

INFORMATION MEMORANDUM:

Where agreement for sale was registered, consideration was paid and possession of land transferred to buyer, decree for execution of sale deed cannot be refused on the ground that it is inequitable to do so under section 20(2)(c) of the erstwhile Specific Relief Act

Leeladhar (D) thr. L.Rs. Vs. Vijay Kumar (D) thr. L.Rs. and Ors.

Civil Appeal no. 7282 of 2009 (SC)

Decided on 26/09/2019

The Defendant must prove that enforcement of specific performance will be an unfair advantage to Plaintiff.

Facts of the case:

Leeladhar and Deshraj (father of the respondents herein) entered into "Agreement to sell" 18 bighas of land for a sum of Rs. 40,000/-. Deshraj paid an amount of Rs. 35,000/- in advance and the balance Rs. 5,000/- was paid when the parties entered into another agreement on 26.03.1985. Leeladhar handed over the possession of the said land to Deshraj.

Deshraj issued a legal notice to Leeladhar asking for execution of sale deed of the said land. Leeladhar did not comply. After Deshraj expired, the respondents herein filed a suit for specific performance of the contract before the

trial Court which decreed the specific performance. The First Appellate Court dismissed the appeal of Leeladhar and upheld the order of the Trial court. The second appeal of Leeladhar was dismissed by High Court and thus this appeal.

Leeladhar alleged that the said contract is a sham document and Deshraj was a money lender, who did not have a licence to do money lending, thus they executed the contract to secure the loans advanced by Deshraj. Leeladhar also stated that he had returned the entire amount along with interest to Deshraj on 03.03.1887.

Issues before Supreme Court:

- (i) Whether the suit filed by the Respondent is within the limitation?
- (ii) Whether the document executed was only to secure repayment of amount?
- (iii) Are the Respondents entitled for relief of specific performance of the document under question?

Key Principles:

1. Discretion to grant or not to grant specific performance depends upon the conduct of the parties.
2. Necessary ingredient has to be proved by the party seeking relief so that discretion would be exercised judiciously in favour of that party.

Verdict of the Supreme Court

The Supreme Court made the following observations:

- (i) The agreement for sale was registered on 18.02.1985 and a sum of Rs. 35,000/- was paid out of Rs. 40,000/-. The balance amount of Rs. 5000/- was paid on 26.03.1985 when the other document was

executed. Thus, finding that the suit was filed within the limitation period.

- (ii) The appellate court gave a finding that the document relied upon by Leeladhar could not be used by him because they were only copies and if Leeladhar have had repaid those loans, then in that event, he would have got the original documents.

- (iii) Further, the agreement was an agreement to sell and thereafter, Leeladhar received the full sale consideration and handed over the possession to Deshraj. Thus, the agreement was not a sham document.

- (iv) If Leeladhar wanted an aid disentitling the respondents from getting the relief of specific performance under section 20 (2) (c) of the Act, he must show that he entered into the contract under the situation which makes it unfair. Since the document in question is not a sham transaction, Leeladhar cannot take the advantage from this provision.

Acelegal Analysis:

- (i) Under Section 20 of the Original Act, courts had discretion in granting the remedy of specific relief. Courts were not bound to grant

specific relief merely because it was lawful to do so. Such discretion was to be tested on the cornerstone of sound and reasonable judicial principles.

(ii) After the amendment of the Act in 2018, now its obligatory on the courts to grant specific performance since section 10 & 11 are amended by adding words like “shall be enforced” and removing the words “discretion of court”. These amendments in the Act have codified the guiding principles for grant of specific performance. Hence, the contracts which have been performed substantially, cannot now be defeated by relying upon the discretion of the Courts.

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