06.09.2023
s/l.15
pk

F. A. 31 of 2012

Sri Anup Dutta (since deceased)
represented by Miss Simla Dutta and others
Versus
Sri Sunil Kumar Mehera and another

Mr. Probal Kumar Mukherjee,
Mr. Somnath Roy
… for the appellants.

Mr. Bhaskar Ghosh,
Mr. Arup Banerjee
… for the respondents.

1. This appeal is directed against judgement and order dated September 12, 2011 passed in Title Suit No. 189 of 1999 by the learned Civil Judge (Senior Division) at Bardhaman.

Facts of the Case

2. The suit was for specific performance of agreement dated May 27, 1998 (exhibit 10). By the said agreement the appellant agreed to sell his 1/4th share in the suit property. The three brothers of the appellants also agreed to sell their 3/4th share in the suit property to the respondent.
3. The said agreement was signed by the appellant (now deceased) and his wife apart from admittedly being signed by three other brothers of the deceased appellant.
4. Pursuant to the said agreement or sometime there about, the plaintiff is stated to have paid about Rs.

62,000/- and odd in cash and in cheque to the deceased appellant and his wife. The consideration amount is mentioned in the agreement.

5. Admittedly, the defendant no. 1 and his three brothers claimed to have jointly inherited the suit property from their father. Pursuant to disputes and differences, a suit being T. S. no. 75 of 1997 came to be filed by the father against the late appellant no. 1 and his three brothers. A compromise decree was thereafter passed. The father sought to resile from the compromise decree by an application under Section 151 of the CPC. A suit was also subsequently filed by the father being T.S. No. 35 of 2000, challenging the compromise before the learned Civil Judge (Senior Division) at Bardhaman. The father died and the suit may have become infructuous.

6. The other three brothers of the appellant no. 1, executed conveyance of the property in favour of the respondents pursuant to the said agreement of sale dated 27.05.1998 and executed the conveyance. The plaintiffs/respondents took possession of ¾ of the property between May 1998 and July 1999.

7. On September 16, 1998 (exhibit 3), the appellants have sought an extension of time of three months to comply with the terms and conditions of the agreement dated 27.05.1998.

8. Upon the appellants delaying the execution of conveyance of their ¼ share in the property, learned advocate for the respondents/plaintiffs issued a notice of demand on July 12, 1999 (exhibit 4).

9. In reply to such notice of demand, the appellants through their advocates by letter dated 19th July 1999 (exhibit 5) denied ever having signed any agreement dated 27.05.1997 and stated the same was manufactured. It was alternatively stated on behalf of the appellants that the plaintiffs/respondents have delayed and were not ready and willing to execute the agreement, given the delay and lapse of time for performance thereunder.

Proceedings in the Court below

10. The plaintiffs/respondents thereupon filed the instant suit seeking specific performance of the agreement dated 27.05.1998 against the defendants. The appellants filed written statement.

11. The Court below filed several issues, set out hereinbelow:-

a) *Is the suit maintainable in its present form and in law?*
b) *Have the plaintiffs any cause of action to file this suit?*
c) *Is the suit barred by limitation?*
d) *Are the plaintiffs entitled to get decree for Specific Performance of Contract for Sale as prayed for?*
e) *To what other relief or reliefs if any are the plaintiffs entitled?*

12. The plaintiffs exhibited, inter alia, money receipts, letters of demand, the agreement dated 27.05.1998 and a certificate from their bank indicating the money paid towards advance and/or earnest money.

13. The plaintiffs examined two witnesses, namely, the plaintiff no. 1, Umesh Kumar Mehera and the attesting witness of the agreement of sale, Salil Kr. Basu. The defendants examined the second defendant as DW 1 and one Gautam Dutta, brother of the appellant no. 1.

14. The Court below heard arguments at length and found in favour of the plaintiffs/respondents.

Analysis and Findings of this Court

15. This Court has carefully heard the arguments of Mr. Probal Kr. Mukherjee, learned Senior Advocate for the appellants and Mr. Bhaskar Ghosh, learned Senior Advocate for the respondents/plaintiffs and has very carefully considered the pleadings, the evidence on record, deposition of the witnesses in chief and cross-examination.

16. The appellants argue that the signature of his late client Anup Dutta very curiously appears both on the top of the last page of the agreement dated 27.05.1998 as also on the left hand side bottom. This, according to Mr. Mukherjee would lend credence to his defence that signature on blank documents was obtained from the defendant by his

three brothers. The defence version is that Anup Dutta often signed blank document for the purpose of business with his brothers.

17. This Court of the view that an additional signature at the bottom of an agreement and that too only on the last page could by itself not be assumed as a suspicious circumstance as regards execution of the agreement as a whole. Without any other evidence of suspicion, the second signature at the bottom left hand side can at best be seen as an additional albeit unnecessary endorsement.

18. The appellants have not been able to dislodge the evidence produced by the defendants in the Court below that they have in fact received money both in cash and cheque from the plaintiffs. The appellants have also not been able to dispel or wriggle out of the letter dated 16.09.1998 seeking extension of time to comply with the terms and conditions of the said agreement dated 27.05.1998.

