

A

PRATIBHA SINGH AND ANR.

v.

SHANTI DEVI PRASAD AND ANR.

NOVEMBER 29, 2002

B

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Code of Civil Procedure, 1908

C

Ss.47 and 152—Suit for specific performance of contract to sell immovable property—Failure on part of plaintiff to give specific description of property—Suit decreed—Execution—Omission on part of execution court to insist on compliance of Order 21 r.34(2)—Held, where suit as to immovable property has been decreed and the property is not definitely identified, the defect can be cured—A successful plaintiff should not be deprived of fruits of the decree—A decree of a competent court should not as far as practicable, be allowed to be defeated on account of an accidental slip or omission—Resort can be had to s.152 or s.47 depending on facts and circumstances of case—Being an advertent error, not affecting merits of the case, it may be corrected u/s.152 by the court which passed the decree—Alternatively, exact description of decretal property may be ascertained by execution court as a question relating to execution, discharge or satisfaction of decree within the meanings of s.47—On facts, it would be more appropriate to invoke s.47—Execution court would, after hearing the parties rectify the map filed by decree-holder and such corrected map would form part of the sale deed—Accordingly, possession shall be delivered by judgment-debtor—These directions are given partly in exercise of powers under Article 142 of the Constitution for doing complete justice—Constitution of India—Article 142.

D

E

F

G

H

Order 7, r.3, Order 20, r.3—Suit for specific performance of contract to sell immovable property—Plaintiff's failure to give specific description of suit property—Held, plaintiff ought to have annexed with the plaint the map of suit property—If plaintiff committed an error, defendant should have objected to it promptly—Default or carelessness of parties does not absolve trial court of its obligation, while scrutinising the plaint, to point out the omission on the part of the plaintiff and it should have insisted on filing a map of the suit property—However, the defect in the court record caused by overlooking the provisions contained in Order 7 r.3 and Order 20 r.3 can be cured under

s.152 or s.47 depending on facts and circumstance of each case.

A

Order 21, r.34(2)—Procedure for execution of documents pursuant to a decree—Decree for specific performance of contract to sell immovable property—Execution—Failure on part of decree-holder to submit to the court a draft of sale deed in accordance with terms of the decree—Resultantly draft sale deed accompanied by a notice requiring objections to be made by judgment debtor as provided by sub-rule(2) of r.34 of Order 21 was not caused to be served by the court—Judgment-debtor insisting on draft sale deed being delivered to him—No determination by execution court as to specification of suit property—Held, execution court would decide upon the correctness of the map forming part of the sale deed and if need be would rectify it in part or wholly and the deed of sale would take effect accordingly.

B

C

Order 41, r.6—Security in case of order for execution of decree appealed from—High Court staying execution of decree under appeal subject to appellant depositing certain amount as security and entitling the respondent to withdraw that amount—Respondent withdrew the amount—When the appeal was finally disposed of High Court not making any order as to appropriation of the security amount—Held, in the absence of any specific judicial order made by High Court or by any other court, the amount deposited as security cannot be appropriated by other party and should be returned to the depositor.

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7891-7892 of 2002.

E

From the Judgment and Order dated 27.11.2001 of the Jharkhand High Court in C.R. 15/01 and 61/01.

Appellant-in-person.

F

Respondent-in-person.

The following Order of the Court was delivered :

Leave granted.

G

Failure on the part of plaintiffs to give correct, specific and exact description of the immovable property forming subject-matter of suit, added by omission on the part of the Trial Court to insist on compliance by the draftsman of the plaint with the rules of pleadings, has resulted in a decree which is yet to witness its full execution and satisfaction though the litigation

H

A has by this time stretched over two decades.

The parties are appearing in person and we have heard them at length. We propose to make an order which would finally bury-to the extent we can-the hatchets so far wielded by the parties. The directions which we propose to make, after briefly setting out the facts, are partly in exercise of jurisdiction conferred on this Court by Article 142 of the Constitution of India for doing complete justice in the lis before us.

