

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1392 OF 2011

MADHAVAN (DEAD) THROUGH LRS. & ANR.

.....APPELLANT(S)

VERSUS

KANAKAVALLY

.....RESPONDENT(S)

ORDER

1. Heard the learned senior counsel appearing for the parties.
2. The decree of the Trial Court was set aside by the High Court by its impugned judgment.
3. Brief reference to few facts will be necessary. The first appellant on 03.10.1988 executed a sale deed in favour of the second appellant and the respondent in respect of the suit property. On 03.03.1989, a registered release deed was executed by the second appellant in favour of the respondent-defendant relinquishing her rights in respect of the suit property under the sale deed executed by the first plaintiff (therein) on 03.10.1988. According to the case of the appellants, on 19.03.1989, the respondent executed an agreement in favour of the second plaintiff for re-conveyance of the suit property.

4. On 29.12.1989, a suit simpliciter for injunction was filed by the appellants praying for restraining the respondent from executing a sale deed in respect of the suit property in favour of the strangers. An injunction was also claimed for protecting possession of the appellants over the suit property. Subsequently, an application was made by the appellants for amendment of the plaint. The application was allowed. By the amendment, an averment was added in the plaint that the appellants were always ready and willing to pay the amount of Rs. 29,400/- to the respondent. A prayer was added for specific performance of the agreement dated 19.03.1989 (for short 'the suit agreement') seeking a direction to the respondent to execute a sale deed in favour of the first appellant.

5. There was some dispute about execution of the suit agreement with reference to the dates appearing in the suit agreement. The Trial Court had accepted the evidence of scribe (PW-3) of the suit agreement. The Trial Court passed a decree for specific performance. While allowing the first appeal, by the impugned judgment, the High Court discarded the testimony of PW-3 and ultimately, held that this was not a fit case to exercise discretion under Section 20 of the Specific Relief Act, 1963 (for short 'the 1963 Act'). Hence, the High Court reversed the decree passed by the Trial Court.

6. The first submission of the learned counsel appearing for the appellants is that after the Trial Court exercised the discretion under Section 20 of the 1963 Act in favour of the appellants, the

Appellate Court did not have jurisdiction to interfere with the exercise of discretion unless it was established that the exercise of discretion was perverse or arbitrary. He has relied upon a decision of this Court in the case of *K. Prakash v. B.R. Sampath Kumar*¹, and particularly what is held in paragraph '16', which reads thus: -

"16. The principle which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists upon a condition precedent to the grant of decree for specific performance: that the plaintiff must show his continued readiness and willing to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or the other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validity proved and further requirements for getting such a decree are established then the court has to exercise its discretion in favour of granting relief for specific performance."

7. He has also relied upon what is held in paragraph '14' of the decision of this Court in the case of *Bal Krishna and Another v. Bhagwan Das (Dead) by LRs and Others*², which reads thus: -

"14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the

1 (2015) 1 SCC 597

2 (2008) 12 SCC 145

discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void."

8. He submitted that unfair advantage cannot be given to the respondent and refusal to grant specific performance will not be fair. He also submitted that substantial justice lies in favour of the appellants and what is in favour of the respondent is mere technicality. He urged that the execution of all the three documents including the suit agreement is undisputed and, therefore, the Trial Court rightly decreed the suit.

9. He submitted that when agreement for sale was admittedly executed and when the equity was in favour of the appellants, it is the duty of the Court to pass a decree for specific performance. He further submitted that even assuming that there may be something wrong with the pleadings, this Court has always adopted a justice oriented and fair approach which ought to be adopted in this case. He would, therefore, submit that the interference by the High Court was completely unjustified. The learned counsel appearing for the respondent urged that taking the terms of the suit agreement as it

is, it was not specifically enforceable.

10. We have given careful consideration to the submissions and perused the pleadings and notes of evidence as well as the impugned judgments. According to the case made out by the appellants, the suit agreement was to re-convey the suit property to the second plaintiff or her nominee. When a prayer for specific performance of agreement for sale or an agreement to execute a re-conveyance is made in a suit and when the plaintiff seeks execution of the sale deed from the defendant, it is implicit that the plaintiff has to accept the title of the defendant. We have, therefore, carefully perused the plaint as originally filed. While carrying out the amendment, none of the paragraphs in the plaint were deleted. Only certain averments were added in the plaint for incorporating averments regarding readiness and willingness. As stated earlier, there is a sale deed dated 03.10.1988 executed by the first appellant in favour of the second appellant and the respondent. The averments made in paragraph '4' of the plaint refer to the sale deed dated 03.10.1988 and it is contended that it was due to the friendship between the second appellant and the respondent, by way of securing repayment of the loan, the sale deed was executed. It is stated that the second appellant had borrowed a sum of Rs. 13,000/- from the respondent. It is specifically pleaded in paragraph 4 that the sale deed did not affect the rights of the appellants and in effect, the second appellant and the respondent do not have rights with respect to the suit property. It is further specifically pleaded that the sale deed is just a paper transaction.