19. Between 16.09.1998 and 12.07.1999, admittedly the other three brothers of the deceased appellant, duly executed and registered conveyance and complied with their bargain of selling ¾ of the property to the plaintiffs/respondents.

20. This Court's mind is, therefore, not free from doubt that the defence raised in the written statement might be an attempt to squeeze out further sums of

money from the plaintiffs. The plaintiffs seem to have by that time purchased, occupied and taken over ¾ of the suit property and were lawfully entitled to ¾ of the suit property and were already cornered.

21. The defendants/appellants tried to cough up and/or fork out extra sums of money for conveying the balance ¼ of the property of which they were admittedly occupying the ground floor.

22. This Court is unable to accept the defence of the appellants that they have no other suitable property or could not relocate to any alternative property in Bardhaman. There is evidence on record that the appellants collect rents from at least 40 to 50 tenants from other properties belonging to their family.

23. The sheet anchor of the arguments of the appellants however is the evidence of DW 2.

24. The Court below has already found some inconsistency in the examination in chief and answer in cross-examination of the DW 1. The DW 2 was Gautam Dutta, one of the brothers of the appellant no. 1.

25. DW2 Gautam Dutta has stated that the agreement with the plaintiffs/respondents was only entered into by three brothers. There was no relationship whatsoever between the plaintiffs/respondents and the appellant no. 1.

26. While this evidence looks rather damning to the respondents/plaintiffs case, it is equally difficult to digest that a purchaser of a property knowing fully well that the vendors comprises of 4 several persons with ¼ equal share each would not enter into any agreement with the appellants. If, indeed, the agreement was manufactured, the appellant/defendant no. 1 ought to have questioned the receipt of money both in cash and by cheque coming into his account in the year 1999. He could have returned the same. He has not. On the contrary he appropriated the same to his use and benefit.

27. The allegation of fraud being perpetrated on the appellant/defendant by his brothers cannot be accepted for the following reasons:

a) One of his brother came to depose in his favour.

b) The appellant has not lodged any complaint against his other brothers for having procured a signature by surreptitious means or on blank document or in manufacturing the said agreement of sale dated 27.05.1998.

c) While they might have been reference to some criminal proceeding in the oral evidence of DWs, there is no proof or evidence of such proceedings in fact or any specific documents to that effect exhibited in the Court below.

d) No particular of such fraud has been pleaded in the written statement.

28. It is now well-settled that fraud unravels all and has serious and extreme consequences on the parties against whom allegations have made. It is for the these reasons that specific and detailed particulars are required to be given in the principal pleading of a party. Fraud ought to be taken as a defence in the first available instance and has to be pleaded with precession and detail. Sufficient evidence must also be led to this effect. The defendant/appellant has miserably failed to comply with any of the aforesaid mandates of law.

29. The appellant's father has since died during the pendency of the suit in the Court below, the attempt by the father to resile from a compromise decree and pursue T.S. 35 of 2000 cannot stand in the way of the defence complying with the terms of the agreement dated 27.05.1998.

30. As already stated hereinabove, the suit itself may have become infructuous. The same is not an acceptable ground even otherwise in law. In any event since three brothers of the appellants have already executed conveyance of ¾ of the property in favour of the plaintiffs/respondents the defense is no longer sustainable.

Conclusion

31. For the reasons stated herein above, this Court is of the view that the impugned judgement 12.09.2011 calls for no interference whatsoever.

32. There is, however, some need for modification of the operative portion of the impugned judgment, the Court ought to have passed a decree for specific performance simplicitor against the defendants/appellants. There was no need for passing any preliminary decree. If the defendants/appellants fail to comply with the requisitions in the decree, the remedy of execution is always available to a plaintiff.

33. Mr. Probal Mukherjee had, by reference of the judgement of the Hon'ble Supreme Court, stated that the value of the property has increased many fold with the passage of time. Even assuming for the sake of argument that his clients might have been correctly found in default and liable for specific performance, given the passage of time, it would be unfair on his clients to compel him to part sale the suit property at the same agreed rate in the year 1999.

34. This Court has carefully considered the arguments. The Court should not inclined at all to consider the increase in the value of the property from 1999 to 2023, i.e., a period of 24 years. The total receivable

consideration by the appellants/defendants was Rs. 3 lacs in the year 1999. However, in the interest of justice, this Court directs the plaintiffs to pay a total consideration of Rs. 8 lacs including the earnest money already paid for purchase and registration of conveyance in respect of 10 cents share of the appellants in the suit property. This amount is fixed by this Court on Rs. 8 lacs despite submission of learned counsel for the appellants that the current market value of the property is in around Rs. 30 lacs, in view of the gross impropriety on the part of the appellants indicated hereinabove.

35. The respondents shall however be liable to pay stamp duty and registration charges at the current market rate.

36. F.A. 31 of 2012 shall stand dismissed except as directed hereinabove.

37. In view of the above, all pending applications shall also stand dismissed.

38. Let the LCR be sent back to the Court below expeditiously.

39. There will be no order as to costs.

40. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)