Smt. Pratibha Singh, the appellant no.1 is the wife of Shri Madhusudan Prasad Singh, the appellant no.2. The appellant no.2 is power of attorney holder for appellant no.1. Smt. Shanti Devi Prasad, the respondent no.1 is the wife of Shri Lakshmi Kant Singh, respondent no.2. Respondent no.2 is also power of attorney holder for respondent no.1. The agreement to sell forming subject-matter of decree for specific performance thereof was entered into between Smt. Pratibha Singh as vendor and Smt. Shanti Devi Prasad as vendee. However, it appears that the suit for specific performance was filed by Smt. Shanti Devi Prasad and Shri Lakshmi Kant Singh, arrayed as plaintiffs against Smt. Pratibha Singh and Shri Madhusudan Prasad Singh, arrayed as defendants. For the sake of convenience the former two will be referred to as the plaintiff-decree holders while the latter two will be referred as the defendant judgment-debtors.

The suit property is a piece of land admeasuring 8 kathas situated in village Hinoo of P.S. Doranda in District Ranchi. It is part of Revenue Survey No. 595 which has a larger area. Vide registered deed of sale dated 21st June, 1975, the defendant judgment-debtors had purchased a piece and parcel of land measuring 9 decimals (0.09 acres) out of Revenue Survey plot No. 595 which was designated as sub-plot no.595/II out of Khata No.9, Khewat No. 8 of P.S. Ranchi, P.S. No. 225. A map of the property so purchased was annexed with the Deed of Sale. By yet another registered Deed of Sale dated 11th June, 1976, the defendant judgment-debtors purchased another piece and parcel of land measuring 11 kathas 3 Chattacks out of Revenue Survey plot No. 595 which was described as sub-plot No. 595/I out of Khata No.9 Khewat No.8 P.S. Ranchi, P.S. No.225. The boundaries of the land covered by the respective sale deeds were stated in the deeds of sale and map describing the location of land was each annexed therewith. It is clear that two pieces of land so purchased by the defendant judgment-debtors though described in the deeds of sale as survey nos. 595/II and 595/I were not so designated as sub-plots in the revenue records-either the record of rights or in the revenue

survey map.

The defendant judgment-debtors entered into an agreement to sell sub-plot No. 595/I area 6 kathas and 595/II area 2 kathas total area 8 kathas (equivalent to 2.44 acres) in favour of the plaintiff-decree holders. It is not disputed that 8 kathas of land forming subject-matter of agreement to sale is out of the same land as the defendant judgment-debtors had purchased through the two sale deeds dated 21.6.1975 and 11.6.1976 referred to hereinabove. The plaintiff-decree holders filed a suit for specific performance. In the plaint the suit property was described as under:

SCHEDULE OF THE SUIT LAND

All that piece and parcel of land measuring 8 (eight) Kathas out of total area of 17 Katha, 4 chatak as mentioned below:-

Khata No.	Plot No.	Sub Plot No.	Area
9	595	595/I	6 Kathas
"	595	595/II	2 Kathas

situated at Village Hinoo, P.S. Ranchi, P.S. No. 225 District Ranchi bounded and settled as follows:-

North -	Portion of R.S. Plot No, 595
South -	Portion of sub-plot No. 595/II belonging to the defendant no.1
East -	Ranchi Chaibasa Main Road
West -	Portion of R.S. Plot No.595"

The suit was decreed. The principal relief that was allowed to the plaintiff-decree holders was relief no.1 as prayed for in the plaint which is reproduced hereunder:

"Claim for : (i) That the defendants be directed to accept the balance amount of the consideration under the agreement dated 30.11.78 read with the agreement dated 4.9.79 within a time to be fixed by the court and to execute and register a deed of sale with respect to the suit lands as described in the schedule of the plaints in favour of the plaintiffs no.1 and 2 as per terms of the

A said agreement failing which the said sale deed executed by and registered through the court at the cost and expenses of the defendants.”

The decree reads as under:

B “It is ordered and decreed that the suit is decreed on contest with cost. Pleader’s fee of Rs. 36 and pleader Clerk fee Rs. 4 are also allowed. The defendants are directed to accept the balance amount of the consideration money under the agreement dated 30.11.78 read with the agreement dated 4.9.79 and are further directed to execute and register the sale deed of the suit lands within a period of two months from the date of order failing which the plaintiffs shall be at liberty to get it executed through the process of the Court and that the sum of Rs. 3529.95p. (Three thousand five hundred and twenty nine and paise ninety five) as paid by the defendants to the plaintiffs on account of the costs of this suit.”

C

D As there was no map of the land attached with the plaint, the decree too is not accompanied by any map of the property forming subject-matter of decree. The decree refers to the decretal property as “suit lands” which obviously means the lands forming subject matter of suit as per plaint averments.

