

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 213 of 2015
[Shrirang Chandrabhan Sawai Vs. Sanjay Makhanlal Agrawal & another]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. Rohit Joshi, Adv., for the appellant.
Mr. Uday Dastane, Adv., for respondent no.1.

CORAM : A. S. CHANDURKAR, J.

DATE : 05th July, 2017

The original plaintiff has filed the present appeal being aggrieved by the decree passed by the first appellate Court refusing the relief of specific performance and directing payment of earnest amount.

It is the case of the plaintiff that on 5th May, 1995, the defendant no.1 entered into an agreement for sale of plot nos. 13 and 14 for a consideration to be fixed at the rate of Rs.15/- per sq. ft. Rs. 21,000-00 were paid as earnest amount and the sale-deed was to be executed by 31st March, 1996. On 14th November, 1996, a fresh agreement was entered and the time to execute the sale-deeds was extended till 30th April, 1997. Interest was also agreed to be paid by the plaintiff. On 14th November, 1996, Rs.5,000/- was further paid. In the meanwhile, on 7th April, 1997, the defendant no.1 executed sale-deed of plot no.14 in favour of defendant

no.2. It is thereafter that suit for specific performance came to be filed.

The trial Court held the agreement to be proved and that the plaintiff was ready and willing to perform his part of the agreement. It partly decreed the suit in so far as plot no.13 is concerned. The plaintiff being aggrieved filed an appeal seeking relief with regard to Plot No.14. The defendant no.1 challenged the decree of specific performance by filing a cross-appeal. The appellate Court modified the decree and held the plaintiff entitled only to refund of earnest amount.

Shri Rohit Joshi, learned counsel for the appellant, submitted that the appellate Court was not justified in reversing the findings with regard to readiness and willingness of the plaintiff. He submitted that various steps taken by the plaintiff clearly indicated that he was always ready and willing to perform his part of the contract. It was not necessary for the plaintiff to always be ready with the balance consideration and for that purpose he relied on the decision in **Azhar Sultana Vs. B. Rajamani & others** [AIR 2009 SC 2157]. According to him, the findings of the trial Court deserve to be accepted.

Shri U. Dastane, learned counsel for the original defendant no.1, supported the impugned judgment. He submitted that the appellate Court rightly exercised

discretion by refusing the relief of specific performance. According to him, unless this finding is shown to be perverse, the same would not give rise to any substantial question of law. He placed reliance on decisions in **[a] N. P. Thirugnanam (dead) by LRS. Vs. Dr. R. Jagan Mohan Rao & others** [(1995) 5 SCC 115], and **[b] Harjeet Singh & another Vs. Amrik Singh & another** [(2005) 12 SCC 270] and submitted that no substantial question of law arises.

I have heard the learned counsel for the parties at length.

To consider whether the aspect of readiness and willingness gives rise to any substantial question of law, it would be necessary to refer to the observations in para 5 of the decision in *N. P. Thirugnanam (dead) by LRS* [supra], the relevant portion of which reads as under:-

“5.
To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part

of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. "

While considering the evidence on the question of readiness and willingness, it has been found that though initially the sale-deed was to be executed by 31st March, 1996, the time was extended at the instance of the plaintiff on 14th November, 1996. This fact was specifically mentioned in the agreement at Exh.54, as a result of which, the plaintiff agreed to pay interest at the rate of eighteen per cent per annum. It has then been found that the plots were to be got measured as the price was fixed at Rs.15/- per sq. ft. The defendant no.1, in the meanwhile, on 7th April, 1997 sold Plot No.14 to the defendant no.2. The appellate Court after taking into consideration the conduct of the plaintiff and the surrounding circumstances has concluded that the plaintiff was not entitled for the discretionary relief of specific performance. It further noticed that though the final consideration was not fixed, the plaintiff did not take steps to complete the transaction. Though it is true that it is not always necessary to demonstrate availability of the balance consideration as observed in *Azhar Sultana* [supra], that is not the sole ground on which the appellate Court has held against the plaintiff. The various circumstances considered by the appellate Court indicate that this conclusion has been arrived at

after considering the entire evidence on record. This appreciation cannot be said to be perverse. I find that the appellate Court has taken a possible view of the matter and the appeal does not give rise to any substantial question law. The appeal is, therefore, dismissed. No costs.

Judge

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