



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 10th OF MARCH, 2025

SECOND APPEAL No. 2494 of 2024

AJAB SINGH

Versus

KAMAL SINGH AND OTHERS

Appearance:

Shri Prashant Singh Kaurav – Advocate for appellant.

Shri Ram Krishna Upadhyaya- Advocate for respondent No.1/Caveateor.

Shri S.S. Kushwaha – Government Advocate for respondent No.2/State.

J U D G M E N T

This Second Appeal, under Section 100 of Code of Civil Procedure, 1908, has been filed against the judgment and decree dated 03.08.2024 passed by First District Judge, Sironj, District Vidisha (M.P.) in Regular Civil Appeal No.11/2023, thereby reversing the judgment and decree dated 12.05.2023 passed by Civil Judge, Senior Division, Sironj, District Vidisha (M.P.) in RCSA No.26/2019 by which the suit filed by respondent No.1/plaintiff for specific performance of contract has been decreed.

2. It is the case of appellant that respondent No.1 preferred a suit for specific performance of contract pleading *inter alia* that appellant/defendant No.1 is the owner and in possession of Khasra No.295/1 area 1.770 hectares situated in



village Anooppur, Tahsil Sironj, District Vidisha (M.P.). On 22.05.2017, defendant No.1/appellant entered into an agreement to sell. 0.885 hectare out of total area 1.770 hectare of Khasra No.295/1.

Boundaries of the land which was agreed to be sold were also mentioned in paragraph 2 of the plaint according to which on the northern, western and eastern side remaining land of appellant is situated whereas on the southern side there is a road. The agreement was entered into for a consideration amount of Rs.8,50,000/-. An amount of Rs.7,50,000/- was received by appellant in presence of Krishnamohan and Umesh Patel and it was agreed that the sale-deed shall be executed by 15.05.2018 after receiving the remaining amount of Rs.One Lac. The agreement to sell was got registered on 28.06.2017. The plaintiff was ready to execute the sale deed after making payment of remaining amount of Rs.One Lac and accordingly, he had verbally requested appellant/defendant No.1 on multiple occasions but appellant/defendant No.1 was somehow avoided the registration of sale deed. Accordingly, on 06.05.2019, the plaintiff sent a registered notice to defendant No.1/appellant thereby mentioning that he is ready and willing to perform his part of contract. Appellant sent a false reply to the notice and accordingly it was pleaded that the appellant/defendant No.1 has not executed the sale deed so far. It was further pleaded that plaintiff is ready and willing to pay remaining consideration amount of Rs.One Lac and is also in possession of expenses for registration of sale deed.

3. Defendant No.1/appellant filed his written statement and admitted that he is the owner of Survey No.295/1. It was denied that any agreement to sell was executed between the parties. In special statement, it was stated by defendant No.1/appellant that plaintiff had given 1/3rd of his agricultural land to defendant No.1 for cultivation purposes. Since the total land of defendant No.1/appellant was less therefore he also took the land of plaintiff for agricultural purposes.



Defendant No.1 carried out the cultivation work from the year 2013 to 2016 and since defendant No.1/appellant was not in possession of sufficient funds to meet out the expenses of seed, diesel, sowing etc., therefore, he took the amount on loan from the plaintiff. However, defendant No.1 even after selling out the crop was not in a position to repay the entire loan amount. Accordingly, on 17.07.2016, the accounts were settled and the plaintiff demanded an amount of Rs.3,22,700/- inclusive of interest. The defendant accepted his liability. Thereafter, the plaintiff with a dishonest intention got the insurance of defendant No.1 and his wife done and when defendant No.1 informed that he does not have money to pay the premium, then plaintiff assured that he would pay the premium and accordingly the plaintiff paid an amount of Rs.10,000/- on 17.07.2016, Rs.5,000/- on 06.07.2016, Rs.10,000/- on 24.10.2016, Rs.5,750/- on 24.10.2016 and Rs.5,000/- on 22.12.2016 and defendant No.1 also agreed to repay the same to the plaintiff. Thereafter, the marriage of son of defendant No.1 was fixed for 02.06.2017 and defendant No.1 was not in sufficient means to bear the marriage expenses, therefore, he took a loan of Rs.40,000/- on 23.05.2017 and Rs.60,000/- on 29.05.2017. After marriage was performed, when defendant went to plaintiff to settle his account, then it was informed by plaintiff that an amount of Rs.4,58,450/- is outstanding against defendant No.1. At that time, plaintiff suggested that since the loan amount is more therefore he should execute a document by way of security of loan and under *bona fide* belief, defendant No.1 agreed for the same and accordingly, plaintiff with a dishonest intention got agreement to sell executed for a consideration amount of Rs.8,50,000/- whereas defendant No.1 had not executed any agreement to sell. It was submitted that defendant No.1 is a rustic villager and he had put his signatures without going through the contents of agreement.

