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C.A.No. 1762 OF 1998  
ITEM No.105

Court No.12

SECTION XII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 1762 OF 1998

MALLIKA AMMAL

Appellant (s)

VERSUS

PURUSHOTHAMA REDDIAR & ORS.

Respondent (s)

(WITH OFFICE REPORT)

Date : 04/03/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE S.B. SINHA

For Appellant (s) Mr. Rakesh K Sharma, Adv.  
Dr. R Prakash, Adv.

For Respondent (s) Mr. V Prabhakar, Adv.  
Ms. Revathy Raghavan, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard Mr. Rakesh K Sharma, learned counsel for the appellant from 11.15 A.M. To 11.30 P.M. and thereafter Mr. V Prabhakar, learned counsel for the respondents till 12.10 P.M.

The appeal is allowed in terms of the signed order, judgment rendered by the High Court is set aside and those passed by the trial court as well as the first appellate court restored.

In the circumstances of the case, there shall be no order as to costs.

(D.P. WALIA)

COURT MASTER

(VIJAY AGGARWAL)

COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1762 OF 1998

Mallika Ammal.... Appellant (s)

vs.

Purushothama Reddiar & Ors.... Respondent (s)

O R D E R

This appeal by special leave has been preferred by the plaintiff-appellant against the judgment and order of the Madras High Court whereby the second appeal filed by the defendant-respondents has been allowed, judgment and decree passed by the two courts below set aside and the suit of the plaintiff dismissed.

The plaintiff filed a suit for specific performance of contract in relation to a property for which there was an agreement of sale entered into on 21.7.1986 between defendants Nos. 1 to 3 who agreed to sell the suit property in favour of the plaintiff for a consideration of Rs.21,400/-

out of which a sum of Rs.7,400/- was paid as earnest money and balance amount of Rs.14,000/- was to be paid at the time of execution of the sale deed which was required to be

executed before 20.10.1986. According to the plaintiff, the defendants not only failed to execute the sale deed but also executed a sale deed in favour of 4th defendant on 18.9.1986 which necessitated filing of the suit for specific performance of contract.

The defendants objected to the grant of decree on the grounds, inter alia, that no agreement was executed by them and the same was forged and fabricated. The trial court, after considering the evidence adduced on behalf of the parties, came to the conclusion that the agreement was duly executed by the defendants for sale of the house in question in favour of the plaintiff and decreed the suit for specific performance of contract after deposit of balance consideration of Rs.14,000/- by the plaintiff. Against the decree of the trial court, when the matter was taken in appeal, the same was affirmed by the appellate court. Thereafter, the defendants brought the matter before the High Court in second appeal. It appears that in the High Court two questions of law were framed which read thus :

"1)Whether the equitable remedy is available to a person who has come to Court with a false case with reference to the essential ingredient and element necessary for claiming such a relief ? And

2)Whether the Courts below are correct in law in decreeing a suit for specific performance by picking loopholes in the evidence of the defendants completely

overlooking the false and inconsistent evidence of P.W. 1 to P.W.3 ?"

The High Court came to the conclusion that no decree for specific performance of contract for sale of the house in question could have been passed as according to the terms of the agreement the plaintiff was entitled to damages alone and, therefore, the decree for specific performance of contract as affirmed by the appellate court was liable to be set aside. Secondly, the High Court was of the view that the plaintiff's case that even after the agreement he paid Rs.1,100/- to the defendants having not found favour with the courts below he having come to court with a false plea, no decree for specific performance should have been granted on equitable grounds. Thus, the High Court allowed the appeal of the defendant-respondents and dismissed the suit of the plaintiff-appellant. Hence, this appeal by special leave.

Learned counsel appearing on behalf of the appellant in support of the appeal submitted that though the agreement

provided for payment of damages in case of breach of contract but such a term in the agreement would not disentitle the plaintiff-appellant to a decree for specific performance of contract, especially when there is no such conduct on the part of the appellant so as to disentitle him to the relief for specific performance of contract. Reliance in this connection has been placed upon a decision of this Court in

the case of M.L. Devender Singh and Others vs. Syed Khaja, 1973 (2) SCC 515, wherein similar clause was there in the agreement. The plea taken by the defendant that the plaintiff was not entitled to the decree for specific performance of contract, was negated by the High Court and this Court upheld the judgment of the High Court. The same view has been reiterated by a 3-Judge Bench of this Court in Prakash Chandra vs. Angadlal and Others, 1979 (4) SCC 393 as well as in Manzoor Ahmed Magray vs. Ghulam Hassan Aram and Others, 1999 (7) SCC 703.

