

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 30th May, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RSA No.03 of 2021

Appellant : Tshering Dorjee Lepcha

versus

Respondents : Chimbu Lepcha and Others

Appeal under Section 100 read with Section 151
of the Code of Civil Procedure, 1908

Appearance

Mr. B. Sharma, Senior Advocate with Mr. Safal Sharma, Advocate for the Appellant.

Mr. Dewen Sharma Luitel, Advocate with Mr. Bhaichung Bhutia, Advocate for the Respondents No.1 and 2.

Mr. S. K. Chettri, Government Advocate for the Respondents No.3 to 5.

JUDGMENT

Meenakshi Madan Rai, J.

1. This second appeal has meandered into this Court on the dis-satisfaction of the Appellant with the impugned Judgment and Decree, of the Learned District Judge, East Sikkim, at Gangtok, dated 30-09-2021, in Title Appeal No.02 of 2020 (*Chimbu Lepcha and Another vs. Tshering Dorjee Lepcha and Others*). The impugned Judgment set aside the Judgment and Decree of the Learned Trial Court, dated 30-04-2019, in Title Suit No.01 of 2016, (*Tshering Dorjee Lepcha vs. Chimbu Lepcha and Others*). The Learned Trial Court had decreed the suit of the Plaintiff, the Appellant herein.

2. To comprehend the matter in its entirety, the brief facts of the dispute are required to be considered. The Plaintiff (Appellant herein) filed a suit for Declaration and Specific Performance of Contract, under Section 10 of the Specific Relief Act, 1963

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(hereinafter, the "Specific Relief Act"), against the Defendants No.1 and 2 (Respondents No.1 and 2 herein), claiming that, the Defendant No.1 had sold him three plots of land, situated at Lingzey Block, Assam Lingzey, East Sikkim, with the consent of his son, the Defendant No.2, at a mutually fixed consideration value of ₹ 12,00,000/- (Rupees twelve lakhs) only. An advance payment of ₹ 2,20,000/- (Rupees two lakhs and twenty thousand) only, is said to have been made by the Plaintiff to the Defendant No.1, on 27-10-2014, reflected in Exhibit 1 "*Dhan Rashid*" (money receipt), in the presence of the wife of Defendant No.1, his daughter, his son and four other independent witnesses, whose names appear in the said document. Consequent upon such deposit, Exhibit 2, a Sale Deed document, was executed on 14-01-2015 between the Defendant No.1 as the seller and the Plaintiff as the purchaser, in the presence of two witnesses viz.; Tirtha Ram Sharma (PW-6) and Santosh Subba (PW-1). On the same day, i.e., 14-01-2015, another document Exhibit 3, a "*Bandobasta Patra*" (Agreement), was executed between the same parties, in the presence of independent witnesses and the wife, son and daughter of the Defendant No.1. They had no objection to the registration of the sold property, in the name of the Appellant. A Certificate to that effect, Exhibit 4, was signed by the family members of the Defendant No.1 including one daughter and one son. Pursuant thereto, a spot verification was conducted by the 'Amin' (Surveyor), and a report, Exhibit 5 prepared. All relevant documents were then submitted in the Office of the Registrar/Sub-Registrar for registration of the suit land in the name of the Plaintiff, which however did not fructify as the Defendant No.2 objected to it. Notwithstanding the Plaintiff's

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appearance as summoned before the registering authority post the objection, the Defendant No.1 failed to enter appearance, despite several verbal requests made to them by the Plaintiff. That, the Plaintiff is willing to pay the balance amount of ₹ 9,80,000/- (Rupees nine lakhs and eighty thousand) only, upon which, the Defendant No.1 is duty bound to transfer the suit lands for performance of the contract. Hence, the prayers in the Plaint, seeking a decree declaring that the Defendant No.1 as the owner of the suit land had executed the Sale Deed in the Plaintiff's favour, and thereby has a right to register the Sale Deed in his name, that he has acquired right, title and interest over the suit land. That, the Defendant No.3 be directed to compulsorily register the Sale Deed.

