REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8962-8963 OF 2022
(@ SPECIAL LEAVE PETITION (C) NOS. 6122-6123 OF 2022)

Basavaraj ...Appellant(S)

Versus

Padmavathi & Anr. ...Respondent(S)

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with impugned judgment(s) and order(s) dated 27.11.2020 and 06.12.2021 passed by the High Court of Karnataka at Kalaburagi Bench in Regular First Appeal (RFA) No. 5033/2011 and Review Petition (RP) No. 200036/2021 respectively, by which, the High Court has allowed the said appeal preferred by respondents herein – original defendants and has quashed and set aside the judgment and decree passed by the learned Trial Court decreeing the

suit for specific performance, the original plaintiff has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under: -

2.1 That respondent No. 1 herein – original defendant No. 1 executed an agreement to sell dated 13.03.2007 in favour of the appellant herein – original plaintiff – buyer agreeing to sell the land in question on or before 31.07.2007 for a sale consideration of Rs. 12,74,000/-. Rs. 3 lakhs were paid as earnest money. The receipt was issued by respondent No. 1 for the same. That thereafter, as respondent No. 1 – seller did not execute the sale deed, the appellant got issued a legal notice dated 20.11.2007 asking the respondent(s) to receive the balance sale consideration and execute the sale deed. The seller replied to the legal notice *vide* reply dated 03.12.2007 denying the execution of agreement to sell. That thereafter, the appellant – buyer filed the suit for specific performance on 14.02.2008 *vide* O.S. No. 17/2008. The original defendants – sellers filed their written statement and

opposed the suit. The defendants denied the execution of agreement to sell. It was also the case of the defendants in the written statement that the plaintiff was not ready to perform his part of the contract. Therefore, the defendants denied readiness and willingness on the part of the plaintiff – buyer to perform his part of the contract.

2.2 Both the parties led evidence before the Trial Court. The plaintiff led evidence by examining witnesses, on his readiness and willingness to perform his part of the contract. It was brought on record that plaintiff went with cash to the seller but the seller did not accept the same. That thereafter, on appreciation of evidence the learned Trial Court decreed the suit for specific performance *vide* judgment and decree dated 30.09.2011. The learned Trial Court believed the case of the plaintiff – buyer as to the execution of agreement to sell. The learned Trial Court also believed the plaintiff's case as to the payment of earnest money of Rs. 3 lakhs to the seller. The learned Trial Court also held that the plaintiff – buyer was ready and willing to perform his part of the contract. That pursuant to the

judgment and decree passed by the learned Trial Court, the buyer – original plaintiff deposited an amount of Rs. 9,74,000/- before the learned Trial Court which is still reported to be lying with the Trial Court.

2.3 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court, respondents herein – sellers preferred the appeal before the High Court. By the impugned judgment and order the High Court has allowed the said appeal and has set aside the judgment and decree passed by the learned Trial Court, mainly on the ground that the plaintiff was not ready and willing to perform his part of the contract. The impugned judgment and order passed by the High Court is the subject matter of present appeals.

2.4 The appellant also filed a review petition which came to be dismissed by the High Court, and the judgment passed in the review petition is also the subject matter of one of the appeals.

3. Shri K. Parmeshwar, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the Hon'ble High Court has materially erred in reversing the findings of the Trial Court on readiness and willingness of the appellant.

3.1 It is submitted that on appreciation of entire evidence on record the learned Trial Court recorded findings as to readiness and willingness of the appellant, in favour of the appellant, and such findings were not required to be interfered with by the High Court.

3.2 It is further submitted that all through, out and right from the very beginning, the appellant – buyer was ready and willing to perform his part of the contract. He has prayed that the following aspects emerging from the evidence on record be considered, while considering the issue as to readiness and willingness on the part of the appellant to perform his part of the agreement dated 13.03.2007: -

(i) That the appellant specifically averred in the plaint that he is ready and willing to perform the agreement dated 13.03.2007;

(ii) That in the suit notice dated 20.11.2007 the plaintiff specifically averred that he is ready and willing to pay the balance sale consideration;

(iii) The plaintiff in his evidence stated that he is ready and willing to perform the agreement. In the deposition it was further stated that he approached the defendant – seller in the month of June, 2007 and again in July, 2007 with the balance sale consideration. That there is no cross-examination in this regard;

(iv) The plaintiff examined PW2 and PW3, the attestors to the agreement to sell, who specifically stated that in June, 2007, the plaintiff approached the defendants and asked them to take the balance sale consideration in cash. That there is no cross-examination in this regard;

(v) That the DW-1 – first defendant admitted in her cross-examination that she executed the agreement and that she was the owner of the said property;

(vi) That she had affixed her signatures on the agreement and that she received Rs. 3 lakhs;

(vii) That the appellant had deposited the balance consideration of Rs. 9,74,000/- before the learned Trial Court on 31.10.2011.

