

NAHAR SINGH
v.
HARNAK SINGH AND ORS.

A

OCTOBER 29, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

Specific Relief Act, 1963 :

Immovable property—Agreement of sale—Specific performance of—Trial Court without applying its mind regarding identifiability of property granted decree in respect of same—However, first appellate court on examination of material on record came to positive conclusion that said agreement neither contained exact area of land to be sold nor boundaries, length, breadth, place from where it was to be measured and khasra numbers thereof—First Appellate Court also found said agreement was entered into to save stamp duty and registration fee and, therefore, opposed to public policy and relief of specific performance could not be claimed—High Court dismissed second appeal—Held: Supreme Court's interference with findings of First Appellate Court as confirmed by High Court not called for—Constitution of India, Art.136.

C

D

Code of Civil Procedure, 1908 :

E

Immovable Property—Decree for recovery of—Held: Unless property was identifiable no decree could be granted in respect of same.

The appellant entered into an agreement of sale of immovable property with the respondent whereby the respondent agreed to sell his land for a sale consideration and agreed to execute the sale deed. Part of the consideration was paid as earnest money and remaining amount was to be paid before the Sub Registrar at the time of registration of sale deed. As the respondent did not execute the sale deed the appellant filed a suit for specific performance of the agreement of sale. The trial court decreed the suit. The Lower Appellate Court held that the said agreement of sale was not enforceable and no specific performance of the said agreement could be ordered as the property in respect of which the agreement had been entered into was vague and unidentifiable. The Lower Appellate Court further found that the said agreement having been deliberately undervalued to save the stamp duty and registration fee, was void on the ground of public

F

G

H

A policy. The second appeal was dismissed by the High Court. Being aggrieved the appellant preferred the present appeal.

B On behalf of the appellant it was contended that the Courts below not having found the agreement to be invalid, committed error in denying specific performance and, therefore, this Court should interfere with the judgment and decree of the Lower Appellate Court as confirmed by the High Court in Second appeal.

C On behalf of the respondent it was contended that no court would pass a decree which ultimately became unenforceable and, therefore, there was no infirmity with the judgment of the Lower Appellate Court as confirmed by the High Court.

Dismissing the appeal, this Court

D HELD : 1.1. The Trial Court while decreeing the suit for specific performance never applied its mind to the identifiability of the property in question and on the basis of a finding that the parties had entered into an agreement and the respondent failed to perform his part, granted relief sought for in the suit. The Lower Appellate Court, however, examined the materials on record and came to the positive conclusion that the agreement of sale neither contains the exact area of the land to be sold to the appellant, nor the boundaries thereof. The Lower Appellate Court further found that no length or breadth of the land have been given and it does not pin point the place from where it was to be measured and no khasra nos. had been given in the agreement. The Lower Appellate Court also found that the parties entered into an agreement to save stamp duty and registration fee and the said agreement is thus opposed to the public policy and relief of specific performance cannot be claimed. [135-A-C]

E 1.2. It is not for this Court to interfere with the decision of the Lower Appellate Court which has been confirmed by the High Court in Second Appeal in exercising power under Article 136 of the Constitution. It is well settled that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same. [135-D]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13388 of

1996.

A

From the Judgment and Order dated 9.5.95 of the Punjab and Haryana High Court in R.S.A. No. 220 of 1995.

L.K. Gupta, A. Gupta and Dinesh Kumar Garg for the Appellant.

B

Harbans Lal and Ashok Kumar Mahajan for the Respondents.

The Judgment of the Court was delivered by

PATTANAİK. J. Delay condoned.

C

Leave granted.

This Appeal by Special Leave is directed against the judgment dated May 9, 1995, of the High Court of Punjab and Haryana in Regular Second Appeal No. 220 of 1995. The appellant filed the suit for specific performance of the agreement of sale dated 28.11.1984, alleging therein that the respondent had agreed to sell his land measuring 4 Bighas 15 Biswas @ Rs. 7,500 per bigha and agreed to execute the sale deed by 15th June, 1985. Part of money was paid as earnest money and remaining amount of Rs. 23,000 was to be paid before the Sub Registrar at the time of registration of the sale deed. It was further alleged that Rs. 2.50 paise were paid as writing charges of pronote and pronote was executed for Rs. 11,050 but no amount was paid in cash to the appellant by the respondent as recited in the pronote. The appellant further urged that he was and is still ready and willing to perform his part of the contract but the respondent committed breach and did not execute the sale deed. And therefore, a suit was filed for the relief of specific performance, as already stated. The respondent resisted the said suit by denying the allegations made in the plaint. It was further pleaded that the appellant had borrowed a sum of Rs. 11,050 from the respondent and executed a pronote and therefore, he had filed a suit for recovery of the amount alongwith interest which had been registered as suit no. 463 of 1987. He accordingly prayed for dismissal of suit for specific performance. In the suit filed by Harnak Singh for realisation of the sum of Rs. 11,050 togetherwith the interest thereon, Nahar Singh took the plea that he had never taken any money as alleged and never executed any pronote. Both these suits were tried together and disposed of by a common judgment dated 31.1.1990. The suit filed by Harnak Singh for recovery of money was dismissed (Civil Suit No. 463