3. The Defendants No.1 and 2 opposed the claims of the Plaintiff by averring that, in fact in October 2014, one Tirtha Ram Sharma (PW-6), had offered to loan an amount of ₹ 2,30,000/- (Rupees two lakhs and thirty thousand) only, to the wife of the Defendant No.1, to enable her to meet the educational expenses of her daughter. Later he approached her to sell him the disputed property. There being a legal bar to transferring the property of a tribal (the community to which the Defendants No.1 and 2 belong), Tirtha Ram Sharma sought to register the property in the name of the Plaintiff, Tshering Dorjee Lepcha, the Appellant herein. Consequently, on execution of the Sale Deed dated 14-01-2015, Tirtha Ram Sharma took the *Parcha* (Title Deed) from the possession of the Defendant No.1, which was later recovered from him on a complaint to the concerned Police Station. That, following the execution of Exhibit 2, neither possession nor interest over the disputed land was transferred to the Plaintiff but Tirtha Ram Sharma

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started constructing an approach road on it, despite the objection of the family members of the Defendant No.1.

(i) In their Counter-Claim the Defendants No.1 and 2 besides the facts averred in their written statement, reiterated that, the Defendant No.1 being an illiterate person, signed Exhibit 2, unaware of the fact that the property would be transferred in the name of the Plaintiff, instead of Tirtha Ram Sharma. The reliefs sought by them in the Counter-Claim was for a declaration that the Defendant No.1 was the absolute owner of the suit land and for cancellation of the Sale Deed, dated 14-01-2015.

(ii) The records of the Learned Trial Court reveal that the Defendants No.3, 4 and 5 appeared therein intermittently, they did not file their response to the Plaint. It appears that the Learned Trial Court was remiss in not declaring them *ex parte* despite their non-appearance after the Court framed the issues.

(iii) On the basis of the pleadings of the parties, the following four issues were struck by the Learned Trial Court for determination;

- (i) Whether the Defendant had executed the Sale Deed in favour of the Plaintiff duly entering into mutual agreement between Defendant No.1 and the Plaintiff as seller and buyer on 14-01-2015, with regard to suit property bearing plot nos.111, 536 and 540 measuring 0.530 hectares, 0.0640 hectares and 0.1200 hectares, situated in Linzey Block, Soureni, Assam Linzey, East Sikkim?*
- (ii) Whether the Plaintiff has right to registration of the Sale Deed executed by the Defendant No.1 and whether NOC was given by the family members of the Defendant No.1*

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including Defendant No.2 for the sale of the suit property in presence of witnesses to the Plaintiff?

(iii) Whether the Plaintiff is entitled for rights, title and interest over the suit property and whether the present suit filed by the Plaintiff is maintainable or not?

(iv) Whether the Plaintiff has made an advance payment of ₹ 2,20,000/- (Rupees two lakhs and twenty thousand) only, to Defendant No.1 on 27-10-2014?

(iv) The Plaintiff examined six witnesses in support of his case, while the Defendants No.1 and 2 examined Kamal Kumari Rai, Bishnu Maya Rai, Reena Lepcha and Tshering Lhamu Lepcha as their witnesses. The Defendants No.3, 4 and 5 did not examine any witness.

4. On consideration of the evidence furnished, in issue no.1, the Learned Trial Court observed that as Exhibits 1, 2, 3 and 4 stand proved, the transaction and the issue was decided in favour of the Plaintiff. In issue no.2, it was concluded that the signatories to Exhibit 3 had authenticated the transaction and the Plaintiff would have the right to register the suit property. In issue no.3, while referring to Exhibits 1, 2, 3 and 4 the Court observed that the Plaintiff was ready and willing to perform the essential terms of the contract, under Section 16(c) of the Specific Relief Act and this issue was decided in favour of the Plaintiff. In issue no.4, the Learned Trial Court observed that enough evidence was furnished by the Plaintiff and the Defendants had not disputed the signatures appearing on Exhibit 1, 2 and 3, which accordingly stood proved in favour of the Plaintiff. The suit was decreed in favour of the Plaintiff.

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5. Aggrieved by the Judgment, the Defendants No.1 and 2 were before the Learned First Appellate Court in Title Appeal No.02 of 2020. The Learned First Appellate Court vide the impugned Judgment, in issue no.1 disagreed with the finding of the Learned Trial Court and set it aside with the observation that the findings of the Learned Trial Court were perverse and unsustainable and that, it was not the Plaintiff, but PW-6 Tirtha Ram Sharma (Sapkota) who was the real purchaser of the suit lands which the Learned Trial Court had overlooked and simply based its finding on the tenor of Exhibits 2 and 3, while the material evidence on record would belie the recitals in the documents. Taking up issues no.2 and 3 together and concluding differently from the findings of the Learned Trial Court, the Appellate Court held that, the Plaintiff was not entitled to the registration of the concerned Sale Deed which was a *sham* transaction. In issue no.4, it observed that though the Defendants No.1 and 2 may have admitted that they had put their signatures on the various documents above, it was only seen to have been made with regard to the *sham* sale transaction and that strictly speaking, issue no.4 had not been proved by the Plaintiff. Accordingly, the findings of the Learned Trial Court on the issues (*supra*) were found to be erroneous and the Judgment and Decree of the Learned Trial Court were thus set aside, which has given rise to this Second Appeal, which was admitted on the following substantial question of law;

