



2024 INSC 122

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2024
[@ SLP(C) No.29462 OF 2019]

BABASAHEB DHONDIBA KUTE

Appellant(s)

VERSUS

RADHU VITHOBA BARDE

Respondent(s)

J U D G M E N T

Leave granted.

Being aggrieved by the judgment and decree of the High Court of Judicature at Bombay, Aurangabad Bench dated 17.12.2018 in Second Appeal No.118/2018, the plaintiff in the original suit has preferred this appeal.

For the sake of convenience, the parties shall be referred to in terms of their status before the trial Court.

The appellant-plaintiff and the respondent-defendant entered into an agreement to sell dated 31.07.2001 under which, the defendant agreed to sell his land of 80R situated at Block No.41/1, Mandve (Bk), Tq. Sangamner to the plaintiff for a total consideration of Rs.2,25,000/-. An advance amount of Rs.1,55,000/- was paid by the plaintiff to the defendant on the said date. Thereafter possession was stated to have been given in the year

2003 by the defendant to the plaintiff. On 10.01.2003, the plaintiff paid an additional consideration of Rs.65,000/- and thus out of a total consideration of Rs.2,25,000/-, an amount of Rs.2,20,000/- was paid. Since the defendant did not perform his part of the contract to execute the sale deed, the plaintiff filed Special Civil Suit no.11 of 2005 before the concerned trial Court seeking the decree for specific performance of the agreement to sell and in the alternative, for refund of the advance sale consideration / earnest money of Rs.2,20,000/- along with interest @ 6% p.a.

In response to the suit summons and notice issued by the trial Court the defendant appeared and denied the case of the plaintiff by filing his written statement.

The trial court framed the issues for its consideration and ultimately refused the decree of specific performance and granted the alternative relief of refund of Rs.2,20,000/- with interest 6% p.a.

Being aggrieved by the denial of the decree for specific performance of the agreement to sell, the plaintiff preferred his appeal before the First Appellate Court. The First Appellate Court (Ad-hoc District Judge) affirmed the judgment of the trial Court but increased the rate of interest from 6% to 14% from the date of the decree. He also directed the plaintiff to hand over possession to the defendant.

Being aggrieved, the plaintiff preferred the second appeal, namely, S.A. No.118/2018 before the High Court. The High Court

raised the following substantial questions of law:

“Whether a decree for specific performance of land to be transferred from tribal to non-tribal can be granted subject to obtaining permission u/s 36A of Maharashtra Land Revenue Code?”

The High Court considered Section 36A of the Maharashtra Land Revenue Code, 1966 ('Land Revenue Code', for short) and observed that such a decree for specific performance could not be granted and thereby, dismissed the second appeal. Hence, this appeal.

We have heard learned counsel for the respective parties.

Learned counsel for the appellant contended that the High Court was not right in interpreting Section 36A of the Land Revenue Code to the effect that there was a total bar for transfer of any land to be made by a tribal to a non-tribal. Such a transfer by way of sale could be made on the basis of the conditions stipulated therein, that is, with the previous sanction of the State Government. That the stage for obtaining a sanction had not arisen in the instant case, inasmuch as the defendant had not come forward to execute the sale deed. In the circumstances, the plaintiff filed a suit seeking specific performance of the agreement to sell. Even after a decree for specific performance is granted by the Court, the plaintiff was required to seek permission under Section 36A of the Land Revenue Code and thereafter execute such a decree. Merely because Section 36A stipulates a pre-condition for sale of land by

tribal to a non-tribal, it would not imply that there is a bar to seeking a relief from specific performance of an agreement to sell entered into by a tribal in favour of a non-tribunal. He contended that in a suit for specific performance for agreement to sell what was required to be considered was conditions and stipulations considered under Sections 10, 16 etc. of the Specific Relief Act, 1963 and the plaintiff had complied with those conditions inasmuch as out of a total consideration of Rs.2,25,000/-, the plaintiff had already tendered Rs.2,20,000/- and he had performed his part of the contract whereas the defendant had not done so. Therefore the trial Court as well as the first appellate Court were not right in granting only the alternative relief.

