

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

PRESENT:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Supratim Bhattacharya

FA 11 of 2015

Mr. Manojit Bhattacharjee and Ors.

Vs.

Mr. Suman Ganguly and Anr.

For the Appellants : Mr. Ajay Debnath
Mr. Pradip Kar
Mr. Sujit Saha
Mr. Devranjan Das
Mrs. Swagata Datta
Mr. U. Mukherjee
Mr. Subhankar Adhikary

For the Defendants : Mr. Ashoke Kumar Banerjee
Mr. Uttam Basak
Ms. Shohini Chakraborty
Mr. Kaushik Bhattacharjee

Heard On : 30.08.2023

Judgement Delivered On : 30.11.2023

Supratim Bhattacharya, J.:-

1. The instant appeal arises out of the Judgement and Decree passed by the Ld. Civil Judge, Senior Divn., 1st Court, Barasat North-24-Parganas in Title Suit No. 266 of 2011 dated 30.09.2013.

Through the impugned judgement the Ld. Trial Judge has been pleased to pass decree in the suit on contest without cost. The respondents/plaintiffs have been granted a decree for specific performance of the agreement for sale dated 24.02.2010 entered with the first defendant namely Manojit Bhattacharjee. The respondents/plaintiffs have also been directed to deposit the balance consideration amount and Manojit Bhattacharjee the then first defendant was directed to execute a conveyance in terms of the agreement for sale in favour of the respondents/plaintiffs after withdrawing the balance consideration amount.

2. The respondents were the plaintiffs in the Trial Court and are the intending purchasers whereas the appellants were the defendants in the Trial court and are the intending sellers of the property.
3. The fact of the instant *lis* is that Manojit Bhattacharjee, since deceased, the then the appellant No.1/defendant No.1 and the respondents/plaintiffs entered into an agreement for sale on 24.02.2010, intending to sell the suit property being 6 cottahs 3 chittaks of land having a one storeyed building measuring an area of 1298 square feet within Barasat Municipality, in Mouza- Prasadpur, under R.S. Dag No. 84 and 85 and Khatian No. 50 and 226 known as land of Taraknagar scheme Plot No. 17 & 17A at a consideration amount of Rs. 35 lakhs. In the said agreement it has been mentioned that a sum of Rs. 16 lakhs have already been paid as earnest money on different dates and it has also been agreed that the balance amount could be paid at the time of registration of the deed of conveyance. The said agreement was registered on 24.02.2010.

Thereafter the respondents/plaintiffs paid further sum of Rs. 4 lakhs 20 thousands to the appellants /defendants which was accepted and thereafter on 18.11.2010 the appellant No.1 /defendant No.1 issued a letter to the respondents/plaintiffs confirming that the registration of the deed of sale shall take place on 03.12.2010. The appellants/defendants were requested to make arrangement to get the deed of conveyance registered. Since then the appellants/defendants did not responded, on the contrary have sat tight over the matter. In spite of being given several reminders the appellants/defendants have not shown any intention to execute the sale deed. Thereafter the respondents/plaintiffs came to know that the appellants were trying to sell the property to a third party. Initially the respondents/plaintiffs filed a suit for declaration and injunction before the Ld. Civil Judge, Jr. Divn, 1st Court at Barasat bearing Title Suit 662 of 2010 and subsequently the said plaint was amended by incorporating the prayer for specific performance and as the valuation of the suit exceeded the pecuniary jurisdiction of the Civil Judge (Jr. Divn.) the plaint was returned and had to be filed before the Ld. Civil Judge (Sr. Divn.) 1st Court at Barasat and renumbered as Title Suit No. 266 of 2011.

4. The Ld. Counsel appearing on behalf of the appellants during his exhaustive submission has submitted the following:

- i)** This instant appeal arises from the judgement and decree dated 30.09.2013 pronounced by the Ld. Civil Judge (Sr. Divn.) 1st Court at Barasat in Title Suit No. 266 of 2011 which was a suit for declaration, permanent injunction and specific performance.

