

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE HARISH TANDON

And

THE HON'BLE JUSTICE PRASENJIT BISWAS

FA 98 OF 2018

With

CAN 7 (9424) of 2011

&

CAN 10 (8237) of 2019

Smt. Ratna Roy & Anr.

Vs.

Sri Ramesh Chandra Biswas & Anr.

**For the petitioners : Mr. Partha Pratim Roy, Adv.
Mr. Dyutiman Banerjee, Adv.**

**For the respondents : Mr. Subhojit Mullick, Adv.
Mr. Arijeet Das Mullick, Adv.**

Judgment on : 17.10.2023

Prasenjit Biswas, J:-

1. The Instant appeal is preferred by the defendant/appellant challenging the impugned judgment and decree passed by the learned Civil Judge (Senior Division), 1st Court, Barasat, in connection with Title Suit No. 383 of 1995. The learned Trial Court held that the plaintiffs/respondents are entitled to specific performance of contract and consequently, directed

the defendant/appellant to execute deed of sale transferring the suit property in favour of the plaintiffs/respondents.

2. Being aggrieved by and dissatisfied with the judgment and decree passed by the learned Trial Court, the instant appeal has been preferred on behest of the appellant/defendant.

3. The ground for appeal is that the learned Trial Court did not appreciate the evidence correctly and the decision arrived is perverse. It has been canvassed that there was no agreement between the parties and the said agreement for sale and other documents were fraudulently manufactured by the plaintiff which will be revealed from his cross-examination.

4. The another ground which is taken by the appellant is that the learned Trial Court ought to have considered that the document in question (exhibit 1) was manufactured by the plaintiffs as the hand written portion in the body of the agreement was made by the plaintiff No. 1 who has not made any explanation for it as well as to why the consideration was reduced in place of actual consideration. Moreover, learned Trial Court ought to have been relied on the evidence adduced by DW3, Ratna Ghosh. It is stated by the appellant that the plaintiffs under undue influence and on some deceptive motive obtained the signatures of the appellant on exhibit 1.

5. It is admitted position that the suit property belongs to the defendant/appellant. It is the case of the plaintiff that the defendant by an agreement dated 19.01.1994 agreed to sell the scheduled properties to them at a consideration of Rs.1,27,632/- and this appellant in pursuance of that agreement of sale received Rs.30,000 as earnest money on the date

of agreement for sale. Subsequently, Rs. 20,000 was further paid by the plaintiffs to the defendant/appellant and as such the appellant/defendant received Rs.50,000 in total from the plaintiffs as earnest money. The plaintiffs repeatedly requested this appellant to complete the sale but she avoided the sale on different pretext and finding no other way he sent notices demanding the performance of the agreement by the appellant. This appellant replied to those notices but ultimately did not execute the sale deed in favour of the plaintiffs. As the plaintiffs were always ready and willing to buy the scheduled property on payment of balance consideration money but the defendant avoided the same and so under compelling circumstances he took the shelter of the Court of law with a prayer for decree for specific performance of contract against this appellant. After getting summon from the Court this appellant/defendant entered appearance in the suit and filed written statement denying all the allegations as made out in the plaint. It is the stand point of the appellant no.1 that at the relevant point of time as she required money to buy some shares of a property at Kolkata, she procured a portion of that amount as a loan from her husband's brother. As the appellant was not in a position to repay the loan amount she took another loan from one Netai Das of her village but she also failed to repay the loan amount which was taken from Netai. It is stated by the defendant/appellant that to overcome the situation she took loan of Rs. 40,000 from the plaintiff through her son-in-law and as a security for the said loan she put some signatures on blank piece of stamp papers and demy papers which had been subsequently converted by the plaintiff/respondent to alleged agreement for sale of the suit property with malafide intention. It is further stated by the defendant/appellant that

she had never intended to sell the suit property in favour of the respondents/plaintiffs. As averred by the appellant that the respondent in collusion with her son-in-law prepared and manufactured the alleged agreement for sale with intention to grab the suit properties. It is also the stand point of the appellant that the document in question is not an agreement for sale and it is only a piece of document bearing her signature, a security for loan and although she was very much ready and willing to repay the loan amount which was taken by her but the plaintiffs/respondents refused to accept the same with the malafide intention. What must now be pointed out is that the appellant subsequently pleaded that the agreement for sale is a product of fraud and the said document was manufactured by the plaintiffs in respect of the scheduled properties.