E It is not disputed that in all an amount of Rs. 32,000 was required to be paid by the plaintiff-decree holders to the defendant judgment-debtors as balance of consideration.

F It appears that the defendant judgment-debtors did not execute the sale deed as decreed, and therefore, the plaintiff-decree holders had to file an execution application. At one stage of the execution proceedings the plaintiff-decree holders filed a draft of sale deed accompanied by a map of the suit property to be executed and registered by the defendant judgment-debtors. Admittedly this map was drawn by the plaintiff-decree holders and filed for the first time during the execution proceedings and as accompanying the draft sale deed. As we have already stated neither the plaint nor the decree was accompanied by any map and so also the revenue survey map did not indicate sub-plot no. 595/I and 595/II. These sub-plots find mention either in the two registered deeds of sale whereby the suit property was acquired by the defendant judgment-debtors or in the map annexed with the court sale deed.

G

H

The Executing Court directed the draft sale deed submitted by the plaintiff-decree holders, along with the map forming part of the draft sale deed, to be executed and registered. That was done. Thereafter, it appears that the plaintiff-decree holders also got possession over some property purportedly the decretal property, but there was some dispute raised and the judgment-debtors succeeded in possession over the property being restored to them. As on the date, it is an admitted position, that the sale deed as per the draft filed by the plaintiff-decree holders stands executed and registered under the directions of the Court but the possession over the suit property is with the defendant judgment-debtors. There is also a dispute raised by the judgment-debtors that full balance consideration has not yet been deposited by the plaintiff-decree holders and realised by the defendant judgment-debtors; it is stated to be short by Rs. 5000. A B C

At the time of hearing the parties raised very many contentions and we have told them that the concern of this Court is to put an end to the litigation guided by the overriding consideration that the decree of a competent Court having achieved a finality must be honoured while the judgment-debtors must receive full consideration and at this stage we would not permit sheer technicalities coming in the way of execution, discharge and satisfaction of the decree. It has also to be seen that the decree-holders acquire title and enter into possession over the property which defendant judgment-debtors intended to sell while the latter should not be compelled to part with any property which they did not intend to sell. D E

Out of the voluminous documents brought on record by the parties we have carefully compared the maps annexed with the registered sale deeds of the defendant judgment-debtors with the map annexed with the sale deed executed by the Court in execution of the decree and we find that there is some difference between the exact description and location of the property between the two sets of the maps. One of the noticeable difference is that what has been shown as survey no. 595/I in the defendant's registered sale deed has been shown in the Court sale deed as 595/II and vice-versa. The plaintiff decree holders have pointed out that this is an inadvertent error though there is no difference in the location of the property and the area forming subject-matter of Court sale deed is 8 kathas only which area was the subject-matter of agreement to sell and also the decree. Be that as it may, some error is there. F G

Order 7 Rule 3 of the CPC requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property H

- A sufficient to identify it. Such description enables the Court to draw a proper decree as required by Order 20 Rule 3 of the CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Having perused the revenue survey map of the entire area of R.S. plot no. 595 and having seen the maps annexed with the registered sale deeds of the defendant judgment-debtors we are clearly of the opinion that the sub-plots 595/I and 595/II were not capable of being identified merely by boundaries nor by numbers as sub-plot numbers do not appear in records of settlement or survey. The plaintiffs ought to have filed map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to promptly.
- C The default or carelessness of the parties does not absolve the Trial Court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming subject-matter of the suit being filed. This is the first error.
- D The second error was committed during the execution proceeding. Under Order 21 Rule 32 of the CPC a decree of specific performance of a contract, on failure to obey, may be enforced by the judgment-debtor being detained in civil prison. Order 21 Rule 34 provides the procedure for execution of documents pursuant to a decree. Where a decree is for the execution of a document the decree holder may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the court. Thereupon the court shall cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made out within time as the court fixes in this behalf. Where the judgment-debtor objects to the draft, his objections shall be stated in writing and then determined. The draft shall be approved or altered consistently with the finding arrived at by the Court. In the present case the plaintiff-decree holders pointed out that the defendant judgment-debtors were aware of the contents of the draft sale deed. The fact remains that the draft sale deed accompanied by a notice requiring objections to be made by judgment-debtor as provided by sub-Rule 2 of Rule 34 of Order 21 of the CPC was not caused to be served by the Court. The record also reveals the judgment-debtors repeatedly insisting, may be dogmatically, on draft sale deed being delivered to them enabling objections being filed. There is no determination by the Executing Court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed was the property forming subject-matter of agreement to sell and the decree.
- H Inasmuch as the possession is yet to be taken by the plaintiff decree holders

this aspect can still be taken care of and that we shall do by making an appropriate direction in the operative part to his order. A

