

GAHC010250132018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/304/2018

SRI BIREN RAJBONGSHI
S/O LATE KHAGEN RAJBONGSHI, R/O VILL. LAMGAON CAMP, P.O.
BAMUNIGAON, P.S. BOKO, DIST. KAMRUP, ASSAM, PIN 781141

VERSUS

ON THE DEATH OF NAGENDRA CHANDRA DAS HIS LEGAL HEIRS SRI
PAPUL DAS AND 3 ORS
S/O LATE NAGENDRA CH. DAS, R/O VILL. LAMGAON (CAMP), P.O.
BAMUNIGAON, P.S. BOKO, DIST. KAMRUP (R) ASSAM, PIN 781141

2:NRIPEN DAS
S/O LATE NAGENDRA CH. DAS
R/O VILL. LAMGAON (CAMP)
P.O. BAMUNIGAON
P.S. BOKO
DIST. KAMRUP (R) ASSAM
PIN 781141

3:DIPU DAS

S/O LATE NAGENDRA CH. DAS
R/O VILL. LAMGAON (CAMP)
P.O. BAMUNIGAON
P.S. BOKO
DIST. KAMRUP (R) ASSAM
PIN 781141

4:HEMANTA DAS

S/O LATE NAGENDRA CH. DAS
R/O VILL. LAMGAON (CAMP)

P.O. BAMUNIGAON
P.S. BOKO
DIST. KAMRUP (R) ASSAM
PIN 78114

Advocate for the appellant : **Mr. BD Deka**

Advocate for the respondents : **Ms. S Kanungoe**

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

16.07.2024

Heard Mr. BD Deka, the learned counsel appearing on behalf of the appellant and Ms. S Kanungoe, the learned counsel appearing on behalf of the respondents.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code), challenging the judgment and decree dated 13.07.2018 passed in Title Appeal No.11/2014 by the Court of the learned Civil Judge, Kamrup at Amingaon whereby the suit filed by the plaintiff was decreed thereby setting aside the judgment and decree dated 08.09.2009 passed by the learned Munsiff No.4 Kamrup at Guwahati in Title Suit No.124/2008.

3. This Court vide an order dated 26.11.2018 admitted the second appeal by formulating a substantial question of law which reads as under:

“Whether while reversing the finding of the trial court, the first appellate court had applied its discretion in decreeing the suit for specific performance of contract properly on the face of the evidence on record?”

4. The question as to whether the said substantial question of law is involved in the instant appeal, this Court finds it relevant to refer briefly to the facts which led to the filing of the instant appeal.

5. The respondent herein had filed a suit before the Court of the learned Munsiff No.1 Kamrup(M) at Guwahati which was registered and numbered as Title Suit No.124/2008. The reason for filing the suit was that the plaintiff had entered into a registered agreement for sale with the defendant and his mother one Sumitra Rajbongshi for purchase of a plot of land measuring 1 katha 5 lechas at a total consideration of Rs.1,90,000/-. This agreement was entered into on 19.10.2006. Out of the total consideration, an amount of Rs.80,000/- was paid by the plaintiff to the defendant and his mother. It was a stipulation in the said agreement that the sale proceedings would be completed within 35 days on payment of the cash of the outstanding balance. Subsequent thereto, a notice was issued by the plaintiff on 17.11.2006, through his counsel to execute the sale deed and delivered possession of 1 katha 5 lechas of land. It was averred in the plaint that the said notice was duly received by the defendant. However, the defendant and his mother did not immediately execute the deed of sale and it was averred in the plaint that on 04.04.2007, 07.08.2007 and 25.10.2007, the plaintiff requested to complete the terms and conditions of the contract by receiving the remaining consideration. The mother of the defendant, however, performed her part of the agreement by executing a deed of sale for

12.5 lechas by a registered sale deed No.374/2007 dated 01.12.2007 on receipt of Rs.60,000/- as full and final consideration and delivered possession to the plaintiff to the extent of the land sold. However, the defendant did not execute the deed of sale, for which, the suit was filed seeking specific performance of the agreement for sale dated 19.10.2006 and for other reliefs. It is relevant to mention that as the mother of the defendant had sold half of the land, the suit was confined only to 12.5 lechas of land.