- ii)** The Ld. Counsel has further submitted that there was another suit filed before the Ld. Civil Judge (Jr. Divn.) Barasat being Title Suit No. 662 of 2010.
- iii)** He has further submitted that having filed one suit before the Ld. Civil Judge (Jr. Divn.) the respondents are not entitled to file another suit before the Ld. Civil Judge (Sr. Divn.) at Barasat on the same cause of action.
- iv)** The Ld. Counsel has further submitted that he does not know as to whether any agreement for sale was executed and was submitted for registration or not.
- v)** The Ld. Counsel has also submitted that the appellants/defendants have no other premises except the present house.
- vi)** The Ld. Counsel has further submitted that the respondents were not at all ready and willing to perform the contract as the respondents have not paid the whole consideration money.
- vii)** The Ld. Counsel has relied upon the following citations:-
 - a) AIR 2011 SC 1424,
 - b) 2003 9 SCC 478,
 - c) 2004 8 SCC 689 ,
 - d) 2006 7 SCC 470

5. The Ld. Counsel appearing on behalf of the respondents during his exhaustive argument has submitted the following:

- i)** The original appellant No.1/defendant No.1 entered into an agreement for sale on 24.02.2010 intending to sell 6 cottahs

3 chittaks of land situated within the Barasat municipality in Prasadpur, under R.S. Dag No. 84 and 85 and Khatian No. 50 and Khatian No. 226 known as land of Taraknagar scheme Plot No. 17 & 17A having one storeyed building comprising an area of 1298 sq. st. at Rs 35 lakhs. He further submitted that it was also agreed that the balance amount would be paid at the time of registration of the deed of conveyance and the said deed would be executed within 20.11.2010 and 31.12.2010.

ii) The Ld. Counsel has further submitted that the said agreement for sale is registered.

iii) He has also submitted that the respondents/plaintiffs paid a further sum of Rs. 4 lakhs 20 thousands to the appellants/defendants which was accepted by them and thereafter on 18.11.2010, Manojit Bhattacharjee since deceased, issued a letter confirming that on 03.12.2010 he has no objection to the execution and registration of the said deed of sale.

iv) The Ld. Counsel has further submitted that the appellants/defendants had also made a request to make arrangement for the said deed of conveyance to be registered on commission.

v) The Ld. Counsel has also submitted that on 23.11.2010 the respondents/plaintiffs had sent a draft copy of the proposed Deed of Sale to the said Manojit Bhattacharjee and the

defendants had received the same but since then the appellants/defendants have not responded.

- vi)** The Ld. Counsel has further submitted that on 30.11.2010 the respondents/plaintiffs had further gone to the house of the appellants/defendants when the appellants/defendants informed that they have decided to sell the property to another person at a higher consideration amount.
- vii)** The Ld. Counsel has further submitted that on 03.12.2010 the respondents/plaintiffs had gone to the house of the appellants/defendants along with the concerned Additional District Sub-Registrar, when the original Defendant No.1 had refused to execute the proposed Deed of Sale. Thereafter the respondents/plaintiffs came to know from a reliable source that the appellants are trying to sell the property to a third party.
- viii)** The Ld. Counsel has further submitted that having no other alternative the respondents/plaintiffs were compelled to file a suit for injunction before the Ld. Civil Judge (Jr. Divn.) 1st Court being TS 662 of 2010 and the said suit was subsequently amended incorporating the prayer for specific performance and as the valuation of the suit exceeded the pecuniary jurisdiction of the said Civil Judge (Jr. Divn.) the said plaint was returned which was thereafter filed before the Ld. Civil Judge (Sr. Divn.) being renumbered as T.S. 266 of 2011.

