HIGH COURT OF TRIPURA
AGARTALA

RFA 28 of 2019

1. Smt. Bandhana Modak (Das),
W/o – Lt. Prabha Ranjan Das
2. Diptanu Das,
S/o- Lt. Prabha Ranjan Das,
Permanent address Town Bordawali,
Near Vivekananda Bayamagar,
P.S- West Agartala, Agartala,
District- West Tripura
Present Address- C/o- Lt. Subrata Modak,
Modak Villa, Beltali Chowrangi,
P.O & P.S – A.D Nagar, Agartala,
District – West Tripura

---Appellant(s)

Versus

Sri Parswanath Saha,
S/o- Lt. Chunilal Saha, Town Boardawali,
Sukanta Palli, Near Forest Office,
P.S- West Agartala, Agartala,
District – West Tripura

---Respondent(s)

For the Appellant(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. S. Bhattacharjee, Advocate Mr. K. Nath, Advocate
For the Respondent(s)	:	Mr. D. R. Chowdhury, Sr. Advocate Mr. S. Pal, Advocate
Date of hearing	:	**24.06.2022**
Delivery of Judgment & Order	:	**29.07.2022**
Whether fit for reporting	:	**Yes**

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HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

(Arindam Lodh, J.)

The legality and propriety of the judgment and decree dated 20.11.2018 and 23.11.2018 respectively passed by the learned Civil Judge, West Tripura, Agartala, in connection with case No. TS 135 of 2016 are challenged by the defendants by preferring the instant appeal before this court.

The suit of the plaintiff, Sri Parswanath Saha, the respondent herein praying for specific performance of agreement for sale dated 27.05.2016 was decreed by the learned court below.

2. The facts of the case, as deduced by the learned trial Judge, may be reproduced here-in-below for convenience**:-**

> **"*Fact of the case, in brief, is that the predecessor-in-interest of the defendants namely Prabha Ranjan Das due to urgent need of money approached to the plaintiff for selling of the suit land along with the building thereon mentioned in the Schedule of the plaint owned by him for consideration of Rs. 17,50,000/- and on acceptance of the proposal by the plaintiff a Registered Agreement for Sale was executed by the predecessor-in-interest of the defendants in favour of the plaintiff after taking earnest money of Rs. 4,00,000/- with the***

condition that the defendant shall execute a Registered Deed of Sale transferring the suit land to the plaintiff within a period of three months from the date of agreement for sale after receiving rest consideration amount. But unfortunately on 05.07.2016 Prabha Ranjan Das died. The expiry period of the agreement was on 27.08.2016. But due to death of Prabha Ranjan Das and for his Sraddha Ceremony the plaintiff was silent for sometimes. But on 18.07.2016, 20.07.2016 and on 21.07.2016 the plaintiff visited the house of late Prabha Ranjan Das as well as to the house of father of the defendant No. 1 where she used to reside for sometimes. In spite of repeated requests of the plaintiff as well as sending of Advocate's Notice dated 23.07.2016 defendants denied to execute the Sale Deed on the ground that defendant No. 1 being the mother of the minor son i.e. defendant No. 2 was required to obtain survivorship certificate and guardianship certificate from the proper authority. But on 18.11.2016 when the plaintiff inquired whether the defendant No. 1 applied for those certificates she openly denied to sell the suit land. Hence this suit.

After receiving of summons the defendants appeared and filed written statement denying most of the contentions of the plaint. Defendant No.1 has been appointed as the guardian of minor defendant No.2. It is mentioned in the written statement that the value of the suit land and the building was much more than the consideration amount mentioned in the agreement and deceased Prabha Ranjan Das was not physically and mentally fit when the alleged

***agreement was executed. They also contended that the defendants have no other landed property except the suit land and if it has been sold out they would be shelterless. They stated that the agreement was not enforceable in law and so there cannot be any specific performance of contract. Thus, they prayed to dismiss the suit.*"**

3. After exchange of pleadings and hearing both the sides, the learned trial court framed the following issues:-

(i) Is the suit maintainable in its present form and nature?
(ii) Has the plaintiff any cause of action to institute the instant suit?
(iii) Has the plaintiff entered into a registered agreement for sale dated 27.05.2016 with Prabha Ranjan Das (Predecessor of the defendants) to purchase the suit land?
(iv) Are the averments available in the plaint in respect of readiness and willingness to perform the part of the contract in its true construction sufficient to enforce specific performance as prayed for?
(v) Is the plaintiff entitled to get a registered sale deed in terms of agreement for sale?
(vi) Is the plaintiff is entitled to get a decree as prayed for?
(vii) What other relief/reliefs the plaintiff is entitled to?

4. To substantiate the claim, the plaintiff examined six witnesses and exhibited relevant documents.

On the other hand, the defendants examined one witness, but no document was produced by them.

Having heard the rival contentions of the learned counsels, all the issues were decided in favour of the plaintiff/respondent and decreed the suit in his favour.