6. The defendant pursuant to receipt of the summons appeared and filed the written statement. There was neither any denial to the execution of the agreement for sale dated 19.10.2006 by the defendant, nor to the receipt of the part consideration. It was the specific stand of the defendant that the plaintiff did not honour his promise to pay the balance amount within the time stipulated, for which, the defendant could not purchase an alternative plot of land, which he was looking for.

7. Based on the pleadings, the learned Trial Court framed as many as six issues. The Issue No.4 relates to as to whether the plaintiff entered into a valid and enforceable contract vide deed No.285/2006 dated 19.10.2006 with the defendant in respect of the suit land and the issue No.5 relates to as to whether the plaintiff is entitled to a decree for specific performance of contract of sale as prayed for.

8. The plaintiff in support of his case examined as many as three witnesses and exhibited various documents. On the other hand, the defendant examined

as many as four witnesses and also exhibited certain documents. The Trial Court vide the judgment and decree dated 08.09.2009 dismissed the suit by opining that as the plaintiff had failed to pay the remaining consideration within 35 days from the date of the agreement, there was no cause of action for filing a suit seeking specific performance. Being aggrieved, the plaintiff preferred an appeal before the Court of the learned Civil Judge, Kamrup at Amingaon which was registered and numbered as Title Appeal No.104/2009 and was subsequently re-registered as Title Appeal No.11/2014.

9. The learned First Appellate Court vide the impugned judgment and decree dated 13.07.2018 decreed the suit in favour of the plaintiff by holding *inter alia* that there was an enforceable contract between the plaintiff and the defendant and secondly, the plaintiff was ready and willing to perform his part of the contract and the defendant had avoided and as such, decreed the suit for specific performance.

10. It is under such circumstances, the instant appeal is before this Court.

11. In the backdrop of the above facts, let this Court take note of the submissions made by Mr. BD Deka, the learned counsel appearing on behalf of the appellant, who is the defendant in the suit to support that the substantial question of law which was formulated by this Court vide the order dated 26.11.2018 is a substantial question of law involved in the instant appeal. Mr. BD Deka, the learned counsel appearing on behalf of the appellant submitted that though the plaintiff had averred in his plaint, his readiness and willingness,

but he has failed to prove his readiness and willingness in the context of the requirement in terms of the deed of agreement dated 19.10.2006. He submitted that though the plaintiff tried to show on the basis of the notice dated 17.11.2006 that he was ready and willing, but during his cross examination, he had himself admitted that he had not issued the notice. The learned counsel, therefore, submits that this aspect is a perversity which strikes on the Issue No.5 as to whether the plaintiff was entitled for a decree of specific performance. In addition to that, the learned counsel also submitted that the agreement for sale was entered into on 19.11.2006 and the suit was filed on 22.05.2008 and as such, the learned First Appellate Court ought not to have exercised the discretion conferred under Section 20 of the Specific Relief Act, 1963 (for short, the Act of 1963). He submitted that though in terms of Article 54 of the Limitation Act, 1963 a period of three years is stipulated, but then also it is the well settled principle of law that the suit for specific performance has to be filed at the earliest and failure to do so, the exercise of discretion should not be made by the Court.

