

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3067 OF 2000

LATEEFA BEGUM
PELLANT

.....AP

(S)

VERSUS

B.G. KIRLOSKAR (DEAD) BY LRS.
ENT (S)

...RESPOND

O R D E R

This appeal arises out of a suit seeking specific performance of agreement of sale of plot No.15 admeasuring 555 square yards in an urban area at Sikanderabad. The suit was based on an alleged oral agreement entered into on 11.8.1975 by the defendant No.1 who is successor-in-title of the original owner and is the appellant before us. The case of the plaintiff-respondent was that pursuant to the oral agreement of sale, a sum of Rs.2,000/- was paid by cheque followed by Rs.3,000/- in cash and thereafter Rs.15,000/- by a post dated cheque. The negotiations for sale took place through defendant No.2 who was alleged to be the agent and nephew of defendant No.1. A receipt in the total sum of Rs.20,000/- was issued by defendant No.2 for and on behalf of defendant No.1. Before filing this suit for specific performance, the plaintiff served a legal notice on 3.8.1976 to both

the defendants. Defendant No.2 alone gave a reply repudiating the contract.

The trial court as well as the learned Single Judge of the High Court in appeal recorded a concurrent finding that an oral agreement did take place between

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defendant No.2 on behalf of defendant No.1 and the plaintiff and aforementioned part consideration for sale was paid. A decree for specific performance for executing the sale of the land was granted.

The defendants preferred Letters Patent Appeal to the High Court which has been dismissed by the impugned order dt.19.7.1999 of the Division Bench.

Mr.P.S.Narasimha, learned counsel appearing on behalf of the appellant took us to the relevant part of the pleadings and evidence. He made efforts to persuade us to hold that defendant No.2 had no right as an agent of defendant No.1 to agree for the sale of plot in question. It is contended that the plaintiff led no evidence to prove that defendant No.1 had appointed defendant No.2 as his power of attorney with authority to negotiate and agree for sale as the agent of the former.

We have also heard Mr.P.Niroop Reddy, learned counsel appearing on behalf of the respondent-plaintiff.

From the judgment of the trial court, we find that no specific issue was raised on the question of existence of any alleged agency between defendant No.1 and defendant No.2.

Not only that before the trial court no specific issue was raised on the existence and validity of the agreement for appointment of defendant No.2 as an

agent of defendant No.1, defendant No.1 kept himself away from the witness box

and sent no reply to the legal notice to deny that he had not authorised his own

nephew (defendant No.2) to act as his agent and negotiate for sale. The plaintiff

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also examined other witnesses to prove that there were earlier similar transactions of

sale in the Ishaq Colony in which defendant No.2 acted as an agent on behalf of

defendant No.1. A concurrent finding of fact has been recorded by all courts that

there was an oral agreement of sale evidenced by payment of part of the price by

cash and cheque evidenced by a formal issuance of receipt. There is also a

concurrent finding recorded that defendant No.2 was acting as an agent of

defendant No.1.

In the aforesaid circumstances, we decline to re-appreciate the evidence and take a contrary view. The appeal has no merit and is dismissed.

Learned counsel appearing on behalf of the appellant submitted that as on the property in dispute, they have raised construction which they are occupying

for their residence, they should be granted six months' time to vacate and execute the

sale deed. Prayer made is allowed. The appeal is dismissed but on the condition of

the appellant's filing a written undertaking in this Court within three weeks that they

will vacate the property on expiry of six months from the date of this Order and

deliver up actual physical possession to the Decree holder/Respondent within the

said period and execute the sale deed in terms of the decree passed by the co

urts

below.

No order as to costs.

.....J.

.M.DHARMADHIKARI)

.....
(D

.....J.

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CHATTERJEE)

(TARUN

NEW DELHI;

MAY 5 , 2005.

ITEM NO.102

COURT NO.11

SECTION XIIA

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(s). 3067 OF 2000

LATEEFA BEGUM

Appellant (s)

VERSUS

B.G. KIRLOSKAR (DEAD) BY LRS.

Respondent(s)

(With office report)

Date: 05/05/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr.P.S.Narasimha, Adv.

Mr.Ananga Bhattacharya, Adv.

Mr. V.G. Pragasaam,Adv.

For Respondent(s)

Mr.P.Niroop Reddy, Adv.

Mr. Pavan Kumar, Adv.

Mr.R.Chandra Shekhar Reddy, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

No order as to costs.

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(Satish K. Yadav)

(Phoolan Wati Arora)

Court Master

Court Master

(Signed order is placed on the file)