

S. RANGARAJU NAIDU

A

v.

S. THIRUVARAKKARASU.

MARCH 8, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

Specific Relief Act, 1963 :

Promissory note—Execution of towards money due—As collateral security agreement to sell certain plots entered into—Suit for specific performance—Suit decreed by trial Court and confirmed by first appellate Court and High Court—Prominent object of suit being recovery of money with interest Court has discretion and not bound to grant specific performance—Granting of such relief depends on facts and circumstances of each case.

C

Constitution of India, 1950 :

D

Art.13—Discretion exercised by Courts below—Normally not interfered but could be interfered with depending on facts and circumstances of each case.

The appellant had taken some loan from the respondent and his brother. In order to recover the loan, the respondent and his brother filed three suits. The decretal amount due was Rs. 35,500 which after payment of Rs. 20,000 came to Rs. 15,500.

E

The appellant executed a promissory note for Rs. 15,500 inclusive of interest @9% p.a. On the same day he also executed an agreement of sale, for the discharge of the very same promissory note debt, agreeing to sell three plots of land. Respondent filed a civil suit for specific performance of the agreement. The trial Court decreed the suit. It was confirmed in appeal by the first appellate court as also by the High Court.

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In this appeal, the appellant contended that the agreement of sale was only collateral to the promissory note and that there was no consensus ad idem to sell the land under the agreement.

G

The Respondent contended that since the Courts below exercised discretion, there was no need to interfere under Art.136 of the Constitution

H

A Disposing of the appeal, this Court

B HELD : 1. The respondents are money-lenders and sought to recover the amount due to them. Since the appellant was not in a position to pay the amount due on the promissory note, he entered into the agreement to sell the property and the agreement was sought to be enforced. Though the appellant had agreed to sell the property to respondents, the predominant object thereby would be for recovery of the dues with interest. He who demands equity must do equity. Court has discretion. Court is not bound to grant specific performance. It depends on facts and circumstances in each case. [619-F-G]

C 2. The respondents had claimed in his suit alternative relief for the recovery of Rs. 21,000 with interest thereof @12% per annum. Rs. 21,000 is inclusive of interest accrued on Rs. 15,500 @ 12% per annum. Therefore, in view of the facts of this case, justice would be met by granting the alternative relief sought for in the suit, namely, the decree for refund of the money due to him with simple interest @12% per annum, as claimed by him. The decree of the courts below is accordingly modified and there shall be a money decree for Rs. 21,000 with interest @12% from the date of the suit till the date of recovery. [619-H, 620-A-B]

D 3. The appellant has undertaken to pay the amount within a period of six months from the date of this order. In case he commits default in the payment of the decretal amount, the decree for specific performance shall stand confirmed. [620-C]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3140 of 1986.

F From the Judgment and Order dated 2.4.86 of the Madras High Court in S.A. No. 197 of 1986.

G M.N. Krishnamani and T.Raja for the Appellant.

K.R. Choudhary for the Respondent.

The following Order of the Court was delivered :

H This appeal by special leave arises from the judgment and decree in Second Appeal No. 197/86 dated April 21, 1986 passed by the single Judge

of the Madras High Court. The facts are very simple. The respondent had filed three suits : O.S. Nos. 27/63 and 53/63 by him and O.S. No. 32/63 by his brother Sathappa Chettiar, in the court of the Subordinate Judge, Selam, to recover certain amounts taken by the appellant from the respondent and his brother. The decretal amounts due thereon were made up of a total sum of Rs. 35,500 which after payment of Rs. 20,000, came to Rs. 15,500. Therefore, on December 30, 1977, the appellant executed a promissory note, Ex.A-1, for the payment of Rs. 15,500 inclusive of interest @9% per annum. On the same day, the appellant had also executed an agreement of sale, for the discharge of the very same promissory note debt, and since he was not in a position to pay the same, he agreed to sell three plots of land of an extent of 7,500 sq. ft. for the same consideration, i.e., Rs. 15,500. Since the appellant had not executed the sale deed, the respondent filed the civil suit in the Court of Subordinate Judge for specific performance of the agreement. The trial court decreed it and the appellate court has agreed that the agreement is specifically to be enforced. In the Second Appeal, it was confirmed. Thus this appeal by special leave.

Though the learned counsel for the appellant sought to contend that the agreement of sale was only collateral to the promissory note and that there was no consensus ad idem to sell the land under the agreement but only as a collateral security, the High Court has gone into the question and gave findings that it was not given as collateral security, but an agreement to sale, with which we are broadly in agreement. But the question is whether the decree for specific performance is to be confirmed. It is true as rightly pointed out by Shri K.R. Choudhary, learned counsel for the respondent, that since the High Court and the courts below have exercised discretion, it may not normally be interfered with under Art. 136 of the Constitution, but the fact remains that the respondents are money-lenders and that they sought to recover the amounts due to them. Since the appellant was not in a position to pay the amount due on the promissory note, he entered into the agreement to sale the property and the agreement was sought to be enforced. Though the appellant had agreed to sell the property to respondents, the pre-dominant object thereby would be for recovery of the dues with interest. He who demands equity must do equity. Court has discretion. Court is not bound to grant specific performance. It depends on facts and circumstances in each case.

Rightly, the respondent had claimed in his suit alternative relief for

- A the recovery of Rs. 21,000 with interest thereon @12% per annum. Rupees 21,000 is inclusive of interest accrued on Rs. 15,500 @12% per annum. Therefore, in view of the facts of this case, we think that justice would be met by granting the alternative relief sought for in the suit, namely, the decree for refund of the money due to him with simple interest @12% per annum, as claimed by him. The decree of the courts below is accordingly modified and there shall be a money decree for Rs. 21,000 with interest @12% from the date of the suit till the date of recovery. The decree of the courts below is accordingly modified.
- B

- C The appellant has undertaken to pay the amount within a period of six months from today. In case he commits default in the payment of the decretal amount, the decree for specific performance shall stand confirmed.

G.N.

Appeal disposed of.