11. The averments regarding the execution of deed of relinquishment by the second appellant in favour of the respondent are in paragraph '5' of the plaint. There is a specific pleading that the second (appellant) had no authority or power to transfer her share in the property to the respondent and even after execution of the deed of relinquishment, only the first appellant continues to have right in respect of the suit property. In fact, all along, the plea in the plaint is that the appellants continued to be in possession. This does not stop here. Even in the examination-in-chief of the first appellant, he has stated that the sale deed was only on paper as a security and he has not lost any right of possession. The first appellant also stated on oath that the second appellant had no right to execute a relinquishment deed. The second appellant in her examination-in-chief has contended that the sale deed executed in favour of the respondent was only by way of security. Further, she has stated that she had no right to execute the release deed.

12. The agreement for sale on the basis of which specific performance was claimed by the appellants proceeds on the footing that the respondent has become the owner. However, in the plaint, the appellants have asserted that notwithstanding the execution of the sale deed and release deed, no right, title and interest in the suit property was transferred to the respondent and rights of the first appellant in respect of the suit property continued to exist and the appellants continued to be in possession. After pleading to that effect and after saying so on oath, the question is how the appellants can seek equitable relief of specific performance

against the respondent.

13. Therefore, taking the averments made in the plaint as correct, there was no occasion for the appellants to seek specific performance compelling the respondent to execute re-conveyance deed inasmuch as, even according to the case of the appellants as pleaded in the plaint and in evidence that the respondent had no right, title and interest in the suit property.

14. The Trial Court completely ignored the effect of the averments made in the plaint and the statements made in the evidence of the appellants and, therefore, we have no manner of doubt that the exercise of discretion under Section 20 of the 1963 Act by the Trial Court in favour of the appellants was perverse and illegal. Though, in so many words, the High Court may not have recorded that the finding recorded by the Trial Court is perverse, the ultimate effect of the conclusions drawn by the High Court is the same. We, therefore, hold that the High Court was right in holding that the discretion under Section 20 of the 1963 Act ought not to have been exercised in favour of the appellants.

15. The learned counsel appearing for the appellants made a fervent appeal to the Court to grant some relief to the appellants on the basis of the equity.

16. The appellants have not filed a suit for declaration that the sale deed and release deed are null and void or that the same are not binding on them. Even today, the appellants claim to be in possession.

17. Considering the frame of the suit and the stand taken by the appellants consistently in the plaint and in the evidence, no relief can be granted in favour of the appellants. Accordingly, we dismiss the appeal with no order as to costs.

18. Pending application(s), if any, shall stand disposed of.

.....J.
[ABHAY S. OKA]

.....J.
[PANKAJ MITHAL]

NEW DELHI;
NOVEMBER 09, 2023.

ITEM NO.101

COURT NO.9

SECTION XI-A

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). 1392/2011

MADHAVAN (DEAD) THROUGH LRS. & ANR.

Appellant(s)

VERSUS

KANAKAVALLY

Respondent(s)

([PART-HEARD BY : HON'BLE ABHAY S. OKA AND HON'BLE PANKAJ MITHAL,
 JJ.]

IA No. 41096/2013 - APPLICATION FOR DIRECTIONS

IA No. 101969/2011 - APPLN. FOR ADDITIONAL DOCUMENTS

IA No. 158285/2022 - EARLY HEARING APPLICATION

IA No. 101963/2011 - VACATING STAY)

Date : 09-11-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
 HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Mr. K. Radhakrishnan, Sr. Adv.
 Ms. Kiran Bhardwaj, AOR

For Respondent(s) Mr. Thomas P Joseph, Sr. Adv.
 Mr. Jogy Scaria, AOR
 Mr. Dinunthomas, Adv.
 Ms. Beena Victor, Adv.
 Mr. Vivek Guruprasad Ballekere, Adv.
 Ms. Priya M, Adv.

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

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
 COURT MASTER (SH)

(AVGV RAMU)
 COURT MASTER (NSH)

(Signed order is placed on the file)