- (i) *Whether the First Appellate Court while holding that the transaction was a sham transaction erroneously set aside the Order of the Learned Trial Court, despite the weight of evidence being tilted in favour of the Appellant in light of*

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the evidence pertaining to execution of documents being Exhibit-1 to Exhibit-5?

6. The parties shall hereinafter be referred to as per their litigative status before this Court.

7. Learned Senior Counsel for the Appellant walked this Court through the averments of the parties with emphasis on the documents relied upon and contended that vide Exhibit 2, the Sale Deed document, dated 14-01-2015, the advance money of ₹ 2,20,000/-(Rupees two lakhs and twenty thousand) only, having been deposited with Respondent No.1, the Appellant took over possession of all three disputed plots. That, Exhibit 3 "*Bandobasta Patra*", executed on the same day viz.; 14-01-2015 refers to the agreement, dated 27-10-2014 by which the transaction between the disputing parties took place. That, the property described in the second portion of Exhibit 3 is however incoherent and in fact is not concerned with the transacted lands. That, Exhibit 4, is the No Objection Certificate (NOC) issued by the family members of the Respondent No.1, indicating their knowledge of the transaction and approval of the same. That, although the daughters of the Respondent No.1 have not signed on Exhibit 4, it is of no consequence as the Sikkim Registration of Documents Rules, 1930, makes no provision for such NOC from the family members of the seller. That, Section 58 of the Indian Evidence Act, 1872 (hereinafter, the "Evidence Act") comes into play in the context of Exhibit 1 as the amount of ₹ 2,20,000/-(Rupees two lakhs and twenty thousand) only, having been paid to the Respondent No.1 has not been disputed. That, the Respondent No.1 blocked the registration process even though the Appellant is willing to pay the

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balance amount agreed to for the sale. In this context, Learned Senior Counsel invited the attention of this Court to ***Dheeraj Developers Pvt. vs. Dr. Om Prakash Gupta and Others***¹. Reliance was also placed on ***M/s Summit Online Trade Solutions (Pvt.) Ltd. and Another vs. State of Sikkim and Another***², ***Shri Bishnu Prasad Bhagat vs. Shri Prakash Basnett***³, ***Taramani Devi Agarwal vs. M/s. Krishna Company***⁴, ***Union of India vs. Ibrahim Uddin and Another***⁵ and Sections 10, 16 and 17 of the Specific Relief Act and Section 55 of the Transfer of Property Act, 1882 (hereinafter, the "TP Act") to fortify the case of the Appellant. That, neither in their averments, nor in their evidence have the Respondents No.1 and 2 denied the execution of the documents and the contention that Tirtha Ram Sharma was the actual vendee is an unproved allegation. That, the transaction having been proved by the documents (*supra*), the suit be decreed in favour of the Appellant in view of Order VI Rule 12 of the Code of Civil Procedure, 1908 (hereinafter, the "CPC") and the Judgment of the Learned First Appellate Court be set aside.

8. Learned Counsel for the Respondents No.1 and 2 for his part contended that the Respondent No.1 has deposed that he signed on Exhibit 1 under duress. That, none of the witnesses to Exhibit 1 have said that money changed hands during the execution of Exhibit 1. PW-1, Santosh Subba said to be a witness to the Exhibit 2 when confronted with the document, stated that, his signature does not appear on it. Reference was also made to the evidence of PW-2 Kaching Lepcha and that his evidence is contradictory and does not support the case of the Appellant. He