D

E

F

G

H

A of 1987), the suit filed for specific performance by Nahar Singh was decreed (Civil Suit No.181 of 1988) Two appeals were preferred by Harnak Singh and the learned Additional District Judge, Sangrur by his judgment dated 13th September, 1994 came to hold that the agreement dated 28.11.1984 (Exhibit D1) is not enforceable and no specific performance of the said agreement can be ordered as the property in respect of which the agreement had been entered into is vague and unidentifiable. He further found that the said agreement Exhibit D1 having been deliberately undervalued to save the stamp duty and registration fee, is void on the ground of public policy.

C So far as the suit filed by Harnak Singh for recovery of money is concerned, the Lower Appellate Court affirmed the findings of the Trial Judge and confirmed the dismissal of the suit for recovery of the money of the basis of the alleged pronote. Thus the Lower Appellate Court ultimately dismissed both the suits. Regular Second Appeal having been carried to the High Court the High Court agreed with the conclusion of the Lower Appellate Court with regard to the vagueness of the property in respect of which the agreement had been entered into and therefore, dismissed the Second Appeal, and thus the present Appeal by Special Leave.

E The learned counsel for the appellant vehemently argued that the parties having been entered into an agreement whereunder the respondent agreed to execute the sale deed in respect of the property in question and the Courts below not having found the agreement to be invalid, committed error in denying the relief of specific performance and, therefore, this Court should interfere with the judgment and decree of the Lower Appellate Court as confirmed by the High Court in Second Appeal, so far as it relates to the suit for specific performance. The learned counsel for the respondents, on the other hand contended, that the findings of the Lower Appellate Court that the agreement in question was vague and the property for which the agreement had been entered into cannot be identifiable remain unassailable and as such the lower Appellate Court was wholly justified in dismissing the said suit. According to the learned counsel for the respondents no court would pass a decree which ultimately become unenforceable and, therefore, there is no infirmity with the judgment of the Lower Appellate Court which has been confirmed by the High Court in the Second Appeal. In view of the rival submissions at the Bar the only question that arises for consideration is whether the Lower Appellate Court and the High Court were right in refusing the grant of specific performance on the finding that the property for which the agreement is said to have been entered into is vague and unidentifiable. It is seen that the trial Judge while decreeing

the suit for specific performance never applied his mind to the indentifiability of the property in question and on the basis of a finding that the parties had entered into an agreement and the respondents failed to perform its part, granted the relief sought for in the suit. The Lower Appellate Court, however, examined the materials on record and came to the positive conclusion that the agreement Exhibit D1 neither contains the exact area of the land to be sold to Nahar Singh, nor the boundaries thereof. He further found that no length or breadth of the land has been given and it does not pin point the place from where it was to be measured and though Nahar Singh had claimed right from Khasra numbers 435 and 436 but the said Khasra nos. had not been given into he agreement Exhibit D1. The Lower Appellate Court also found that the parties entered into an agreement to save stamp duty and registration fee and the said agreement is thus opposed to the public policy and relief of specific performance cannot be claimed.

In view of the aforesaid findings of the Lower Appellate Court which could not be assailed before us by the learned counsel for the appellant, it is not for this Court to interfere with the decision of the Lower Appellate Court which has been confirmed by the High Court in Second Appeal in exercising power under Article 136 of the Constitution. It is well settled that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same. The learned counsel in the course of his arguments, however, not been able to dislodge the findings arrived at by the Lower Appellate Court merely urged that the agreement having been found to have been entered into between the parties the Court should issue the direction for enforcement of the same. We are unable to agree with this argument of the learned counsel for the appellant.

In the premises, as aforesaid, we are of the considered opinion that the case does not warrant interference under Article 136 of the Constitution and is accordingly dismissed. But in the circumstances, there will be no order as to costs.

V.S.S.

Appeal dismissed. G