IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 8th OF JULY, 2025

SECOND APPEAL No. 821 of 2021

CHHOTELAL GUPTA

Versus

PUNIT AND OTHERS

Appearance:

Shri G.S. Sharma and Shri V.K. Jha- Advocates for appellant.

Shri Nirmal Sharma- Advocate for respondent No.1.

Shri Dilip Awasthi- Government Advocate for respondent/State.

JUDGMENT

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 04.01.2020 passed by VII Additional District Judge, Shivpuri, District Shivpuri (M.P.) in Civil Appeal No.02/2019.

2. Appellant is the defendant who has lost his case from the court below.

3. The facts, necessary for disposal of present appeal, in short, are that plaintiff/respondent No.1 filed a suit for specific performance of contract, for declaration of registered sale deed dated 31.07.2014 as null and void. It was the case of the plaintiff that defendants No.1 and 2, namely, appellant-Chhotelal and Ramkali were the joint owner of the disputed property. To meet out the personal

expenses, defendants No.1 and 2 made a proposal on 15.06.2011 to the plaintiff to purchase the land in dispute for a consideration amount of Rs.70,000/-. On 15.06.2011, it was mutually agreed that Rs.70,000/- shall be given on 20.06.2011 and defendants No.1 and 2 shall execute an agreement to sell 3/4 of their share i.e.1.54 hectares. On 15.06.2011, defendant No.2 has executed a power of attorney in respect of her 3/8 share i.e., 0.77 hectare of land. Accordingly, on 20.06.2011, an agreement to sell was executed which was got notarized on 20.06.2011. It was agreed that the sale deed would be executed within a period of three years i.e. 19/06/2014, failing which the plaintiff would be entitled to get the sale deed executed. It was further contended by plaintiff that on 15.06.2015 the plaintiff made verbal request to defendants No.1 and 2 who assured that the sale deed shall be executed. However, defendants No.1 and 2 stated that for execution of sale deed they are not in possession of necessary document and shall positively execute the sale deed by 15.06.2015. On 15.06.2015, defendants specifically refused to execute sale deed. It was the case of plaintiff that he was always ready and willing to perform his part of contract. Since there was escalation in the price of the land, therefore, defendants No.1 and 2 are intending to alienate the disputed property to somebody else. Accordingly, the suit for specific performance of contract was filed and it was prayed that in case if the defendants do not execute the sale deed then the same may be got executed through the court. The suit was amended and it was pleaded that on 31.07.2014, the defendants had executed a sale deed in favour of defendant No.5 for a consideration amount of Rs.3,70,000/- and accordingly it was also prayed that the sale-deed dated 31.07.2014 executed in favour of defendant No.5 be declared as null and void to the extent of right and title of plaintiff.

4. Defendants No.1 and 2 filed their written statement and denied that any agreement to sell was executed on 20.06.2011. It was denied that defendant No.1 had signed agreement to sell on behalf of defendant No.2. Defendant No.2 had never received any amount from the plaintiff. Defendant No.1 had no right to enter into an agreement to sell in respect of the land in dispute because it was a joint property of defendants No.1 and 2. Defendant No.1 has no power of attorney to act on behalf of defendant No.2 and even defendant No.2 had never executed any Power of Attorney in favour of defendant No.1. **It was further pleaded that when the defendants came to know that the agreement to sell has been wrongly executed therefore on 22.07.2014 they refunded the amount of Rs.70,000/- and now nothing is outstanding towards the plaintiff**. Since the amount which was received by the defendants has already been returned back, therefore, there is no question of execution of sale deed. Plaintiff has no right or title to seek declaration of sale-deed dated 31.07.2014 executed in favour of defendant No.5 as null and void.

5. Defendant No.5 also filed his written statement and denied the agreement to sell. It was denied that an amount of Rs.70,000/- was paid to defendant No.1. All other plaint averments were denied. It was also pleaded that on 31.07.2014 a registered sale deed has been executed in favour of defendant No.5.

6. The Trial Court after framing issues and recording evidence dismissed the suit. Being aggrieved by the judgment and decree passed by the Trial Court, the plaintiff/respondent No.1 preferred an appeal which has been allowed by the Appellate Court and instead of directing for specific performance of contract has directed for return of amount of Rs.70,000/-.

