

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5868 OF 2011

B. KUSUMANATH

Appellant(s)

VERSUS

K. SHARADA & ANR.

Respondent(s)

O R D E R

(1) Heard Mr. Shadan Farasat, learned counsel for the appellant and Mr. R. Basant, learned senior counsel for the respondents.

(2) A suit was filed by the respondents for specific performance of contract entered into with the appellant to sell the plaint schedule property, which was decreed by the trial Court and the said decree stands confirmed by the impugned judgment of the High Court.

The agreement is dated 20.08.1995. It is not in dispute that the appellant agreed to sell the plaint schedule property for a sum of Rs. 12,75,000/-. An amount of Rs. 50,000/- was paid as advance and even before the day fixed for the payment of sum of Rs.2,50,000/-, on 14.09.1995, the amount of Rs.2,50,000/- came to be paid.

(3) It is not in dispute that there was an earlier suit filed against the appellant relating to the plaint schedule property. The suit was, no doubt, dismissed prior to the date of the agreement. Thereafter, the present suit after exchange of notices, came to be filed on 13.10.1998. As noticed already, the suit stands decreed by two Courts.

(4) No doubt, the principal contention of the learned counsel for the appellant appears to be that the appellant was not ready and the Courts ought not to have decreed the suit for specific performance without the appellant having established the indispensable requirement which flows from the mandate of Section 16(c) of the Specific Relief Act, 1963 (hereinafter referred to as 'Act' for brevity).

It is pointed out further that the appellant is suffering from cancer. The plaint schedule property is a residential home; she has three daughters and her husband passed away after the agreement in the year 2011. Therefore, at any rate, the decree for specific performance ought not be confirmed it is contended. With aid of the pleadings and the evidence, it is sought to be canvassed that this is a case where the appellant has not proved the essential requirements and what is more, at any rate, this is a case where the discretionary relief of specific performance should not be granted. Learned counsel also no doubt drew our attention to case law in his support.

(5) *Per contra*, Mr. R. Basant, learned senior counsel for the respondents, would point out with reference to the conduct of the parties that the impugned decree does not call for any interference. The plaintiffs have performed their part and paid Rs.3 lakhs out of sum of Rs.12,75,000/-. The whole problem arose in the form of litigation. It is further pointed out that the entire balance of Rs.9,75,000/- came to be deposited immediately upon the decree being passed by the trial Court on 19.12.2003. It is also pointed out with reference to the evidence that it is a case where the appellant did not have a case that the respondents/plaintiffs did not have the financial wherewithal.

As far as the hardship goes, shelter is sought under the explanation in Section 20 of the Act to contend that the matter is to be tested with reference to the circumstances prevailing while entering into the contract, unless the hardship is caused by the conduct of the plaintiff.

(6) Learned counsel for the appellant would point out with the aid of the decision that when the Court considers granting a decree for specific performance at a late stage with passage of time after the institution of proceedings, the Court will not be oblivious to the fact that prices of property would have escalated. Equity, at any rate, demands that the respondents must if they are found to be entitled to a decree of specific performance be called upon to pay

the present market price.

(7) Mr. R. Basant, learned senior counsel, would point out that this is case where there was litigation pending against the appellant in respect of the plaint schedule property. The appeal filed against the decree in the suit filed by a third party came to be dismissed only on 21.03.2002.

(8) In the facts and circumstances of the case, after having heard the learned counsel for the parties, we do not think that we should decline specific relief as such. But at the same time, we are of the view that the interest of justice do require that the impugned judgment must be supported to with a modification as regards the amount to be paid by the respondents/plaintiffs. Taking into consideration the offer also made by the respondents through their counsel after getting instructions and taking note also of the fact that on the amount deposited by the respondents in the Court, interest would have accrued, the respondents should pay a sum of Rs.50 lakhs in all which will be inclusive of the price/consideration mentioned in the agreement. To facilitate this, we direct that the amount which is deposited by the respondents in the Court with accrued interest should be permitted to be withdrawn by the respondents and they are to deposit a sum of Rs.47 lakhs. Upon deposit of the said amount, the appellant will execute the requisite sale deed in favour of the respondents and give vacant possession of the plaint schedule property

to the respondents.

The respondents will deposit a sum of Rs.47 lakhs within a period of six weeks from today. Upon deposit of the said amount, the appellant will execute the sale deed in terms of the agreement (Exhibit AI agreement) and deliver the vacant possession of the plaint schedule property. The respondents are free to withdraw the amount lying in deposit from the Court along with interest. The appellant can withdraw the amount of Rs. 47 lakhs deposited by the respondents.

Needless to say the respondents will have to bear the entire expenses relating to stamp duty and registration in connection with the conveyance.

The appeal will stand disposed of accordingly.

....., J.
[K.M. JOSEPH]

....., J.
[HRISHIKESH ROY]

New Delhi;
August 24, 2022.

ITEM NO.101

COURT NO.7

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5868/2011

B.KUSUMANATH

Appellant(s)

VERSUS

K.SHARADA & ANR.

Respondent(s)

Date : 24-08-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s)

Mr. Shadan Farasat, AOR
Mr. Bharat Gupta, Adv.
Mr. Shourya Dasgupta, Adv.
Mr. Aman Naqvi, Adv.
Mr. Dhruv Bhatnagar, Adv.
Ms. Hrishika Jain, Adv.
Mr. Nitesh, Adv.

For Respondent(s)

Mr. R. Basant, Sr. Adv.
Mr. A. Ravi Babu, Adv.
Mr. Manu, Adv.
Mr. Nikhil Swami, Adv.
Ms. Divya Swami, Adv.
Mrs. Prabha Swami, AOR

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

The appeal will stand disposed of in terms of the
signed order.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
ASSISTANT REGISTRAR

[Signed order is placed on the file.]