- ix)** The Ld. Counsel has also submitted that the appellants/defendants entered appearance in the suit and contested the same by filing written statement, wherein they have admitted the fact of execution and registration of the agreement for sale.
- x)** The Ld. Counsel has further submitted that the appellants have also admitted about the receipt of Rs. 20 lakhs 20 thousand.
- xi)** The Ld. Counsel has further submitted that the argument raised on behalf of the appellants/defendants that the respondents have filed two suits and the second suit is the present one and as such it is not maintainable has no leg to stand.

In this context the Ld. Counsel has submitted that the respondents/plaintiffs have filed only one suit. The instant suit which is being alleged to be the second suit is nothing but an amended suit after being allowed by the court of law, against which no appeal or revision stands and as such the instant suit is not an illegal one.

- xii)** The Ld. Counsel has also submitted that the allegation of multiple prayers being made in one suit is not at all tenable. In this context the Ld. Counsel has brought to the notice of this Court Order II of the Civil Procedure Code wherein it has been laid down in Rule 2 of the said Order that a suit is to include the whole claim.

- xiii)** The Ld. Counsel has further submitted that the point of mis-joinder of parties is also not at all acceptable.
 - xiv)** He has further submitted that there is no mis-joinder of parties, the wife and the daughter of the Defendant No.1 actively participated in the whole transaction as because the daughter namely Sudeshna Bhattacharjee, is an witness to the agreement for sale.
 - xv)** The Ld. Counsel has further submitted that presently after the death of the Defendant No.1 the present appellants being the heirs of the Defendant No.1 are entitled to proceed with the appeal.
 - xvi)** The Ld. Counsel has further submitted that the respondents/plaintiffs are committed to pay more than the amount indicated in the agreement is not at all correct.
 - xvii)** The Ld. Counsel has relied upon an authority reported in AIR 1995 SC 1607.
 - xviii)** The Ld. Counsel banking upon the aforesaid submission has prayed for dismissal of the instant appeal.
- 6.** On going through the materials on record this Court is of the view that the moot point for consideration is whether there is a registered agreement for sale and whether the respondents/plaintiffs are entitled to give effect to the said agreement for sale by having a deed of conveyance executed by the appellants and subsequently registered.
- 7.** This Court takes into consideration all the points which have been raised on behalf of the appellants. As regards to multiplicity of suit it is fact that the respondents/plaintiffs had initially filed a suit praying

for declaration and injunction which has been amended by the incorporation of the prayer for specific performance of contract. The amendment sought for was allowed and is in force so the order of amendment of the initial plaint is in force and has been given effect to. At that relevant point of time neither any appeal nor revision was preferred before the higher forum by these appellants who were then defendants. As such at this belated stage it cannot be raised once again. In the meantime parties had approached the Hon'ble Court but this point/issue was not agitated then and now after a long gap this point cannot be raised at the appellate stage as because if it is allowed so to be raised then the proceeding will be never ending. In addition on behalf of the appellants it has only been submitted that two suits have been filed, which is not the actual fact.

8. The question of multiple prayers in one suit raised on behalf of the appellants is also not at all acceptable. The statute lays down that a person is entitled to include the whole claim. In this regard Order II Rule 2 of the Code of Civil Procedure is laid down as follows:

“[O II R 2] Suit to include the whole claim :-

- (1) *Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*
- (2) *Relinquishment of part of claim:- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*
- (3) *Omission to sue for one of several reliefs:- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except*

with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

9. The contention of the appellants that the suit suffers from mis-joinder of parties is also not at all tenable. Generally if a necessary party is not impleaded in a suit there is mis-joinder of necessary party but in this instant *lis* nobody has been left aside instead all the parties who are necessary to be impleaded have been made parties. In this context this Court lays down Order I Rule 9 of the Code of Civil Procedure which deals with mis-joinder and non-joinder.

“[O I R 9] Misjoinder and non-joinder.—*No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”*

In this *lis* the wife and the daughter of the appellant/defendant have been impleaded as parties as the daughter is one of the witnesses of the Agreement for Sale and the wife has also actively participated. So here is neither non-joinder of necessary party nor mis-joinder of party. So this point is also not at all tenable.

