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DADARAO AND ANR.

v.

RAMRAO AND ORS.

NOVEMBER 2, 1999

B

[B.N. KIRPAL AND N. SANTOSH HEGDE, JJ.]

*Contract:*

C *Agreement of sale—Stipulating that in the event of default by either party, Rs. 500 more, in addition to payment/forefeiture of earnest money, will be paid by defaulting party and sale deed will not be executed—No sale deed executed—Purchaser filing suit for specific performance of contract for sale—Meanwhile property sold to another person—Trial Court declining to pass decree for specific performance—Appellate Court passing the decree and requiring the defendant to execute the sale deed—Second appeal dismissed by High Court—Held, in view of agreement, plaintiff not entitled to a decree for specific performance requiring sale deed to be executed—Defendants to pay back the earnest money with interest plus Rs. 500 with interest—Suit for specific performance.*

D

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 176 of 1982.

From the Judgment and Order 8.9.81 of the Bombay High Court in S.A. No. 340 of 1979.

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A.K. Sanghi for the Appellants.

S.V. Deshpande for the Respondents.

The following Order of the Court was delivered :

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One Balwantrao Ganpatrao Pande owned three acres of agricultural land and had entered into an agreement dated 24th April, 1969 with one Tukaram Devsarkar. Appellant No. 1 herein is one of the heirs of Balwantrao Ganpatrao Pande while the respondents herein are the successors-in-interest of Tukaram Devsarkar.

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The said agreement, with which we are concerned in the present case,

was in the following terms:

“Tukaram Devsarkar aged about 65, Agriculturist R/o Devsar, purchaser (GHENAR)- Balwantrao Ganpatrao Pande aged 76 years r/ o Dijadi Post Devsar, Vendor (DENAR), who hereby give in writing that a paddy field situated at Dighadi Mouja, Survey No. 7/2 admeasuring 3 acres belonging to me hereby agree to sell to you for Rs.2,000 and agree to receive Rs. 1,000 from you in presence of V.D.N. Sane. A sale deed shall be made by me at my cost by 15-4-1972. In case the sale deed is not made to you or if you refuse to accept, in addition of earnest money an amount of Rs. 500 shall be given or taken and no sale deed will be executed. The possession of the property has been agreed to be delivered at the time of purchase. This agreement is binding on the legal heirs and successors and assigns.”

It seems that no sale deed, as contemplated by the aforesaid agreement, was executed by Balwantrao Ganpatrao Pande. Thereupon Tukaram Devsarkar filed a suit for specific performance on 18th July, 1974. During the pendency of the suit, by sale deeds executed in September 1974 and March 1975 appellant No. 2 herein became the owner of the land in question. In the plaint which was filed, it was specifically stated that the agreement dated 24th April, 1969 contemplated that in the event of Balwantrao not executing the sale deed the sum of Rs. 1,000 was to be returned along with an amount of Rs. 500, Nevertheless, the prayer in the plaint was for a decree of specific performance requiring Balwantrao to execute the sale deed and in the alternative a decree for return of Rs. 1,000 plus a sum of Rs. 500.

The trial court by its judgment dated 8th July, 1977 came to the conclusion that though the plaintiff was entitled to a decree for specific performance of the contract for sale but as the jurisdiction to decree was a discretionary one the interest of justice demanded that no decree for specific performance should be passed. In coming to this conclusion, the trial court noticed that Balwantrao had died and the defendants to the suit were his nephews and whatever property had been left by Balwantrao had been sold by the nephews during the pendency of the suit. In fact it was only appellant No. 1 who continued to contest the suit.

An appeal was thereafter filed by the plaintiff and the lower appellate court allowed the same and passed a decree for specific performance and required the defendants to execute the sale deed on the plaintiff depositing Rs. 1,000 being the balance amount of the sale consideration. The appellants

A thereafter filed an appeal before the High Court but the same was dismissed in limini. Hence the present appeal by special leave.

The relationship between the parties has to be regulated by the terms of the agreement between them. Whereas the defendants in the suit had taken up the stand that the agreement dated 24th April, 1969 was really in the nature of a loan transaction, it is the plaintiff who contended that it was an agreement to sell. As we read the agreement, it contemplates that on or before 15th April, 1972 the sale deed would be executed. But what is important is that the agreement itself provides as to what is to happen if either the seller refuses to sell or the purchaser refuses to buy. In that event the agreement provides that in addition to the earnest money of Rs. 1,000 a sum of Rs. 500 was to be given back to Tukaram Devsarkar and that "no sale deed will be executed". The agreement is very categorical in envisaging that a sale deed is to be executed only if both the parties agree to do so and in the event of anyone of them resiling from the same there was to be no question of the other party being compelled to go ahead with the execution of the sale deed. In the event of the sale deed not being executed, Rs. 500, in addition to the return of Rs. 1,000, was the only sum payable. This sum of Rs. 500 perhaps represented the amount of quantified damages or, as the defendants would have it, interest payable on Rs.1,000.

If the agreement had not stipulated as to what is to happen in the event of the sale not going through, then perhaps the plaintiff could have asked the court for a decree of specific performance but here the parties to the agreement had agreed that even if the seller did not want to execute the sale deed he would only be required to refund the amount of Rs. 1,000 plus pay Rs. 500 in addition thereto. There was thus no obligation on Balwantrao to complete the sale transaction.

Interpreted in such a way as we have indicated herein above, it appears to us that the lower appellate court and the High Court erred in coming to the conclusion that the successors-in-interest of Tukaram Devsarkar were in any way entitled to a decree for specific performance requiring the sale of three acres of land pursuant to the agreement dated 24th April, 1969. The order of the High Court and the lower appellate court, therefore, has to be set aside.

While disposing of the suit, the trial court had directed the defendants to pay back Rs. 1,000 plus interest at the rate of 6 per cent per annum from the date of the suit till realisation. In addition thereto, the Civil Judge had

required the defendants to pay Rs. 500 as damages to the plaintiff. Keeping this in view, while allowing this appeal, we affirm the decree of the trial court with this modification that the sum of Rs. 500 will also carry an interest of 6 per cent per annum with effect from 8th July, 1977, being the date of the decree by the trial court. This will be in addition to a decree for Rs. 1,000 plus interest at the rate of 6 per cent thereon from the date of the filing of the suit till the date of realisation.

Parties to bear their own costs.

R.P.

Appeal disposed of.