3.3 Learned counsel appearing on behalf of the appellant – buyer has further submitted that as such the defendant took a dishonest stand before the learned Trial Court and denied the execution of the agreement. It is further submitted that in the written statement, the specific stand taken by the defendants was that no agreement to sell was executed between the parties. It is contended that however, defendant No. 1 subsequently admitted that Rs. 3 lakhs were received by her, and a receipt dated 13.03.2007 was issued in that regard.

3.4 It is further contended that even the seller – defendant No. 1 took contradictory and dishonest pleas. She initially

denied the execution of the agreement, then denied that it was an agreement to sell but only an agreement in respect of a loan transaction.

3.5 It is next contended by learned counsel appearing on behalf of the appellant that as such there are concurrent findings recorded by the learned Trial Court as well as the High Court on execution of the agreement to sell by defendant No. 1 and to the effect that Rs. 3 lakhs were paid by the buyer by way of earnest money and that the agreement to sell was not in respect of security and/or a loan transaction but it was for an outright sale.

3.6 Learned counsel appearing on behalf of the appellant has heavily relied upon the decision of this Court in the case of **Indira Kaur and Ors. Vs. Sheo Lal Kapoor; (1988) 2 SCC 488** (para 8, 9 and 10) and the subsequent decision of this Court in the case of **Beemaneni Maha Lakshmi Vs. Gangumalla Appa Rao; (2019) 6 SCC 233** (para 14) on the aspect of readiness and willingness on the part of the buyer. It is submitted that in the case of **Indira Kaur** (supra) it was held that no adverse inference can be drawn

against the plaintiff as to whether he had the means to pay the balance consideration on the grounds of non-production of passbook, accounts or other documentary evidence.

3.7 It is submitted that in the case of **Beemaneni Maha Lakshmi** (supra) it was observed and held by this Court that failure on the part of the vendee to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration by the date of his evidence is not of much of consequence.

3.8 It is further submitted that in the case of **Ramrati Kuer Vs. Dwarika Prasad Singh; (1967) 1 SCR 153** (para 9), it was observed and held by this Court that in the absence of a specific prayer asking for the party to produce accounts and their subsequent failure to do so, no adverse inference could be drawn.

3.9 Making the above submissions and relying upon the afore-cited decisions, it is submitted that the High Court has materially erred in reversing the findings of the Trial Court

on readiness and willingness on the part of appellant. Therefore, it is prayed that the present appeals be allowed and the impugned judgments bet set aside.

4. Present appeals are vehemently opposed by Shri Shailesh Madiyal, learned counsel appearing on behalf of the seller - respondents – original defendants.

4.1 Learned counsel appearing on behalf of the respondents – seller submitted that cogent reasons have been assigned by the High Court while reversing the judgment and decree passed by the learned Trial Court and reversing the findings as to the readiness and willingness on the part of the appellant.

4.2 It is further submitted that the appellant – original plaintiff has not demonstrated and/or led any evidence that he had sufficient means/funds/cash to pay the balance sale consideration. It is submitted that in absence of such evidence the High Court has rightly held that the buyer – original plaintiff has failed to establish and prove readiness

and willingness on his part to perform the agreement dated 13.03.2007.

4.3 It is submitted that in the written statement itself it was the specific case on behalf of the defendants that the plaintiff was not ready and willing to perform his part of the agreement.

4.4 Learned counsel appearing on behalf of respondents – original defendants, has relied upon the decision of this Court in the case of **J.P. Builders and Anr. Vs. A. Ramadas and Anr.; (2011) 1 SCC 429** as well as the recent decision of this Court in the case of **U.N. Krishnamurthy Vs. A.M. Krishnamurthy; 2022 SCC OnLine SC 840** in support of his prayer to dismiss the present appeals.

5. We have heard learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that the learned Trial Court, on appreciation of evidence on record, specifically recorded findings on readiness and willingness

on the part of the plaintiff to perform his part of the agreement. The findings recorded on readiness and willingness on the part of the plaintiff were on appreciation of the entire evidence on record. In the legal notice which was issued on 20.11.2007, the plaintiff asked the defendant to receive the balance amount and execute the sale deed. In reply to the legal notice, the defendant denied the execution of agreement to sell itself. That thereafter, the plaintiff filed the suit for specific performance in which it was specifically averred that he was ready and willing to perform the agreement dated 13.03.2007. In his deposition, the plaintiff specifically stated that he was ready and willing to perform his obligations under the agreement. He further stated that he approached the defendant in the month of June, 2007 and again in July, 2007 with the balance sale consideration. There is no cross-examination in this regard. The plaintiff also examined two witnesses, PW-2 and PW-3, who were attestors to agreement to sell dated 13.03.2007, who specifically stated that in July, 2007, the plaintiff approached the defendants and asked them to accept the

balance sale consideration in cash, to that also there is no cross-examination. The receipt of Rs. 3 lakhs by way of earnest money, has been held to be proved by both the courts below. Within a period of one month from passing of the decree, the plaintiff deposited the balance sale consideration i.e., Rs. 9,74,000/- before the learned Trial Court. Considering the aforesaid facts and circumstances of the case, it is observed that the High Court has materially erred in reversing the decree by reversing the findings of the Trial Court on readiness and willingness of the appellant.

