

**Court No. - 4**

**Case :-** SECOND APPEAL No. - 228 of 2024

**Appellant :-** Ram Subhag

**Respondent :-** Gulzar And Another

**Counsel for Appellant :-** Durga Prasad

**Hon'ble Rajnish Kumar,J.**

1. Heard Shri Durga Prasad Verma, learned counsel for the appellant.
2. This Second Appeal has been filed for setting aside the judgment and decree dated 09.09.2024/24.09.2024 passed in Civil Appeal No.83 of 2009; Ram Subhag Versus Sattar (Deceased) and others by the Additional District Judge, Fast Track-II, Ambedkar Nagar and judgment and decree dated 19.10.2006/02.11.2006 passed in Regular Suit No.64 of 1984; Ram Subhag Versus Sattar (Deceased) and others by the Civil Judge (Junior Division), Tanda, District- Ambedkar Nagar by means of which the appeal and suit filed by the plaintiff-appellant have been dismissed.
3. Learned counsel for the appellant submits that the appellant had filed a suit for specific performance of contract executed between the parties for sale of land in dispute for consideration of Rs.10,000/-, out of which an advance of Rs.4,000/- was paid by the appellant, as the same was not executed despite notice. An expert opinion was called, on an application moved by the respondent. The appellant was not satisfied with the same, therefore he moved another application, which was dismissed. The appellant had filed a revision against the same. The revisional court allowed the revision and permitted for expert opinion. However in the intervening period, the opportunity of evidence of the appellant was closed. Though the subsequent opinion had come, but without any opportunity of evidence to

the appellant, the suit was dismissed. The appellant filed an appeal. He moved an application under Order 41 rule 27 of Civil Procedure Code (here-in-after referred as CPC) before the Lower Appellate Court, which was rejected. The said order was challenged by the appellant before this court and this court while disposing of the petition observed that it shall be open for the petitioner/plaintiff-appellant to raise his objections against any interim order impacting his right passed by the trial court, while hearing the appeal on merit.

4. He further submits that the appellant had moved an application for amendment in the memo of appeal, which was partly allowed. Being aggrieved the appellant approached this court by filing a petition. The petition filed by the appellant was dismissed. The appellant raised the objections before the lower appellate court, but the lower appellate court has failed to consider the same and dismissed the appeal without considering it and the grounds raised by the appellant. Hence the appellant is constrained to approach this court by means of the present Second Appeal.

5. Having heard learned counsel for the appellant, I have perused the documents placed on records of this appeal.

6. The appellant filed a Regular Suit claiming that the appellant had entered into an agreement with the respondent-Sattar (now deceased) for sale of half portion of Chak No.1032 having an area of 2 bigha, 1 biswa and 1 dhur as he was bhumidhar of the said land for consideration of Rs.10,000/- on 13.02.1981, out of which Rs.4,000/- was paid to him as advance. The sale-deed was to be executed on payment of remaining sale consideration of Rs.6,000/- and after obtaining permission as the respondent was a scheduled caste and the land was to be sold to the appellant, who is not a scheduled caste. The appellant, appears to have given a notice, the receipt of which has been denied by

the respondent. Thereafter, , the Suit was filed.

7. The Suit was contested by the respondent denying the agreement to sale on the ground that it has been got executed in a fraudulent manner from some imposter. The expert opinion was called on an application moved by the respondent, in which it was found that the agreement for sale was not executed by the respondent-Sattar (now deceased). However it appears that the appellant was not satisfied with the same and he had not pursued the matter. Thus the suit was dismissed for want of prosecution.

8. After a lapse of about 9 years, he moved an application for recall and restoration. The application for recall was allowed. The appellant moved an application for another expert opinion. The said application was rejected on 05.07.2001. The appellant challenged the same in revision. Admittedly no interim order was passed in the revision and the proceedings of the trial court were not stayed, therefore, the trial court proceeded with the matter. The opportunity of evidence of the appellant was closed on 03.08.2001. The revision was allowed by means of order dated 25.09.2003 by the revisional court permitting for expert opinion. Thereafter the expert opinion was called, but the said expert opinion was not proved by the appellant.

9. The trial court decided the suit and dismissed recording a finding that the appellant has not adduced any evidence to prove agreement for sale or the expert opinion and he cannot get any benefit of weakness in defence of the defendant i.e. the respondent. The appellant challenged the same before the lower appellate court.