¹ AIR 2016 SC 1438

² SLR (2018) SIKKIM 1475

³ SLR (2019) SIKKIM 416

⁴ SLR (2018) SIKKIM 1269

⁵ (2012) 8 SCC 148

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denied having signed on any document, except on Exhibit 5, as boundary holder. That, in view of the evidence furnished there is no proof that the Appellant had fulfilled his obligation towards the transaction. That, Tirtha Ram Sharma was in fact the actual purchaser, hence the Appeal deserves a dismissal. To buttress his submissions reliance was place on ***Mettur Beardshell Ltd. vs. Workmen and Another***⁶, ***State of Tamil Nadu and Others*** vs. ***K. Shyam Sunder and Others***⁷, ***Ramjan Khan and Others*** vs. ***Baba Raghunath Dass and Others***⁸, ***Major Gen. Darshan Singh (D) by Legal Representatives and Another*** vs. ***Brij Bhushan Chaudhary (D) by Legal Representatives***⁹, ***Lourdu Mari David and Others*** vs. ***Louis Chinnaya Arogiaswamy and Others***¹⁰ and ***Placido Francisco Pinto (D) by Lrs and Another*** vs. ***Jose Francisco Pinto and Another***¹¹.

9. The arguments of Learned Government Advocate for the Respondents No.3 to 5 was confined to Exhibit 7, which is the application filed by the Appellant before the Respondent No.5 whereby Exhibit 8, a miscellaneous case being Misc. Case No. 105/DM/E of 2015 (*Tshering Dorjee Lepcha vs. Reena Lepcha and Others*) was registered and notice issued to the Respondent No.1, who failed to appear before the registering authority. That, the registration process was thus placed on hold. Relying on ***Sughar Singh*** vs. ***Hari Singh (Dead) through Legal Representatives and Others***¹² it was urged that the Plaintiff cannot be punished by refusing the specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and he is ready and willing to perform his part of the contract.

⁶ (2006) 9 SCC 488

⁷ (2011) 8 SCC 737

⁸ 1990 SCC OnLine MP 191

⁹ (2024) 3 SCC 489

¹⁰ (1996) 5 SCC 589

¹¹ 2021 SCC OnLine SC 842

¹² (2021) 17 SCC 705

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10. The submissions advanced by Learned Counsel for the parties (*supra*) were heard *in extenso* and duly considered. The pleadings, all evidence, documents on record and the Judgments of the Learned Courts below have been carefully perused.

11. Before delving into the merits of the matter the permissible parameters in navigating a Second Appeal may be examined.

(i) Section 100 of the CPC provides for a second appeal which shall lie to the High Court from every decree passed in appeal, by any Court subordinate to it, if the High Court is satisfied that the case involves a substantial question of law. On being satisfied that a substantial question of law is involved, the High Court is to formulate that question and the appeal shall be heard on the question so formulated. The Section also provides that the Respondent at the hearing of the appeal shall be allowed to argue that the case does not involve any such substantial question. The Court is further, for reasons to be recorded, permitted to formulate any other substantial question of law, not previously formulated by it, if it is satisfied that the case involves such question. In **Roop Singh (Dead) through LRs. vs. Ram Singh (Dead) through LRs.**¹³, it was reiterated that under Section 100 CPC the jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC. That having been said, in **Hero Vinoth (Minor) vs. Seshammal**¹⁴, it was elucidated that inference or appreciation of facts from recitals or

¹³ (2000) 3 SCC 708

¹⁴ (2006) 5 SCC 545

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contents of a document are questions of fact. However, the legal effect of the terms of a document or construction of document involving application of any principle of law are questions of law. In ***Kulwant Kaur and Others*** vs. ***Gurdial Singh Mann (Dead) by LRs. and Others***¹⁵ it was observed that Section 100 has introduced a definite restriction on the exercise of jurisdiction in a second appeal so far as the High Court is concerned. That, the Code of Civil Procedure (Amendment) Act, 1976, introduced such an embargo for definite objectives and *while it is true that in a second appeal a finding of fact, even if erroneous will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjecture and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue.* That, this is however, only in the event if such a fact is brought to light by the High Court explicitly and the Judgment should be categorical as to the issue of perversity vis-à-vis the concept of justice. That, perversity itself is a substantial question worth adjudication but a categorical finding on the part of the High Court as records perversity must exist. Thus, in determining second appeals it emerges with clarity that Section 100 CPC does not confer any jurisdiction on the High Court to interfere with pure questions of fact.

12. It would be beneficial while on this subject, to briefly peruse the contents of Section 103 of the CPC which provides as follows;

“103. Power of High Court to determine issues of fact.—In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

¹⁵ (2001) 4 SCC 262

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- (a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or
- (b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100."