7. Challenging the judgment and decree passed by the Appellate Court, it is submitted by counsel for appellant/defendant No.1 that the plaintiff had never

prayed for return of advance amount, therefore, the Appellate Court should not have granted the relief of return of Rs.70,000/-. It is further submitted that defendant No.1/appellant had already returned the amount of Rs.70,000/- to the plaintiff on 22.07.2014 and proposed the following substantial questions of law:-

> (i) Whether the decree reversal passed by Ld. First Appellate Court for payment of Rs.70,000/ - on the basis of an agreement which was time barred, is justified in law ?
>
> (ii) Whether without proving the agreement, the plaintiff was entitled to receive the amount under so-called agreement and consequently whether the findings recorded by First Appellate Court are justified in law?
>
> (iii) Whether after about 7 years, the money suit can be decreed ?

8. Heard learned counsel for appellant.

9. If the written statement filed by defendants No.1 and 2 is read, then it is clear that execution of agreement to sell dated 20.06.2011 by defendant No.1 has not been disputed. It was also the case of defendant No.1 that as soon as he came to know that agreement to sell has been wrongly executed, therefore, on 22.07.2014, he has returned the amount of Rs.70,000/- to the plaintiff. Thus, the burden of repayment of Rs.70,000/- to the plaintiff was on the defendant. Chhotelal (DW-1) had stated that an amount of Rs.70,000/- was returned back to the plaintiff through Fariyad Khan (DW-3). Fariyad Khan (DW-3), in paragraph 10 of his cross-examination, could not point out the date on which the amount was returned back by Chhotelal to the plaintiff. He admitted that Chhotelal did not obtain any receipt from the plaintiff regarding refund of amount of Rs.70,000/-. He admitted that whenever any money transaction is done, receipt is issued. He admitted that he had worked as a Bataidar of father of plaintiff but he denied that because of dispute, he has stated that the amount was returned by

Chhotelal. Fariyad Khan (DW-3) was unable to disclose the denomination of the notes which were returned by Chhotelal. He was also unable to disclose the date on which the amount was returned. No receipt was taken by Chhotelal to prove the refund of Rs.70,000/-. Fariyad Khan (DW-3) has also stated that Chhotelal had refunded the amount in his presence whereas it is not the case of appellant that he had refunded the amount to the plaintiff. Thus, it is clear that Appellate Court did not commit any mistake by holding that the amount of Rs.70,000/- which was received by Chhotelal has not been refunded back.

10. Now, the only question for consideration is that in absence of alternative prayer for refund of consideration amount, whether the Appellate Court was right in granting a decree for refund of Rs.70,000/-?

11. The Supreme Court in the case of **Bhagwati Prasad Vs. Chandramaul** reported in **AIR 1966 SC 735** has held as under:

> "**10.** But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would

> be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

12. Defendant/appellant-Chhotelal had admitted the execution of agreement to sell. He has also admitted the receipt of Rs.70,000/- from plaintiff. He has failed to prove that he had ever refunded the amount of Rs.70,000/-. It is true that the plaintiff had never expressly prayed for an alternative relief for refund of Rs.70,000/- but mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. A decree for specific performance of contract is a discretionary decree. The Appellate Court has held that since suit property has already been sold to defendant No.5, therefore, in case if the sale deed executed in favour of defendant No.5 is set aside and a decree for specific performance of contract is awarded, then it would create further complication. Accordingly, the Appellate Court had directed defendant/appellant to refund the amount of Rs.70,000/-.

13. Under the facts and circumstances of the case, this Court is of considered opinion that where almost all the facts pleaded by the plaintiff in his plaint have been admitted by defendant No.1/Chhotelal and Chhotelal has also failed to prove that he had ever refunded an amount of Rs.70,000/- to the plaintiff, this Court is of considered opinion that the Appellate Court did not commit any mistake by directing the refund of Rs.70,000/- to the plaintiff.

14. As no substantial question of law arises in the present appeal, accordingly, judgment and decree dated 04.01.2020 passed by VII Additional District Judge,

Shivpuri, District Shivpuri (M.P.) in Civil Appeal No.02/2019 is hereby affirmed. Appeal fails and is hereby ***dismissed in limine***.

(G.S. Ahluwalia)
Judge

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