10. During pendency of the appeal, the appellant moved an application under Order 41 rule 27 CPC. The said application was dismissed by the lower appellate court. The same was challenged by the appellant before this court in petition

Misc.Single No.30123 of 2019; Ram Subhag Versus Gulzar and another. This court recorded a finding that perusal of the aforesaid application i.e. Application moved under Order 41 Rule 27 CPC shows that the same is vague and does not specify as to what evidence petitioner-plaintiff/appellant desires to file. However since the appellant after arguing at some length restricted his request for a direction to permit the appellant to challenge the interim order passed by the trial court with regard to submission of evidence made by him before the trial court, while arguing his appeal against the final judgment and decree as is provided under Section 105 CPC, this court disposed of the petition keeping it open to the petitioner-plaintiff/appellant to raise his objections against any interim order impacting his right passed by the trial court, while hearing the appeal on merits. Thereafter the appellant moved an application for amendment in the memo of appeal.

11. The aforesaid application for amendment was partly allowed by the lower appellate court by means of order dated 16.10.2021 permitting the appellant to incorporate the amendments, which were in regard to the parties and case number. However the remaining amendments were rejected. The appellant challenged the same before this court in the Matters Under Article 227 No.26503 of 2021; Ram Subhag Versus Gulzar and another. This court dismissed the petition by means of the order dated 07.12.2022 recording a finding that admittedly the application has been moved after a period of about 37 years of filing of the suit in the year 1984 by the plaintiff and a period of 15 years from the date of filing of the appeal, thus it is apparent that there has been no due diligence on the part of the petitioner-plaintiff/appellant in filing the application for the said amendment to have been allowed by the appellate court.

12. The appellate court decided the appeal, by means of the impugned judgment and decree, recording a finding that the sale deed was to be executed after permission, but there is no averment that the permission was granted and no time limit for execution of the agreement of sale was provided in the agreement. The learned appellate court further recorded that the appellant/plaintiff has not adduced any oral evidence and has not proved his case before the trial court. The expert report No.77ga has not been proved. It appears that due to mistake expert report no.77ga has inadvertently been recorded because the trial court has recorded a finding that the appellant has not proved the expert opinion contained in paper No.144ka1/1 to 144ka1/14. Admittedly the said report had come on the application moved by the appellant. Thus the appellant has failed to prove his case before the trial court.

13. Admittedly no evidence was adduced by the appellant before the trial court and no application was moved for recalling the order, by which the opportunity of evidence was closed, even after the revision of the appellant was allowed, therefore, the contention of learned counsel for the appellant that he has not been afforded opportunity of evidence is misconceived. Even otherwise it is apparent that the opportunity was afforded but the appellant had not adduced the evidence to prove the agreement and the expert opinion came on the application moved by the appellant. Thus the appellant has failed to prove the agreement for sale.

14. So far as the application moved by the appellant under Order 41 Rule 27 CPC before the lower appellate court is concerned, this court had recorded a finding that the application is vague and does not specify as to what evidence petitioner/plaintiff-appellant desires to adduce and it appears

that it was not pointed out before the lower appellate court also.

15. It is also settled law that relief of specific performance of contract is a discretionary relief and readiness and willingness for performance of his part of the agreement by the person, who is claiming the specific performance of contract is required to be pleaded and proved under Section 16 of the Specific Relief Act 1963 and the conduct of the concerned party through out the transaction is also required to be seen. In the present case the conduct of the appellant also does not indicate that he was ready and willing to perform his part of contract as the suit had remained dismissed for a period of 9 years, after which it was got restored. However, in the present case the appellant has failed to prove the agreement itself and the expert opinion came on the application of the appellant, therefore, he is not entitled for any relief and the courts below have rightly dismissed the suit and the appeal filed by the appellant.

16. The Hon'ble Supreme Court, in the case of **Shenbagam and Others Vs. K.K Rathinavel; (2022) SCC Online SC 71**, has held that the decree of specific performance is discretionary relief and in deciding whether to grant the remedy of specific performance, specifically in suits relating to suits of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree and the remedy provided must not cause injustice to a party, specifically when they are not at fault.

17. The Hon'ble Supreme Court, in the case of **P. Ravindranath and Another Vs. Sasikala and Others(arising out of SLP (C) No.2246 of 2017); 2024 SCC OnLine SC 1749**, has held that relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be

extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs.

18. In view of above, this court does not find any illegality or error in the judgment and decrees passed by the courts below, which have been passed with reasoned and speaking orders. No substantial question of law arises in this appeal. The appeal has been filed on misconceived and baseless grounds. The Second Appeal is, accordingly, **dismissed**. No order as to costs.

**(Rajnish Kumar,J.)**

**Order Date :- 9.12.2024**

Banswar