The parameters of determining a second appeal having been clearly delineated hereinabove.

13. The Learned First Appellate Court was of the view that the transaction of sale was a *sham* and observed the Learned Trial Court had overlooked the material admissions that appeared in the evidence and based its finding on the apparent tenor of Exhibits 2 and 3 while the material evidence would however clearly belie the recitals in the documents. The Court reasoned that no sale transaction had actually taken place between the Appellant and the Respondent No.1 as the Appellant during his cross-examination had admitted that he came to know the Respondent No.1 and the wife of the Respondent No.1 only after the institution of this case on being introduced by Tirtha Ram Sharma (PW-6). That, even otherwise no bank records or any other document is seen to have been placed before the Learned Trial Court by the Plaintiff to establish that he had the financial capacity to pay the alleged advance amount or the balance sale consideration amount. Thus, in light of the nature of evidence, according to the Learned First Appellate Court, even though the Respondents No.1 and 2 may have admitted that they have put their signatures on the various documents above it, it was only with regard to the *sham* sale transaction above.

(i) Notwithstanding the observation of the Learned First Appellate Court that the transaction of sale was a *sham* transaction the Learned Court failed to consider that none of the witnesses had

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proved the contents of Exhibits 1 to 5, save the Appellant. The Learned First Appellate Court also did not examine whether the documents Exhibits 1 and 3 which dealt with the transaction of immovable property were required to be registered, in view of the provisions of the Sikkim Registration of Documents Rules, 1930.

14. While considering the probative value Exhibits 1 to 5, it would be essential to consider the evidence of the witnesses, PW-1, Santosh Subba stated that Exhibits 1, 2 and 3 were prepared in the house of PW-6 but shed no light on the contents. PW-2 and PW-3 deposed that they were unaware of the reason for the instant suit or the documents, PW-4 categorically denied that PW-6 had purchased the suit property from the Respondent No.1 in the name of the Appellant. He did not identify the documents. PW-5 expressed the same view as PW-4 and denied that PW-6 had purchased the land in the name of the Appellant. He denied knowledge of the documents that were prepared during the sale. PW-6 admitted that Exhibit 1 did not bear his signature and that he was aware of Exhibit 3 but did not reveal the contents of the document and the reason for its execution. Thus, on consideration of the evidence, it is apparent that the weight of the documents were definitely not in favour of the Appellant the contents of the documents or the signatures therein having remained unproved. In the absence of proof of documents, the case of the Appellant has no legs to stand.

15. Even if the documentary evidence is to be ignored, it would be necessary to consider the provisions of Section 16 the Specific Relief Act, 1963, deals with personal bars to relief and provides as follows;

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“16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

- (a) who has obtained substituted performance of contract under section 20; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) **who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.**

Explanation.—For the purposes of clause (c),—

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.” (emphasis supplied)

(i) This provision therefore mandates readiness and willingness on the part of the Plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. In ***Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi and Others***¹⁶ it was held that in the plaint the Plaintiff must aver that he is ready and willing to perform his part of the contract from the date of agreement till the date of institution of the suit.

16. In ***U. N. Krishnamurthy (Since Deceased) Thr. Lrs. vs. A. M. Krishnamurthy***¹⁷, the Supreme Court observed that Section 16(c) of the Specific Relief Act bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of the contract. That,

¹⁶ AIR 1978 SC 537

¹⁷ 2022 SCC OnLine SC 840

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in view explanation (i)(c) of Section 16, it may not be essential for the Plaintiff to actually tender money to the Defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform essential terms of a contract, which involves payment of money. While discussing Section 16(c) of the Specific Relief Act, the Court was of the view that to aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the Plaintiff would have to make specific statements in the Plaint and adduce evidence to show availability of funds to make payment in terms of the contract, in time. In other words, the Plaintiff would have to plead that he had sufficient funds or was in a position to raise funds, in time, to discharge his obligations under the contract. If the Plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the Plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the Plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money. In ***Man Kaur (Dead) by LRs. vs. Hartar Singh Sangha***¹⁸, the Supreme Court observed as follows;

"40.A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of

¹⁸ (2010) 10 SCC 512

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which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not "ready and willing" to perform his obligations." (emphasis supplied)

