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Ct. No. 04

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S.A.T. 18 of 2022
CAN 1 of 2022

Mathuramohan Das & Ors.
Vs.
Sri Anathbandhu Das and Ors.

Mr. Partha Pratim Roy,
Mr. Debabrata Mondal.
... for the appellants.

A suit for specific performance of an agreement for sale of an immovable property filed by the plaintiffs/respondents was decreed and the judgement of the Trial Court was affirmed by the Appellate Court.

The present Second Appeal has been filed assailing the judgement of both the Courts below on the premise that the judgement is infirm and erroneous to the extent that no corroborative evidence was produced in relation to the signature appended on the agreement for sale.

It is thus contended that both the Courts have proceeded to rely upon the report of the handwriting expert, which is merely 'opinion evidence' and the judgement based thereupon is illegal and, therefore, raises substantial questions of law. It is further argued that though the plaintiffs/respondents claimed possession in part performance of an agreement for sale, but miserably failed to prove the possession and, therefore, the Court ought not to have believed the statement of the plaintiffs in relation to the genuinity and authenticity of the agreement for sale. Lastly it is submitted that the plaintiffs/respondents did not seek decree of possession upon specific performance of an agreement for sale and, therefore, the decree, which is otherwise incapable of being executed in its entirety, cannot be regarded as valid in the eye of law.

An ancillary point is also taken that the decree

was passed against the present appellants being the defendant nos. 1 and 2, who admittedly conveyed and transferred the subject property to the defendant nos. 5 and 6 and, therefore, such decree cannot be executed against the present appellants.

Admittedly in a suit for specific performance of an agreement for sale of an immovable property, the agreement was tendered in evidence and exhibited in the case. The specific defence was taken on the genuinity and authenticity of the said agreement for sale, as according to the appellants they never executed the said agreement.

Obviously the moment the signature appended on the agreement for sale is disputed, on the prayer of the plaintiffs/respondents a handwriting expert was appointed and the report revealed that there is no disparity in the signature appearing in the admitted documents and the purported agreement for sale.

We are not unmindful of the proposition of law that the Court cannot base its decision solely on the report submitted by an expert. The report cannot be said to be conclusive on the above aspect as it is merely an 'opinion evidence' and, therefore, to be corroborated with the convincing materials. The witnesses to the agreement were cited as witnesses before the Trial Court who in unequivocal terms deposed that the appellants executed the agreement by putting their signatures in their presence. There was no suggestion, which was given to such witnesses in the cross-examination in relation to such categorical statements made by them.

It is a cardinal rule of evidence that the statement made in the examination-in-chief having not controverted in the cross-examination it goes unchallenged and there is no difficulty in accepting

such statement as a statement of truth. However, a point is sought to be raised that those witnesses are related to the plaintiffs/respondents, but both the Courts declined to accept such stand and did not find that the aforesaid witnesses are not trustworthy.

The possession in part performance of an agreement for sale does not affect the validity and authenticity of the agreement for sale. The moment plaintiffs/respondents have conclusively proved the due execution of the agreement for sale even if the plaintiffs/respondents have failed to prove that the possession of the subject property in part performance of the said agreement, it does not invalidate the agreement for sale.

The concept of Section 53A of the Transfer of Property Act is to protect the possession obtained in part performance of an agreement for sale. It does not have any impact on the validity or genuinity of the said agreement.

A radical change has been brought into the Specific Relief Act where the discretion of the Court, which earlier vested in passing a decree for specific performance of an agreement for sale, has been done away with. The moment the plaintiffs/respondents have proved the due execution of the agreement for sale and the Court found that the plaintiffs are entitled to such decree, it is imperative to pass a decree for specific performance of an agreement.

Though feebly it is argued by the appellants that the plaintiffs/respondents were not sure on the earnest money allegedly paid to the defendants/appellants at the time of execution of an agreement for sale. According to the learned Advocate for the appellants, in examination-in-chief the first witness of the plaintiffs stated that a sum of

Rs.50,000/- was paid as earnest money, whereas in a later part of the evidence it is stated that a sum of Rs.5,000/- was paid as earnest money.

The Trial Court have examined such issue and held that while dictating the deposition of the witnesses there was a typographical error by incorporating Rs.50,000/- instead of Rs.5,000/- and such mistake cannot be projected afront to deny the payment of earnest money. Furthermore, the moment plaintiffs/respondents have taken a firm stand that they have paid a sum of Rs.5,000/- as earnest money and not Rs.50,000/-, mere recording the aforesaid sum does not efface the evidentiary value of the statements of the plaintiffs/respondents.

From whatever angle we look at do not find any infirmity or incongruity into the findings recorded by both the Courts below and we are of the firm view that the instant appeal does not involve any substantial question of law.

However, we find that in ordering portion while decreeing the suit the Trial Court omitted to direct the plaintiffs/respondents to pay the balance consideration amount upon deducting the earnest money so paid within the time frame.

Though the Trial Court has decreed the suit on contest but omitted to direct the plaintiffs/respondents to pay the balance consideration amount, we had an occasion to peruse the plaint filed by the plaintiffs/respondents; in paragraph 4 and 5 thereof the plaintiffs/respondents have categorically stated that the decree for specific performance of a contract should be passed in their favour upon payment of balance sum of Rs.7,000/-, to which they are ready and willing to put in.

However, we do not find that the prayers have

been couched in a proper manner. There is no fetter on the part of the Court, more particularly the Appellate Court, to pass an appropriate order in exercise of provisions under Order XLI Rule 33 of the Code of Civil Procedure.

We, therefore, modify the decree to the extent that the plaintiffs/respondents are directed to deposit the balance consideration amount within four months from date and in the event of deposit of the said amount, the defendants are directed to execute and register the deed of conveyance in favour of the plaintiffs/respondents within three months therefrom.

It goes without saying that all the incidental charges shall be borne by the plaintiffs/respondents attached to the execution and registration of the conveyance.

Failing to deposit the amount within the time frame mentioned hereinabove the suit shall stand dismissed.

The Registrar (Judicial) is directed to communicate this order to the concerned Judge, where the execution proceeding is pending, immediately for compliance.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