Learned counsel appearing on behalf of the respondents, on the other hand, submitted that the plaintiff-appellant having specifically agreed in the agreement that in case of default she will be entitled to damages, she was precluded from filing a suit for specific performance of contract. In support of his submission, reliance has been placed upon a decision of this Court in State Bank of Saurashtra vs. P.N.B., 2001 (5) SCC 751. That was a case where there was an agreement in relation to sale of goods, i.e., units of Unit Trust of India. Specific performance of such a contract was barred in view of the provisions of Section 14 of the Specific Relief Act as remedy available to the party was to claim damages which could have been an adequate remedy. In our view, the aforesaid decision has no application to the facts of the present case. Next decision

upon which reliance has been placed by the learned counsel is Dadarao and Another vs. Ramrao and Others, 1999 (8) SCC 416.

That case although related to an agreement for sale of immovable property, there the term of contract was that in case of default damages could be awarded and 'no sale deed will be executed'. In the present case, there is no such clause in the agreement that in the event of default the plaintiff will not be entitled to execution of sale deed in his favour. Therefore, this case is also distinguishable.

Thus, we are of the view that the High Court has committed an error in holding that the suit for specific performance of contract was not maintainable.

Next ground which weighed with the High Court was that though according to the plaintiff after the execution of agreement he had paid Rs.1,100/- but the same had been found to be false by the courts of fact and as such on equitable grounds no relief should have been granted in favour of the plaintiff.

We have been taken through the judgments rendered by the trial court as well as the lower appellate court. We find that the trial court has nowhere recorded any finding that the plaintiff had come to the court with a false case. The court was of the view that the payment of Rs.1,100/- was not proved by documentary evidence and, therefore, it was not possible to accept the claim of the plaintiff. Even after

recording this finding, equitable relief had been granted by the trial court in favour of the plaintiff and upheld by the appellate court.

In our view, the question of grant of equitable relief was a discretionary one and in the present case discretion was exercised by the trial court and upheld by the first appellate court. It is true that a discretionary relief may be denied to a plaintiff if he approaches the court with the pair of unclean hands. However, it is well settled that the dirt in hand must be such which will have a direct nexus with the relief sought for in the suit.

In *Spry on Equitable Remedies*, at page 5, the learned author stated :

"... Again, it has been laid down that the absence of clean hands is of no account "unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for". [*Moody v. Cox* [1917] 2 Ch. 71 at pp. 87-88]. ..."

Furthermore, it is a well-settled principle of law that when a trial court exercises its discretionary jurisdiction the same is not interfered with by the appellate court unless and until the same is perverse or contrary to the settled legal principles.

In *Uttar Pradesh Co-operative Federation Ltd. vs. Sunder Bros.*, Delhi, AIR 1967 SC 249, the law was stated in the following terms :

"8. It is well-established that where the discretion vested in the Court under s.34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with

the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well-established; but, as has been observed by Viscount Simon, L.C., in *Charles Osenton & Co. v. Johnston* [[1913] A.C. 241] :

"The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well-established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

In *Gujarat Steel Tubes Ltd. Etc. vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, AIR 1980 SC 1896, the law was stated in the following terms :

"73. .... The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

Therefore, there was no question of law at all, much less substantial one, before the High Court so as to interfere in the exercise of second appellate court's powers under Section 100 of the Civil Procedure Code.

For the foregoing reasons, we are of the view that the High Court was not justified in dismissing the suit of the plaintiff-appellant for specific performance of contract. Accordingly, the appeal is allowed, judgment rendered by the High Court is set aside and those passed by the trial court as well as the first appellate court restored.

In the circumstances of the case, there shall be no order as to costs.

.....J(B.N. AGRAWAL)

.....J

(S.B. SINHA)

New Delhi;

March 4, 2003.