17. The purport and intent of Section 16 of the Specific Relief Act have been categorically elucidated in the foregoing decisions. In light of the said exposition of law, what emerges from the averments and evidence on record is that, as per the Appellant, on 27-10-2014 an amount of ₹ 2,20,000/- (Rupees two lakhs and twenty thousand) only, was paid to the Respondent No.1 as advance for the sale transaction. However, it is the admitted evidence of the Appellant himself that, on 14-01-2015 he did not hand over any cash to the Respondent No.1. He claims to have paid installments to the Respondent's wife whenever she contacted him telephonically. PW-1 Santosh Subba, could not vouch for payment of advance money. PW-2 Kaching Lepcha, admitted that, no advance payment was made in his presence. PW-3 Passang Lepcha, a boundary holder to the suit property gave no evidence of payment of advance. PW-4 Bhim Pradhan was categorical in his cross-examination that he did not witness any transaction of ₹ 2,20,000/- (Rupees two lakhs and twenty thousand) only, between the Appellant and the Respondent No.1. The evidence of PW-5 Yadhu

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Nandan Sharma, the Panchayat vice-president at the time of the transaction, shed no light on the payment of advance and he was unaware of the documents prepared between the parties. PW-6 Tirtha Ram Sharma, deposed that transaction of a sum of ₹ 2,20,000/- (Rupees two lakhs and twenty thousand) only, took place between the Appellant and the Respondent No.1. He did not shed light on who the witnesses were when the money changed hands. The Respondent No.1 himself testified that no money was paid to him and that in fact Tirtha Ram Sharma had loaned his wife a sum of ₹ 2,30,000/- (Rupees two lakhs and thirty thousand) only, to tide over the financial crisis on account of the education of his daughter and that neither the consideration value of ₹ 12,00,000/- (Rupees twelve lakhs) only, between the Appellant and him nor an agreement for sale was made. Respondents No.1 and 2 denied any payment made to them by the Appellant. Witness of Respondent No.1, Kamal Kumari Rai, stated that she did not witness the Appellant paying any money to the Respondent No.1 when the documents were executed. Bishnu Maya Rai another witness of Respondent No.1 gave the exact same evidence as Kamal Kumari Rai. The wife of Respondent No.1 Reena Lepcha, in her evidence, set out to spin a yarn regarding the alleged transaction and that PW-6 (Tirtha Ram Sharma) had actually loaned her money and taking advantage of the illiteracy of Respondent No.1 had made him sign the sale deed. Tshering Lhamu Lepcha, the last witness for the Respondent No.1 failed to throw light on any payment.

18. What ultimately transpires from the evidence of the witnesses of the parties, is that no money in fact changed hands on the day of the alleged sale of land. Indeed, I am in agreement with

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the Learned Senior Counsel for the Appellant that the rules in Sikkim Registration of Documents Rules, 1930, does not lay down a requisite for furnishing a no objection certificate obtained from the family members of the vendor before the registration of a sale deed document. Notwithstanding the absence of such a rule, it is a practice that has hardened into a rule. This not being the issue at hand, it is not necessary to enter into a prolix discussion thereof. Be that as it may, there is no anomaly regarding the fact that the interest or possession of the property was also not handed over. Although the argument was advanced by Learned Senior Counsel that the property was indeed taken over by the Appellant, no proof emanated to fortify such a contention.

(i) Thus, in the first instance, money, even earnest money has evidently not changed hands between the Appellant and the Respondent No.1 for the alleged sale transaction of land between them. Even if it is to be assumed that such money did change hands, the Appellant, as held in ***U. N. Krishnamurthy (supra)***, failed to indicate his willingness or readiness to adhere to his part of the transaction as he did not show availability of funds with him to make the payment in terms of the contract, within the period stipulated, nor did he prove that even if he did not have sufficient funds with him to discharge his obligations to the contract, he failed to specifically plead how the funds would be available to him. He did not aver that he had sufficient funds nor did he prove by evidence any arrangement with a financier to enable him to disburse the requisite funds. It concludes thereby that the Appellant has failed to establish either his willingness or his readiness to pay the amount

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agreed to for the transaction entered between him and the Respondent No.1.

19. In conclusion in consideration of the foregoing discussions, with the observations above, the Appeal stands dismissed and disposed of accordingly.

20. Parties shall bear their own costs.

21. Copy of this Judgment be transmitted forthwith to the Learned Courts below, along with its records.

(Meenakshi Madan Rai)
Judge

30-05-2024

Approved for reporting : **Yes**