4. The Trial Court after recording the evidence of the parties dismissed the



suit.

5. Being aggrieved by the judgment and decree passed by the Trial Court, respondent no.1 preferred an appeal which has been decreed by judgment and decree dated 03.08.2024 passed by First District Judge, Sironj, District Vidisha (M.P.) in Regular Civil Appeal No.11/2023.

6. Challenging the judgment and decree passed by the appellate court, it is submitted by counsel for appellant that it is true that the agreement to sell Ex.P-1 contains signature and photographs of defendant No.1/appellant but the appellate court committed a material illegality by ignoring the account which was prepared by plaintiff and was relied upon by appellant as Ex.D-1 and thus proposed the following substantial questions of law:-

- i. Whether the judgment and decree of specific performance can be granted when there is clear doubt in relation to payment of consideration?
- ii. Whether the Ld. First Appellate court erred in reversing the judgment and decree when trial court has given specific finding in relation to the fact that the entry in the document itself shows that suspicious about the amount for consideration?
- iii. Whether the Ld. Appellate Court has failed to appreciate the fact about the discrepancy occurred in payment to consideration in the plaintiff witness and plaintiff himself?
- iv. Whether reliance placed in Section 111 of the Indian Evidence Act by Ld. Appellate Court is clearly misconceived?
- v. Any other substantial question of law which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be framed.



7. Heard learned counsel for appellant.

8. The main thrust of arguments of appellant is on handwritten account Ex.D-1 which was allegedly prepared by plaintiff/respondent No.1. It is fairly conceded by counsel for appellant that the aforesaid handwritten document never saw light of the day and was produced before the Trial Court for the first time during the course of his examination. Even the plaintiff was not confronted with the handwritten document. He further admitted that there is no pleading in the written statement that plaintiff had ever prepared a handwritten statement. He also admitted that so called handwritten statement was not signed by anybody including the plaintiff. Even it is also admitted by counsel for appellant that even appellant has not got the handwriting of so-called handwritten statement compared with the admitted handwriting of plaintiff. Thus, this Court is of considered opinion that appellant has failed to prove that account statement (Ex.D-1) was prepared by plaintiff in his handwriting. Appellant has admitted his photograph and signatures on agreement to sell. The witnesses of this agreement, namely, Krishnamohan Sharma (PW-2) and Prahlad Singh (PW-3) have also stated that defendant No.1/appellant had executed an agreement to sell in favour of plaintiff. In view of the fact that not only defendant No.1/appellant has admitted his signatures and photograph on the agreement to sell but the agreement to sell was also registered which clearly shows that defendant No.1/appellant had appeared before the Sub-Registrar for registration of agreement to sell. He could have verified from the sub-registrar as to whether the document is by way of security of loan or could have verified about the nature of the document. There is nothing on record to suggest that appellant had ever tried to verify from the sub-registrar about the nature of document. Thus, his contention that being a rustic villager he could not read out the contents of document cannot be relied upon. Section 92 of Evidence Act reads as under:-

**92. Exclusion of evidence of oral agreement.**

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms :

Proviso (1). - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] [*Substituted by Act 18 of 1872, Section 8, for "want of failure".*] of consideration, or mistake in fact or law.

Proviso (2). - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). - Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). - Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Therefore, it is clear that oral evidence with regard to contents of the



written document cannot be led unless and until the person challenging the document successfully proves it to be a sham document. As appellant has failed to prove that the agreement to sell Ex.P-1 was a sham document or it was obtained by misrepresentation or fraud, this Court is of considered opinion that the appellate court did not commit any mistake by reversing the judgment and decree passed by the Trial Court and by decreeing the suit filed by plaintiff/respondent No.1 for specific performance of contract.

9. No other argument was advanced by counsel for appellant.

10. *Ex. Consequenti*, the judgment and decree passed by the appellate court is hereby affirmed. Appeal fails and is hereby *dismissed in limine*, as no substantial question of law arises in the present case.

(G.S. Ahluwalia)
Judge