

THE HIGH COURT OF MADHYA PRADESH**F.A. No. 94/11**

(Kishori Lal Vs. Bhagwan Singh & ors.)

Gwalior, Dated 15/11/18

Shri S.K. Sharma, Advocate for the appellant.

None for the respondents.

Present appeal u/S. 96 CPC assails the judgment and decree passed by court below by which the suit preferred by appellant/plaintiff for specific performance, restitution of possession and compensation, suffered dismissal, primarily on the ground of plaintiff/appellant having failed to prove that defendant No. 1 Bhagwan Singh was owner of the property thereby compelling the trial court to hold that since the suit property does not belong to defendant No.1, the said defendant could not have entered into an agreement to sale in favour of plaintiff.

Learned counsel for the appellant is heard.

Factual matrix involved discloses that a suit for specific performance was brought by the plaintiff/appellant based on express agreement to sale dated 30/9/98 in respect of suit property executed by defendant No.1 in favour of plaintiff agreeing to sell the suit property for consideration of Rs. 1,00,000/- and actually paying Rs. 50,000/- in cash to the defendant No.1 with further stipulation that the remaining amount would be paid at the time of execution of sale deed within three months. The possession of suit property at the time of execution of agreement to sale was handed over to the plaintiff. Incidentally, sale deed was not executed within the three months stipulated period. The plaintiff averred that on 15/3/2000 when he came to Gwalior he gained knowledge of the defendant No. 1 having alienated the suit property in favour of defendant No. 2 and 3 and the possession of

the said property was also given to the defendant No. 2 and 3. This impelled plaintiff to serve a legal notice on the defendant No.1 on 16/3/2000 by registered post asking defendant No. 1 to execute registered sale deed but to no avail. Thereafter the present suit was instituted seeking a decree of specific performance in regard to suit property to compel the defendant No.1 to execute sale deed in favour of plaintiff. Further relief of possession of suit property and compensation @ Rs. 2000/- per month was also sought.

Defendant No. 1 Bhagwan Singh filed written statement to the extent of admitting the factum of execution of express agreement to sale dated 30/9/98 and receipt of part consideration of Rs. 50,000/- from the plaintiff but denied that there was any malintention in executing sale deed in favour of defendant No. 2 and 3 by submitting that defendant No. 1 was compelled to alienate the property in favour of defendant No. 2 and 3.

Defendant No. 2 and 3 in their written statement denied the title of defendant No. 1 over the suit property and disclosed that the suit property is jointly owned by Pappu @ Mahendra, Amritlal and Ballu @ Bhagwan Singh s/o Dashfal Sigh and that the said suit property has not yet been partitioned between the co-owners. In their written statements, defendant No. 2 and 3 denied any sale agreement having entered into between the plaintiff and defendant No. 1. It was further disclosed by defendant No. 2 and 3 that an agreement to sale was entered into between defendant No. 1 as proposed seller and defendant No. 2 and 3 as proposed buyer on 11/1/98 where Rs. 50,000/- exchanged hands as part consideration and the possession of suit property was handed over to the defendant No. 2 and 3 on 30/9/98. It was further disclosed

by defendant No. 2 and 3 that on 24/12/98, the suit property became subject matter of an agreement to sale in favour of defendant No. 2 and 3 for sale consideration of Rs. 1,20,000/- where part consideration of Rs. 65,000/- exchanged hands as advance. In this factual background, defendant No. 2 and 3 contended that the real owners of suit property were defendant No. 1, Amritlal and Pappu and all three individually had sold the said property in favour of defendant No. 2 and 3 and the possession was also handed over.

The trial court framed eight issues.

The factum of execution of sale agreement dated 30/9/98, the exchange of advance consideration pursuant to the aforesaid agreement to sale alongwith readiness and willingness of the plaintiff to pay balance amount of consideration were held to be proved. The suit was dismissed due to the plaintiff having failed to prove the factum of defendant No. 1 being owner of the suit property. The plaintiff having failed to do so, the trial court was compelled to hold that the defendant No. 1 having no exclusive title over the suit property could not have entered into the agreement to sale to alienate suit property.

This court has perused the findings rendered by the trial court and the evidence adduced by both the parties for and against the plaintiff.

The evidence on record does not disclose that the defendant No. 1 was exclusive title holder of the suit property and therefore the defendant No. 1 had no authority to alienate the suit property.

In a suit for specific performance where crucial issue is about the tenability of agreement to sale, it is of utmost importance that the plaintiff to succeed has to establish that the

proposed seller i.e. defendant No. 1 had exclusive title to alienate the same in favour of the plaintiff. If this factum is not proved then the proposed seller/defendant No. 1 herein has no authority in law to transfer the suit property. If the defendant No. 1 does not hold exclusive title on the suit property, the sale agreement in question could not have passed any interest of any nature in favour of plaintiff. Therefore, the said sale agreement did not accrue any right in favour of plaintiff to seek a decree of specific performance against defendant No. 1 for executing a sale deed.

This court finds no reason to differ with the findings of the learned trial court who has taken a reasoned view in shape of impugned judgment and decree.

In view of above, present appeal fails and is dismissed as such.

(Sheel Nagu)
Judge
15/11/18