6.1 From the impugned judgment and order passed by the High Court, it appears that the reasoning given by the High Court is that the plaintiff has not proved that he had the cash and/or amount and/or sufficient funds/means to pay the balance sale consideration, as no passbook and/or bank accounts was produced. In the case of **Ramrati Kuer** (supra) which has been specifically considered by this Court in the case of **Indira Kaur** (supra), it was observed and held as under: -

> "Fourthly, it is urged that the respondents did not produce any accounts even though their case was that accounts were maintained and that Basekhi Singh used to give maintenance allowance to the widows who were messing separately. It is urged that adverse inference should be drawn from the fact accounts were not produced by the respondents and that if they had been produced that would have shown payment not of maintenance allowance but of half share of the income to the widows by virtue of their right to the property. Itis true that Dwarika Prasad Singh said that his father used to keep accounts. But no attempt was made on behalf of the appellant to ask the court to order Dwarika Prasad Singh to produce the accounts. An adverse inference could only have been drawn against the plaintiffs-respondents if the appellant had asked the court to order them to produce accounts and they had failed to produce them after admitting that Basekhi Singh used to keep accounts. But no such prayer was made to the court, and in the circumstances no adverse inference could be drawn from the non-production of accounts. But it is urged that even so the accounts would have been the best evidence to show that maintenance was being given to the widows and the best evidence was withheld by the plaintiffs and only oral evidence was produced to the effect that the widows were being given maintenance by Basekhi Singh. Even if it be that accounts would be the best evidence of payment of maintenance and they had been withheld, all that one can say is that the oral evidence that maintenance was being given to widows may not be acceptable; but no adverse inference can be drawn (in the absence of any prayer by the appellant that accounts be produced) that if they had been produced they would have shown that income was divided half and half in accordance with the title claimed by the appellant."

6.2 In the case of **Indira Kaur** (supra) this Court after considering the observations made by this Court in the case of **Ramrati Kuer** (supra) has set aside the findings recorded by three courts below whereby an adverse

inference had been drawn against the plaintiff therein for not producing the passbook and thereby holding that the plaintiff was not ready and willing to perform his part of the agreement. It is observed and held that unless the plaintiff was called upon to produce the passbook either by the defendant or, the Court orders him to do so, no adverse inference can be drawn.

6.3 Applying the law laid down by this Court in the aforesaid two cases to the facts of the case on hand, no adverse inference could have been drawn by the High Court. The High Court seriously erred in reversing the findings recorded by the learned Trial Court on the readiness and willingness of the appellant.

7. Considering the circumstances narrated hereinabove, we are of the opinion that the High Court has materially erred in quashing and setting aside the judgment and decree passed by the learned Trial Court by reversing the findings on the readiness and willingness of the appellant. Under the circumstances, the impugned judgment(s) and order(s) passed by the High Court is/are held to be unsustainable

and the same deserve to be quashed and set aside. However, at the same time, to do the complete justice, we are of the opinion that if the plaintiff is directed to pay a further sum of Rs. 10 lakhs towards sale consideration, it will meet the ends of justice.

8. In view of the above discussion and for the reasons stated above, the present appeals succeed. Impugned judgment(s) and order(s) passed by the High Court are hereby quashed and set aside. The judgment and decree passed by the learned Trial Court for specific performance of the agreement to sell dated 13.03.2007 is hereby restored. However, to do complete justice, we direct the plaintiff to pay to defendant No. 1 a further sum of Rs. 10 lakhs to be deposited within a period of eight weeks from today and on such payment, defendant No. 1 is directed to execute the sale deed in favour of the original plaintiff – appellant within a period of two weeks therefrom. Defendant No. 1 shall also be permitted to withdraw the amount i.e., Rs. 9,74,000/- deposited by the plaintiff on 31.10.2011, pursuant to the judgment and decree passed by the

learned Trial Court, with the interest accrued thereon, which shall be paid to defendant No. 1 by an account payee cheque. Present appeals are accordingly allowed with the above further directions. No order as to costs.

.....J.
(M. R. SHAH)

.....J.
(B.V. NAGARATHNA)

NEW DELHI,
JANUARY 05, 2023.