5. While considering the point of hardship as argued by learned counsel appearing for the defendant/appellants, the learned trial court had observed thus:

> ***"It was also argued by Ld. Counsel of the defendant side that where the performance of contract would involve some hardship on the defendants decree for specific performance may not be granted by the court. In the present suit except the suit land the defendants have no other shelter and so if decree is granted it will cause hardship to the defendants.***
>
> ***On the other hand, the Ld. Counsel for the plaintiff submitted that it is evident that the defendants were not residing with deceased Prabha Ranjan Das during his life time and so there will be no hardship to the defendants if the suit land is sold out.***
>
> ***Explanation-2 of section 20(2) speaks that the question whether the performance of a contract would involve hardship on the defendant within the meaning of clause-(b) shall, except in case where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.***
>
> ***There is no doubt that no hardship resulted subsequent to the contract from any act of the plaintiff in this suit.***

Defendants also failed to show any circumstances existing at the time of the contract that if the suit land is sold out it would cause hardship to the defendants. Hence, for the present circumstances of the defendants it cannot be said that the agreement for sale is not enforceable.

6. Ultimately, the learned trial court held that the agreement for sale is enforceable and following order was passed:-

"In the result, the suit is decreed with cost in favour of the plaintiff with following directions :

(a) The defendant No. 1 Smt. Bandana Modak (Das) shall execute a Registered Deed of Sale on behalf of herself and also being the guardian on behalf of her minor son i.e. defendant No. 2 Master Diptanu Das in favour of the plaintiff Shri Parswanath Saha for the suit land measuring 1 ganda 1 kara of land alongwith building thereon measuring 529 sq.ft appertaining to Khatian No. 347 having R.S. Plot No. 151 within a period of forty five days from the date of drawing up of decree failing which the plaintiff will be entitled to get the Sale Deed be executed through this Court as per law subject to payment of rest consideration amount of Rs. 13,50,000/- (thirteen lac fifty thousand) only by the plaintiff to the defendants;

(b) The defendants shall hand over the possession of the suit land to the plaintiff immediately after execution of the above mentioned Sale Deed along with all the documents of title relating to the suit property which are in the defendants' possession or power.

Prepare decree accordingly."

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7. Keeping in view the above facts and the order as quoted here-in-above passed by learned trial Judge, we have heard Mr. P. Roy Barman, learned senior counsel, assisted by Mr. S. Bhattacharjee, learned counsel appearing on behalf of defendant-appellants and Mr. D. R. Chowdhury, learned senior counsel, assisted by Mr. S. Pal, learned counsel appearing for the plaintiff-respondent. For convenience, the parties are referred to here-in-below as their original status as mentioned in the plaint.

8. At the time of hearing of this appeal, Mr. Roy Barman, learned senior counsel, mainly argued on the suspicious circumstances under which the deed of agreement for sale was entered into between the plaintiff and Prabha Ranjan Das, the predecessor-in-interest of the defendants and the hardship to be faced by the defendants, if the suit instituted by the plaintiff praying for performance of the said agreement for sale is decreed. Mr. Roy Barman, learned senior counsel submitted that the defendants would be landless and their very existence would be at stake.

Learned senior counsel further argued that this is a fit case to invoke the discretionary power of this Court as contemplated under Section 20 of the Specific Relief Act, dismissing the suit of the plaintiff.

9. Mr. Roy Barman, learned senior counsel appearing for the defendants emphasised that when the predecessor of the defendants had entered into agreement for sale in question, admittedly, the defendant No.2 i.e. son of late Prabha Ranjan Das was minor and being the father, late Prabha Ranjan Das did not take care of the interest of his wife and the minor son and rendered them helpless, who were compelled to take shelter in the father's house of the defendant no. 1. Learned senior counsel also tried to persuade this court that the execution of the said deed of agreement of sale (*Exbt.*1) was surrounded by suspicious circumstances as all the witnesses appearing on behalf of the plaintiff's side deposed and stated in their evidence that at the time of execution of the said deed of agreement, the said Prabha Ranjan Das was suffering from ailments and he was hospitalized on repeated occasions. It was pointed out that the deed of agreement was executed and registered on 27.05.2016 and late Prabha Ranjan Das died on 05.07.2016.

10. Mr. Roy Barman, learned senior counsel strenuously argued that at the time of execution of registration of the agreement of sale in question, late Prabha Ranjan Das was not in sound state of mind.

11. Mr. Roy Barman, learned senior counsel appearing for the defendants further contended that the plaintiff failed to prove his

readiness and willingness to perform his part of liabilities as stipulated in the said deed of agreement of sale (*Exbt.*1).