10. As regards to the allegation made by the appellants/defendants that the respondents had promised to pay more than the amount indicated in the agreement is also not at all tenable. It is apparently clear from the Agreement for Sale that there was/is a final agreement to the extent of payment of Rs. 35 lakhs. So the question of payment of more money does not arise at all. In this regard Exhibit-6(a) that is the valuation report issued by the Government authority reveals that the suit property was valued at Rs. 35 lakhs at that relevant point of time.

In this context this Court is of the view that the respondents being the intending purchasers having been diligent and willing to perform their role during the entire period, so the intending purchasers are not to be penalised by implementing upon them the enhanced rate prevalent at this present moment. The aforesaid view has been supported by the inaction shown on the part of the appellants by not being willing to execute the Sale Deed and register the same in favour of the respondents. In this context this Court relies upon Paragraph 27 of the judgement passed by the Hon'ble Apex Court reported in (1995) 4 SCC 15.

Paragraph 27 states as follows:

“27. Insofar as the delay in the disposal of the case and the rise in prices during interregnum, Shri Parasaran urges that the delay not having been occasioned by any act of the plaintiff, he may not be punished for the same on the principle of “actus curiae neminem gravabit” — an act of the court shall prejudice no man. As regards the rise in prices, the submission is that it should not weigh with the court in refusing the relief if otherwise due, as opined in S.V. Sankaralinga Nadar v. P.T.S. Ratnaswami Nadar [AIR 1952 Mad 389], which decision was cited with approval in Mir Abdul Hakeem Khan v. Abdul Mannan Khadri [AIR 1972 AP 178]. We are in agreement with this view because of the normal trend of rise in prices of properties situate especially in metropolitan city like Madras, where the property in question is situate. If merely because the prices have risen during the pendency of litigation, we were to deny the relief of specific performance if otherwise due, this relief could hardly be granted in any case, because by the time the litigation comes to an end a sufficiently long period is likely to elapse in most of the

cases. This factor, therefore, should not normally weigh against the suitor in exercise of discretion by a court in a case of the present nature.”

- 11.** The last but not the least point raised on behalf of the appellants that the agreement for sale is not registered and not signed by the appellant is also not at all tenable in law. The said Agreement for Sale is a registered one, been registered in the office of the Additional District Sub-Registrar Barasat, District- North-24-Parganas. The said Agreement for Sale being registered all the contentions of the appellants cannot be taken into consideration.
- 12.** The respondents/plaintiffs have prayed for specific performance of the registered agreement for sale. As regards to the agreement for sale it is apparent that the agreement for sale which is the fulcrum of the instant *lis* is a registered one. As such the contention of the appellants cannot be taken into consideration.
- 13.** So the contentions raised on behalf of the appellants are not at all acceptable and as such are not tenable in law. So this Court sees no issue to interfere with the findings of the Ld. Trial Court.
- 14.** As such the judgement of the Ld. Trial Court stands affirmed.
- 15.** The instant First Appeal being FA **11 of 2015** stands **dismissed**.
- 16.** The appellants are directed to execute and register the ‘Deed for Sale’, being the legal heirs of the erstwhile owner and having inherited the property, within this year that is 2023, in favour of the respondents, failing which it would be open to the trial Judge to execute the required document(s).

17. Parties shall be entitled to act on the basis of the server copy of the Judgement and Order placed on the official website of the Court.

18. Urgent certified photo copies of this judgement, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree,

(Supratim Bhattacharya, J.)

(Rajasekhar Mantha, J.)

LATER:-

After the Judgement is dictated in open Court, Learned Counsel for the Appellants prays for stay of operation for a period of 30 days.

This Court has carefully noted that the appellants already have sufficient time in terms of the Judgement and hence prayer for stay is considered and refused.

I agree,

(Supratim Bhattacharya, J.)

(Rajasekhar Mantha, J.)