When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case—which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC. B C D

Another controversy between the parties is as to the sale consideration of Rs. 52,000 (Fifty Two Thousand only) as appointed by the decree and which has been deposited by the decree holders in the Court. We do not have to enter into and re-open the controversy whether the amount was deposited within time or not. The fact remains that it has been deposited. However, there is a side controversy surviving. It appears that at one stage of the litigation when the judgment-debtors preferred an appeal in the High Court, vide order dated 13.4.1983 passed in First Appeal No. 27/83 (R), the Court directed the execution of the decree under appeal to remain stayed subject to the appellants depositing Rs. 5,000 by way of security. However, the High Court went on to add—if the deposit is made by the appellants the respondents shall be entitled to withdraw the same on furnishing security to the satisfaction of the execution court'. We fail to understand how the amount of security demanded by the Appellate Court, presumably in exercise of the power conferred by Rule 6 of Order 41 of the CPC, was simultaneously allowed to be withdrawn by the respondents in the appeal. The amount was withdrawn by the appellants herein. When the appeal was finally disposed of, the High Court did not make any order as to the forfeiture of the security in favour of the plaintiff-decree holders or as to the amount of costs or mesne profits being taxed and recovered out of the amount of security deposit. In the E F G H

- A absence of any further and final order having been made, the amount of security demanded by the High Court through its interim order should have remained as security liable to be released in favour of the person who had deposit the amount of security. In the absence of any specific judicial order having been made, the amount of security demanded by the High Court through its interim order should have remained as security and liable to be released in favour of the person who had deposited the amount of security.
- B In the absence of any specific judicial order made by the High Court or by any other Court, the amount of Rs. 5,000 which was deposited by defendant-judgment debtors by way of security cannot be appropriated by the plaintiff-decree holders and the same should be returned to the defendant-judgment debtors. This amount has nothing to do with the amount of sale and consideration.
- C

Though the parties appearing in person tried to raise other issues and controversies, but we are clearly of the opinion that excepting the abovesaid two controversies, none else survives for decision and cannot be permitted to be raised at this belated stage of litigation.

D

The appeals are disposed of in terms of the following directions:-

- (1)(a) The Executing Court shall, after going through the record of the case and after affording the parties an opportunity of hearing, decide upon the correctness of the map filed by the plaintiff-decree holders during the execution proceedings and presently forming part of the Court sale deed dated 23.12.1998. If the Executing Court finds that the map forming part of the sale deed is not a correct map or needs to be rectified either wholly or in part, that shall be done and the map correctly drawn up under the orders of the court shall then form part of the sale deed. The necessary deed of rectification shall be executed and registered under the orders of the court. In that eventuality, the deed of sale dated 23.12.1998 shall take effect as rectified under the orders of the Executing Court.
- E
- F
- G (b) Thereafter possession over the property equivalent to 8 kathas of land as described in the sale deed executed in execution of the decree and as rectified in the event of an occasion arising for the purpose, shall be delivered by the judgment-debtors to the decree holders, if necessary through warrant of delivery of possession.
- H (c) It would be in the discretion of the Executing Court to take such

steps as may be necessary for fixing the identity of the property. The Executing Court may take assistance from the previous documents of title, the Revenue Records and/or may have a survey carried out by appointing a competent Commission. Nevertheless, the Court shall see that the decree holder gets the property as per agreement to sell as and decreed. A

(ii) The amount of Rs. 5,000 (Rupees five thousand only) shall be deposited by the decree holders for payment to the judgment-debtors within such time as may be appointed by the Executing Court. B

(iii) The direction numbers (i) and (ii) abovesaid are independent of each other and not interdependent. Each party must carry out its own obligation without insisting on compliance by the other as a condition precedent. C

(iv) In view of the delay that has already taken place, it is directed that the hearing of the execution shall be expedited and concluded as early as possible, preferably within a period of four months from the date of communication of this order. D

In view of the above orders, no orders are called for on I.As. 9 and 10.

The appeals stand disposed of. No orders as to the costs. E

R.P.

Appeals disposed of.