He further contended that Section 36A of the Land Revenue Code was improperly invoked by the High Court. The said Section clearly stipulates that if a tribal is to alienate land to a non-tribal by way of sale, gift, exchange, or mortgage, lease or deal otherwise then such a non-tribal has to make an application and with the previous sanction, a tribal can alienate or convey the land to a non-tribal. He submitted that in the absence of the defendant coming forward to execute the sale deed, there was no occasion for the plaintiff to seek such a sanction of the State Government that only if the decree for specific performance is passed in favour of the plaintiff herein he would be in a position to seek such a sanction and ultimately the decree would be executed only if the sanction is given by the State Government in terms of Section 36A of the Land Revenue Code. Therefore, the High Court was not right

in holding that in view of the Section 36A of the Land Revenue Code, the defendant had no right to even enter into an agreement to sell and that the plaintiff had no right to seek the relief of specific performance of the agreement to sell. It was contended that the judgments of the High Court and courts below may be set aside and decree of specific performance of agreement to sell may be granted by allowing this appeal.

Per contra, learned counsel for the respondent supported the impugned judgment and contended that Section 36A not only refers to sale, gift, exchange, mortgage, lease but also uses 'or otherwise'. That in the instant case, pursuant to the agreement to sell entered into by the defendant in favour of the plaintiff, possession also was handed over. That the sale agreement was in violation of Section 36A of the Land Revenue Code. Therefore, the High Court was right in holding that the transaction itself was void since there was no prior sanction obtained and hence, the decree for specific performance could not have been granted. He therefore contended that there is no merit in this appeal and therefore, the same may be dismissed.

Having heard learned counsel for the respective parties and on perusal of the impugned judgment of the High Court as well as the courts below, we find that the High Court has focused itself only on the aspect regarding Section 36A of the Land Revenue Code to deny relief to the appellant-plaintiff. The trial Court, the First Appellate Court as well as the High Court have concurrently held that there was indeed an agreement to sell between the parties and

the plaintiff had paid a sum of Rs.2,20,000/- out of a total consideration of Rs.2,25,000/- to the defendant-respondent herein, who had also handed over possession of the subject land to the plaintiff.

At this stage itself, it may be observed that the defendant had not taken any contention to the effect that the entering of agreement in favour of the plaintiff or the handing over of the possession was contrary to any provision of law. On the other hand, it is contention of the learned counsel for the defendant-respondent herein that there was restriction on transfer of land by a tribal (defendant-respondent herein) in favour of non-tribals (appellant-petitioner herein). In that regard, Section 36 A has been adverted to. The same is extracted hereunder:

"36A: Restrictions on transfers of occupancies by Tribals:-

(1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act,, 1974, be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction- (a)in the case of a lease or mortgage for a period not exceeding 5

years, of the Collector; and (b) in all other cases, of the Collector with the previous approval of the State Government. Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometers thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

- (2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.*
- (3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force, or any decree or order of any court or award or order of any Tribunal, or authority, either suo motu or on application made by the Tribal in that behalf, restore possession of the occupancy to the Tribal.*
- (4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, it is noticed that any occupancy has been transferred in contravention or sub-section (1) 1 (the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on an application made by any person interested in such occupant, within thirty years) from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decide the matter.*
- (5) Where the Collector decides that any transfer*

of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

- (6) Where an occupancy is vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to be state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal - transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding."*

On a reading of the Section 36A, what is evident is that there is only a restriction on the transfer to be made by a tribal in favour of the non-tribal by way of sale, gift, exchange, mortgage, lease or otherwise. Such a restriction is in the context of requiring the non-tribal to make an application for a previous sanction before such a conveyance could be made by a tribal (defendant/ respondent herein) in favour of non-tribal