6. The learned Trial Court casted eight issues viz

- i) Is the suit maintainable in its present form?
- ii) Is the suit barred by limitation?
- iii) Is the suit bad for non-joinder of any necessary party?
- iv) Had there been any agreement of sale for a scheduled property between the parties?
- v) Was the deed dated 19.01.1994 consciously executed by the defendant?
- vi) Was the deed dated 19.01.1994, a deed of agreement for sale of the suit property or deed of loan?
- vii) Is the plaintiff entitled to any other relief as claimed?

7. The case of the appellant is that the document in question dated 19.01.1994 was comprised of a blank stamp paper and few blank papers on which the appellant was made to put her signatures and the respondents have subsequently typed an agreement for sale on those blank papers which was never intended to be executed by the appellant herein. It is contended by the appellant no.1 that she is almost illiterate and could not understand the purport of the agreement dated 19.01.1994. In support of her contention, three witnesses were examined in her favour. It is assailed by the appellant no.1 that she had taken a loan to repay the other loan and for such purpose she deposited the deeds of her property with the respondents and signed on some stamp papers and blank papers.

8. On the other hand, it is contended on behalf of the respondent that they have successfully discharged their burden of proof with regard to the plaint case and fact asserted therein. In support of his submission learned Counsel appearing on behalf of the respondents made reliance on the decisions rendered by the Hon'ble Apex Court reported in **2015 (1) SSC 597** and **2006 (7) SSC Page 756**. It is submitted on behalf of the respondents that the appellants never denied or disputed the fact of receipt of part consideration money and the respondent have all along shown their readiness and willingness to make payment of the balance consideration amount but the appellant no.1 never showed her willingness and readiness to execute deed of sale in respect of the scheduled properties in favour of the respondents.

9. It is further submitted by the learned Counsel on behest of the respondents that they have successfully proved the plaint case and as such

there is no legality or infirmity in the impugned judgment and decree passed by the learned Trial Court.

10. Rule 23-A to Order 41 CPC provides for a remand by an appellate Court in an appeal against a decree if (I) the Trial Court disposed of the case otherwise than on a preliminary point and (II) the decree is reversed in appeal and a retrial is considered necessary. Thus, what is mandated is that on twine conditions being satisfied the appellate Court can exercise the same power of remand under Rule 23/A as it is under Rule 23.

11. Section 107(2) of CPC does invest the appellate Court with some powers that are conferred on Court on original jurisdiction. It is a trite law that it is a bounden duty of the appellate Court to see whether the evidence taken as a whole can reasonably justify the conclusion which the Trial Court arrived or at whether there is an element improbability arising through a number of circumstances which in the opinion of the Court outweighs such findings.

12. In above backdrops, when we revisited the evidence on record we hold that the most essential issue is as follows:-

“Whether the suit is without any cause of action and the alleged document is forged and fabricated one?”

13. We, therefore, frame that issue. Without answering this, there cannot be a proper decision in the instant case and in view of the matter rehearing is necessary. Since, new issue has been casted, opportunity needs to be provided to the rival parties to lead evidence on that issue again. Learned trial court, as the record would clearly surface has not

considered this aspect of the matter and passed the above impugned judgment in question without recording any clear-cut finding in this regard.

14. The impugned judgment and decree passed by the learned Trial Court lacks sufficient reasons and does not at all analyze and appreciate the evidence on record. The issues have also not been properly casted and, accordingly, judgment and decree passed by the learned Trial Court is liable to be set aside.

15. In the result the judgment and decree dated 31.07.1999 passed in connection with Title Suit No. 383 of 1995 is hereby set aside. In the heels of surrounding facts and circumstances, we are also of the mindful opinion that the matter warrants remand to the learned Trial Court for rehearing in the light of observation made hereinabove.

16. The case is remanded back to the court below for re-hearing of the case after giving opportunity to either of the parties to lead evidence on the issue framed by this Court only. The learned Trial Court would re-cast the issue. He would add this issue that we have framed in this appeal to the eight issues already on record and then proceed with the suit as per procedure established by the law. Opportunity should be given to the parties by the Trial Court to lead further evidence on the issue framed by the Court if they so desire by keeping the evidence already adduced by the parties in the record and deliver a fresh judgment. The parties to the proceeding are directed to appear before the Trial Court and no further notice is required to be sent to the either of the party.

17. The instant appeal be and the same is hereby allowed to the aforesaid extent. In the facts and circumstances of the case there shall be no order as to costs

18. Consequently, the applications, if any, in connection with the appeal are hereby disposed of.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)