12. On the other hand, per contra, Ms. S Kanungoe, the learned counsel appearing on behalf of the respondent submitted that the substantial question of law so formulated is not involved in the instant appeal, *inasmuch as*, the plaintiff has pleaded and proved his readiness and willingness. She submits that it is the mandates of Section 16(c) of the Act of 1963 that the plaintiff has to plead and prove the readiness and willingness. Drawing the reference to the plaint, the learned counsel submitted that the plaintiff had pleaded his readiness and willingness. As regards the evidence, the learned counsel submitted that in the evidence on affidavit filed by the plaintiff as well as the other witnesses it

has been categorically shown that the plaintiff was ready and willing. She submitted that during cross examination also nothing could be culled out which would show that the plaintiff was not ready or willing. On the other hand, a reading of the cross examination would also show that the plaintiff have categorically stated that he had kept the remaining money with him to be paid within 35 days. However, the defendant did not receive. Adding further to her submissions, the learned counsel submitted that in the instant case, it would be seen that the defendant's mother had performed her part by executing the deed of sale and if that be so, the said aspect categorically shows that the plaintiff was ready and willing to perform his remaining part of the contract to the sale. As regards the submissions made to the aspect that the plaintiff had stated that she had not issued the notice, the learned counsel submitted that the notice was duly exhibited. The said notice was not put under objection and as such, the said statement could not in any manner show that the plaintiff was not ready or willing to perform his part of the contract.

13. Upon hearing the learned counsels appearing on behalf of the parties and on perusal of the materials on record as well as the evidence, it is apparent that there is no denial to the fact that there was an agreement for sale dated 19.10.2006 for sale of 1 katha 5 lechas of land belonging to the defendant and his mother. The cross examination of the defendant categorically shows that he has also received half of Rs.80,000/- which was paid in advance and had put to use the said amount, which is also apparent from the materials on record. Though the defendant had made a plea that he had entered into agreement for purchase of an alternate plot of land, but there is no evidence to show the same. Rather the pleadings of the defendant would show otherwise, *inasmuch*

as, he stated that he was looking for another alternative plot of land. This Court had also perused the pleadings and from the pleadings of the plaintiff, it is apparent that the plaintiff had pleaded his readiness and willingness to perform his part of the contract.

14. It is also seen that subsequent to the agreement for sale, the mother of the defendant had sold her portion of the land and this was sold on 01.12.2007. The sale made by the mother of the defendant is not in dispute. From the evidence of the plaintiff, it is also clear that he had categorically not only stated in the evidence on affidavit, but also in his cross examination that he had kept the amount of the balance consideration to be paid to the defendant, but the defendant did not receive.

15. At this stage, this Court finds it relevant to touch upon the submission made by Mr. BD Deka, the learned counsel appearing on behalf of the appellant that the suit was not filed at the earliest, for which, the learned First Appellate Court ought not to have exercised the discretion under Section 20 of the Act of 1963. In the opinion of this Court, the said submission is misconceived, taking into account that on 01.12.2007, the mother of the defendant had sold her portion of the share and delivered possession and within five months thereafter, the suit was filed. The said in the opinion of this Court is not such a delay which would disentitle the plaintiff to the relief of specific performance that too when the suit was filed within the period of limitation.

16. This Court further had also taken note of the judgment passed by the

learned First Appellate Court and from a perusal of the said impugned judgment and decree, it is the opinion of this Court that the learned First Appellate Court had rightly decided the suit in terms of the provisions under Order XLI Rule 31 of the Code and as such, the substantial question of law, which was formulated to be involved in the instant appeal does not arise. Accordingly, the instant appeal stands dismissed.

17. Before parting with the records, this Court also finds it very relevant to take note of that the learned First Appellate Court while decreeing the suit for specific performance failed to exercise the powers under Order XX Rule 12A of the Code by fixing a date, within which the plaintiff is required to pay the balance consideration to the defendant. In exercise of powers under Order XLI Rule 33 of the Code, this Court while affirming the judgment and decree passed by the learned First Appellate Court observes that the decree for specific performance shall be subject to the payment of the balance consideration to the defendant within 15(fifteen) days from the date of the instant judgment and if the defendant refuses to accept the said amount, within a period of 7(seven) days, thereafter, to deposit the same before the learned Trial Court.

18. With the above, the instant appeal stands dismissed. However, in the peculiar facts of the case, this Court is not inclined to impose any costs.

19. Send back the LCR.

JUDGE

Comparing Assistant