12. *Per contra,* Mr. Chowdhury, learned senior counsel appearing on behalf of plaintiff contended that the defendants being the inheritors of late Prabha Ranjan Das were under obligation to perform their parts of liabilities under the said deed of agreement of sale (*Exbt.*1). It was argued that the plaintiff was always ready and willing to perform his part of performance as stipulated under the said deed of agreement of sale . Even a demand notice was served upon the defendants expressing his willingness and readiness to perform his part of contract and requested the defendants to come forward and execute the sale deed in terms of the agreement dated 27.05.2016, which was entered into between him and their predecessor, late Prabha Ranjan Das. Mr. Chowdhury, learned senior counsel further argued that the defendant never pleaded their hardships in their written statement. As such, learned senior counsel appearing on behalf of the plaintiff contended that the learned trial court had decreed the suit in accordance with law in favour of the plaintiff asking the defendants to execute the registered sale deed in favour of the plaintiff asking the defendant no. 1, Smt. Bandhana

Modak (Das) to execute the registered deed of sale in regard to the suit land described in the schedule of the plaint in favour of plaintiff.

13. We have given our thoughtful consideration in the matter and perused the pleadings as well as the evidence brought on record. There cannot be any debate in the Bar that a remedy for specific performance exercises discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the jurisdiction of the court to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with the sound and reasonable judicial principles. Here, we may profitably refer the principle laid down by the **Kings Bench in Rooke's** case **[(1598) 5 Co Rep 99 b, 100a: 77 ER 209]**, which observed that:

> ***"Discretion is a science, not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are not to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this court. That is a discretionary power, which neither this nor any other court, not even the highest, acting in a judicial capacity is by the constitution entrusted with."***

14. Here it would be worthy to reproduce Section 20 of the Specific Relief Act:-

" ***Discretion as to decreeing specific performance.—(1)*** *The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.*

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:-

(a) Where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) Where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.- Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair

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advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.- The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party."

On plain reading of the above provision, it is aptly clear that a party is not entitled to get a decree for Specific Performance merely because it is lawful to do so. Nevertheless, once an agreement of sale is legally and validly proved and further requirements for getting such a decree which is established, then, the court has to exercise its discretion in granting relief for Specific Performance.

15. In the instant case, the plaintiff has been able to establish that when the deed of agreement of sale (*Exbt.*-1) was executed and registered by late Prabha Ranjan Das, he was suffering from serious illness. The plaintiff in his evidence stated that late Prabha Ranjan Das

was staying with one lady namely, Smt. Pratima Debnath who deposed as PW4. She stated in her cross-examination that she was working as maid servant in the house of Prabha Ranjan Das for about 17 years and she also purchased a portion of the land from late Prabha Ranjan Das but PW4 was not a witness to the said deed of agreement of sale (*Exbt*.-1).

16. According to us, this PW-4 was a natural witness. The said deed of agreement was executed and registered on 27.05.2016 and late Prabha Ranjan Das died on 05.07.2016, and from the evidence of all the witnesses it is revealed that said Prabha Ranjan Das was suffering from serious illness, immediately before his death.

17. Apart from the aforesaid facts, we find that the submission of learned senior counsel appearing on behalf of the plaintiff that the defendants have not pleaded the fact of hardship in their written statement is not correct. The defendants have specifically stated in their written statement that except the suit land they have no other piece of land and they require the suit land for their own residential purpose and they cannot expect to dispose of their only piece of land and building standing thereon which would render them homeless, shelterless and roofless. This pleading is also supported by their evidence. Even from

the evidence of the witnesses of the plaintiff, it is established that the defendant no. 1 used to reside in the house of her father at Beltali. The plaintiff deposing as PW-1 specifically stated that he along with his staff met with the defendant No.1 personally in the house of her father at Beltali, Agartala on 21.08.2016 and told her as to whether she could obtain the said Survivor Certificate and the Guardianship Certificate.

18. From such evidence of the plaintiff, there cannot be any doubt that the defendants had no shelter other than the father of the defendant no.1 and according to us, this admitted fact is enough to prove the hardship of the defendants that the defendant no.1, who along with her minor son would be rendered homeless and shelterless, if the suit for specific performance of the agreement of sale (*Exbt.*1) is decreed in favour of the plaintiff.

19. Applying the well settled principle that it is not always necessary to grant specific performance simply for the reason that it is legal to do so, we are of the opinion, that the case in hand is a fit case to exercise our discretion rejecting the plaintiff's claim to ask the defendants to execute the deed of sale in terms of *Exbt.*1 as decreed by learned court below.

20. As a sequel, we hold that the plaintiff is not entitled to get a decree for specific performance of the agreement of sale (*Exbt.*-1) and the defendants are not under any obligation to execute the sale deed in favour of the plaintiff in the light of the agreement of sale (*Exbt.*-1). However, the plaintiff is definitely entitled to get refund of the earnest money, which he paid to late Prabha Ranjan Das, the predecessor of the defendants along with interest at the rate of 8% per annum. The defendants shall refund the said earnest money of Rs.4,00,000/- (Rupees four lakhs) along with simple interest at the rate of 8% per annum to the plaintiff from the date of the institution of the suit within a period of 3(three) months from today.

21. In the light of the above, the judgment and decree passed by learned trial court stands set aside and quashed.

Accordingly, the instant appeal stands allowed and thus disposed of.

Send down the LCRs

JUDGE **JUDGE**

Rohit