(plaintiff/appellant herein) before the State Government so as to seek previous approval of the State Government only after a previous approval of the State Government could such a sale take place. The conveyance by way of sale would take place only at the time of registration of a sale deed in accordance with Section 17 of the Registration Act, 2008. Till then, there is no conveyance. Therefore, there is no bar for a tribal to enter into an agreement to sell and seeking advance sale consideration. However, before conveying the land by the tribal in favour of a non-tribal, the requisites of Section 36A must be complied with by the non-tribal before the State Government in terms of Section 36A of the Land Revenue Code. That stage has not yet arisen in the instant case, for the reason that the defendant failed to perform his part of the agreement inasmuch as he did not come forward to execute the sale deed. Possibly, if the defendant had come forward to execute the sale deed in favour of the plaintiff, then it would have been the duty of the appellant to have proceeded under Section 36A of the Land Revenue Code and seek the requisite permission or previous sanction from the Collector.

In view of the defendant not performing his part of the agreement to sell, the plaintiff was constrained to file suit for specific performance. When all the courts have held that the plaintiff has performed his part of the agreement inasmuch as he had tendered a sum of Rs.2,20,000/- out of a total consideration of Rs.2,25,000/- and he was ready and willing to perform the rest of the obligation under the contract, it was only in the context of

non-performance by the defendant that the plaintiff was constrained to file the suit for specific performance. Therefore, on the basis of Section 36A, the trial Court, the first appellate court as well as the High Court could not have declined to grant the decree for specific performance to the plaintiff inasmuch as the considerations under the provisions of the Specific Relief Act, 1963 only had to be made for the purpose of adjudicating the suit between the parties. Since there was no reason to decline the grant of a decree under the provisions of the said Act, the trial Court, the First Appellate Court as well as the High Court ought to have granted the said decree rather than granting an alternative relief.

It may be noted that the plaintiff had relied upon *Nathulal v. Fulchand* 1969(3) SCC 120 wherein it was held that when an agreement to sale is executed but it cannot be specifically performed without permission or sanction of any authority, the suit can be decreed and decree for specific performance can be granted subject to obtaining such permission/sanction from the competent authority. The sanction in the said case pertained to Section 70(4) of the Madhya Bharat Land Revenue and Tenancy Act, 1950 as it postulated that a purchaser of agricultural land, not being an agriculturist, would require permission from the State government for the sale to take place. This court had allowed for the operation of the doctrine of part performance while reasoning that it was well settled that if a property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to the implied condition that the transferor

will obtain the sanction of the authority concerned. We find that the plaintiff had rightly placed reliance on this case before the High Court and that there was no occasion to distinguish the prior sanction required under Section 70(4) of the Madhya Bharat Land Revenue and Tenancy Act, 1950 from Section 36A of the Land Revenue Code, 1959.

On the other hand, in our view, the High Court fell in error while relying upon *Murlidhar Dayandeo Kasekar v. Vishwanath Pandu Barde, 1995 (Supp.) 2 SCC 549* for the reason that the appellant in that case, being a non-tribal purchaser, had been denied permission for alienation by the Collector and the Commissioner, and had filed a writ petition before the High Court that had come to be dismissed. Therefore, this Court dismissed his Special Leave Petition on the ground that the denial of permission by the State authorities could not be faulted for it was in consonance with the constitutional scheme and the assigned land cannot be permitted to be sold or converted to non-agricultural use. The question before the High Court, as noticed by us, was different because the stage of taking steps to secure the previous sanction under Section 36A of the Maharashtra Land Revenue Code, 1959 had not arisen in the present case.

In the circumstances, we modify the judgment of the High Court, First Appellate Court as well as the trial Court and decree the suit filed by the plaintiff by holding that the plaintiff is entitled to the relief specific performance of the agreement to sell dated 31.07.2001. The suit is decreed in the aforesaid terms.

It is needless to observe that now that we have granted the decree of specific performance, the appellant-plaintiff shall proceed under Section 36A of the said Section before seeking conveyance of the subject land in his favour in case the defendant is a tribal.

Registry to draw up a decree in the aforesaid term.

The appeal is allowed in the aforesaid terms.

No costs.

., J
[B.V. NAGARATHNA]

., J
[AUGUSTINE GEORGE MASIH]

NEW DELHI,
FEBRUARY 15, 2024