

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.175 OF 2019

Shri. Kirtibhai Hargovandas Patel

: Appellant
(Orig Plaintiff)

Vs.

Jamsubhai Kuvaria Patel (Since deceased)

Gajriben J. Patel & Ors.

: Respondents
(Orig. Defendants)

Adv. Mandar Soman a/w Adv. Hardik Joshi, for the Appellant.

Adv. Firoze Bharucha, a/w Ms. Khyati Kanani and Mr. Amit Kanani i/by
Kanani & Co for the Respondents.

CORAM : KISHORE C. SANT, J.

DATE : 1st APRIL, 2024

PC. :

1. Heard the parties. By consent the matter is taken up for final disposal at the stage of Admission.

2. The Original Plaintiff has filed this Appeal challenging the Judgment and Order passed by the learned Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa, dated 4th August, 2018, in Special Civil Suit No. 47 of 2010. The learned Trial Judge by way of the impugned Judgment and Order has partly decreed a suit for specific performance

with cost. The Defendant are directed to pay to Plaintiff an amount of Rs. 34,75,000/- with interest @ 6 % from the date of Judgment. The Plaintiff has aggrieved by the Judgment as the Court refused to direct specific performance of the Agreement and instead directed to refund the amount.

3. The parties are referred to as per their original status in the trial Court for the purpose of convenience. Both the parties entered into an agreement dated 15.07.2008, for sale of a land whereby the defendant agreed to sale the suit land to the Plaintiff for consideration of Rs. 69,75,000/- @ Rs. 2,25,000/- p.a. There was a stipulation that the parties will have to obtain necessary permission from the Collector at the cost of the Defendant. There was further clause that if for any reason any of the parties is to cancel the transaction within 2 months i.e. till 15.09.2008 they can cancel it by giving intimation to the other side by repaying the amount of Rs. 21,75,000/- i.e. the amount received at the time of execution of Appellant. Since the Defendant thereafter did not come forward for the execution of the Appellant the Plaintiff filed a suit for specific performance.

4. It is the case of the Plaintiff that on the date of agreement the Plaintiff has paid total sum of Rs. 21,75,000/- through cheque and cash and the same is acknowledged by the Vendor. The Plaintiff thus prayed for

a decree of specific performance by obtaining a sale permission from the Collector Silvassa.

5. The Defendant filed a written statement, it is the case of the Defendant that the sale agreement was infact a document executed for security towards a loan transaction. The defendant wanted to set up industrial unit on his own land and for that purpose he was a need of the amount. It is further case of the Defendant that the Plaintiff happens to be a money lender and therefore he had advanced the loan amount and the said was to be repaid along with interest at the rate of 2 % per month. It is also the case of the Defendant that infact the Defendant has repaid the amount of Rs. 25,00,000/- to the Plaintiff towards repayment. On this pleading the learned Trial Court framed the issues as to whether the Plaintiff proves the payment and that he has performed his part of contract, whether the Plaintiff was ready and willing to perform part of contract. All these issues are answer in affirmative. So far as the issue as to whether the Plaintiff is entitle for specific performance of contract the Court answered the issue in the negative and decreed the suit in terms of alternative prayer of refund of the amount.

6. The Original Plaintiff is thus before this Court by way of this

First Appeal. The learned Advocate for the Plaintiff argued that when the Court has decided all the issues in affirmative it was necessary to allow the suit however the Court has dismissed the prayer of specific performance only by observing that the Defendant in his evidence has fairly and easily admitted the receipt of total amount of Rs. 34,75,000/-. The Court therefore inferred that this easy admission weighed in the mind of the Court. It is discussed that the Plaintiff has not shown source of his income and from which he has made the payment of such huge amount. It is observed that no documents like cheque or account details are produced on record. The Court has also concluded that the Defendant has not through the refund of amount. The Court has wrongly taken that its a collusive suit just to obtain a relief of direction from the Court to the Government/Collector to grant permission to sale the land. The learned Advocate thus submits that the performance could not have been refused only on such grounds.

7. The learned Advocate for the Defendant opposes the appeal submitting that the agreement was executed only for security to the loan transaction. Parties were never intending to act upon the said agreement by inviting the attention of this Court to the written statement. He submits

that infact there is no admission on the part of the Defendant so far as execution of agreement is concerned. He submits that infact it is a specific case that he do not wanted to sale the land.

8. The learned Advocate for the Plaintiff submits that it is always open for the Collector to grant or to refuse the permission and decree cannot be refused on such terms. Even if there is decree it is for the Collector to decide the issue of grant of permission on its own merits. He rely upon the following judgments:-

a) 2001 SCC Online Bom 103:

Balu Baburao Zarole and others ect. vs. Shaikh Akbar Shaikh Bhikan and others etc.

b) 2003(4)Mh.L.J. 134:

Asudamal s/o Laxmandas Sindhi vs. Kisanrao s/o Wamanrao Dharmale and others.

c) 2009 (1) Mh.L.J.

Ambadas Khanderao Hagvane and others vs. Shaikh Razaq Shaikh Yakub and another.

9. The learned advocate for the Respondent relied upon the Judgment reported in

a) *(2013) 8 Supreme Court Cases page 147 I*

Satya Jain (Dead) & Others Vs. Anis Ahmed Rushdie (dead) through lrs and Others

b) *(1999) 7 Supreme Court Cases 435 I*

Ravinder Kumar Sharma vs State of Assam and Others.

Both the judgments are relied upon in support of his submissions that the successful party need not file Cross Objection and can criticize the finding of the Trial Court even without filing Cross Objections.

10. This Court has gone through the evidence with the help of the parties and considering the submissions and judgments. It is trite law that even if a decree of specific performance is passed the Collector while granting permission as to apply his mind independently. He is not bound by the decree. As such the Judgments relied upon by the Appellant are applicable the present case. So far as the Judgments relied upon by the Respondent also there is no dispute. In the present case what needs to be seen is only as to whether specific performance can be granted. The Court refused performance merely because Defendant has admitted the receipt of payment cannot be a reason to come to conclusion that a suit is collusive suit. If the Defendant has received the amount he is bound to say the said

in the evidence. Merely because the Defendant admits the position can never be a reason to come to the conclusion that the suit is collusive. The second reason assigned is about the permission of the Collector. So far as permission of Collector is concerned it is always open for the authorities under the act to deal with the Application for permission keeping in view the provisions of the Act in this case it is rule 16 & 17 of the Dadra and Nagar Haveli Land Revenue Administration rules 1972, which required permission of the Collector for a transaction when the land owner happens to be a tribal. In this case it is not disputed that the Vendor/Defendant happens to be a person belonging to Schedule Tribe. As already stated it is for the Collector to decide the matter of grant of permission on its own merits. The reasoning of the Court that once the decree is passed it will be a mandate given to the Collector is totally perverse. It is for the Collector to consider the Application to independently apply its mind to the Application which is already filed with the Collector by the Vendor which is pending dated 13.01.2009, filed by the Original Vendor who is now represented by his legal heirs in the suit and in this appeal on its own merits.

11. This Court finds that this Appeal and needs to be allowed and

the same is allowed in above terms. The Defendant to execute sale deed pursuant to Agreement dated 15.07.2008, on Plaintiff depositing the amount of balance consideration subject to permission from the Collector within eight weeks, if such permission is granted. The balance amount be deposited with interest at the rate of 6% p.a. from the date it became due, in Trial Court by 30th April, 2024.

12. First Appeal stands disposed of.

(KISHORE C. SANT, J.)

Note :- This Order is corrected as per Speaking to the Minutes of the Order dated 15^h April, 2024.