HIGH COURT OF TRIPURA
AGARTALA
RFA NO.13 OF 2023

Shri Prasanta Bhattacharjee,
Son of Sri Padmanath Bhattacharjee,
Aged about 53 years, Proprietor-cum-Chief,
Hallabol, TV Channel, office at Coloniel
Chowmuhani, Agartala, P.O., Agartala,
Division-Agartala, P.S.- West Agartala,
District-West Tripura, Pin-799001.

-----Appellant(s)

Versus

Sri Shimul Saha,
Son of Late Chitta Ranjan Saha,
Resident of Math Chowmuhani,
College Road, Shibnagar, P.O.-Agartala College,
Sub-Division-Agartala, P.S.- East Agartala,
District-West Tripura, Pin-799004.

-----Respondent(s)

For the Appellant(s)	: Mr. S. Lodh, Advocate.
For the Respondent(s)	: Mr. S.M. Chakraborty, Sr. Advocate. Mrs. P. Chakraborty, Advocate.
Date of hearing	: 05.11.2024
Date of delivery of Judgment & Order	: 19/11/2024.
Whether fit for reporting	: YES.

BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

J U D G M E N T & O R D E R

(T. AMARNATH GOUD, J)

This appeal has been filed under Section 96 of the Code of Civil Procedure, 1908, challenging the Judgment and

Decree dated 14.03.2023 and 16.03.2023 respectively, passed by the learned Civil Judge (Senior Division), West Tripura, Agartala, Court No.1, in Money Suit No. 43 of 2018. The learned Civil Judge (Senior Division), West Tripura, Agartala, Court No.1 decreed the suit, directing the defendant-appellant to pay Rs. 41,15,000/- along with interest at the rate of 8% per annum from the date of the Agreement, i.e., 03.01.2016, until realization of the entire amount.

2. The facts of the case in brief are that the respondent herein, as plaintiff, filed the connected suit against the defendant-appellant, contending *inter alia* that an unregistered agreement was executed on 03.06.2016 between the appellant and the respondent for selling 1.62 acres of the appellant's land, situated under Khatian Nos. 4067 and 3608, Hal Dag Nos. 6011/11172, 6013/9537, 6014/10665, 6055, 6056, and 6058/10659 of Mouja-Anandanagar, for a consideration of Rs. 90.00 lakhs. The respondent paid Rs. 30.00 lakhs to the appellant at the time of execution of the agreement. Thereafter, on 05.01.2016, the respondent again paid Rs.4.00 lakhs in cash as an advance to the appellant, thus, in total, the respondent paid Rs.40.00 lakhs as earnest money to the appellant out of the entire consideration amount of Rs.90.00 lakhs. Subsequently, Sri Dipak Chowdhury prepared the Sale Deed, and after confirmation from the parties,

the date for the registration of the sale deed was fixed for 01.06.2017. On the fixed date for registration, the respondent came to the Sub-Registrar's office and issued two cheques, vide No. 00020 dated 31.05.2017 for Rs.16.00 lakhs drawn on HDFC Bank, Shibnagar, Math Chowmuhani Branch, and Cheque No. 094237 dated 31.05.2017 for Rs.7.00 lakhs drawn on UBI Bank, Baramura Math Chowmuhani Branch, to the appellant. The respondent told the appellant to receive the remaining amount in cash during registration. After receiving the cheques from the respondent, the appellant left the Sub-Registry office without signing the sale deed, telling the respondent that he would return in half an hour, but the appellant did not return. A few days later, the appellant informed the respondent that the land had already been mortgaged to the State Bank of India, Agartala Bazaar Branch, and had not been freed from the mortgage. Subsequently, the appellant expressed his inability to register the Sale Deed in favor of the respondent.

3. After the subsequent events mentioned in the plaint, the plaintiff-respondent filed the suit before the Trial Court for the recovery of Rs. 41,15,000/-. To prove the case, the respondent produced four witnesses and exhibited six documents, whereas the appellant's side examined two witnesses but did not produce any documents. After hearing both parties, the learned

Court below, via the impugned Judgment and Decree dated 14.03.2023 and 16.03.2023, decreed the suit in favor of the respondent, directing the appellant to pay Rs. 41,15,000/- along with interest at 8% per annum from the date of the agreement, i.e., 03.01.2016, until the realization of the entire amount.

4. Aggrieved and dissatisfied with the Judgment and Decree dated 14.03.2023 and 16.03.2023, passed by the learned Civil Judge (Senior Division), West Tripura, Agartala, Court No.1, in Money Suit No.43 of 2018, the defendant-appellant preferred the instant appeal.

5. Heard Mr. S. Lodh, learned counsel appearing for the defendant-appellant, as well as Mr. S.M. Chakraborty, learned Senior Counsel, assisted by Mr. P. Chakraborty, learned counsel appearing for the plaintiff-respondent.

6. Mr. Lodh, learned counsel appearing for the defendant-appellant, submits that the suit filed by the respondent under Section 34 of the Specific Relief Act is not maintainable. Learned counsel submitted that, upon bare perusal of the plaint, it is revealed that the suit is based on the Sale Agreement dated 03.06.2016. According to the plaint, the respondent paid Rs.40.00 lakhs in terms of the Agreement dated 03.06.2016, and according to the respondent, the appellant failed to fulfill his obligation in

terms of the Agreement dated 03.06.2016. Therefore, the suit ought to have been filed under Section 10 of the Specific Relief Act instead of Section 34 of the Specific Relief Act. The learned Court below failed to appreciate this legal position and also failed to consider the proviso of Section 34 of the Specific Relief Act, and held that the suit is maintainable. For the aforesaid reasons, the impugned judgment and decree are liable to be interfered with. Learned counsel further submits that his contractual right has been violated, and thus, the Specific Relief Act supports his claim for forfeiture. Mr. Lodh, learned counsel, further questioned the readiness and willingness of the respondent-plaintiff to perform his part of the contract by showing his financial capacity to pay the consideration amount of Rs. 90 lakhs. Learned counsel also submits that if the respondent had paid the money on time, the appellant would have paid the same to the bank to liquidate the loan, and accordingly, he could have executed the sale deed in favor of the respondent. The learned Court below committed a serious error in appreciating that, in terms of the Agreement for Sale dated 03.06.2016, if the respondent failed to pay the remaining consideration amount within a period of one year from the date of execution of the Sale Deed, the earnest money should be forfeited. Stating thus, learned counsel for the defendant-appellant urged this

Court to allow the appeal and set aside the impugned Judgment and Decree.

To support his argument, learned counsel for the appellant relied upon **Para-13** of the Hon'ble Supreme Court Judgment reported in ***AIR 2019 Supreme Court 1178*** *titled as* ***Mehboob-Ur-Rehman(Dead) Through Lrs. V. Ahsanul Ghani***. The same is produced herein under:-

> ***"3. It remains trite that the relief of specific performance is not that of common law remedy but is essentially an exercise in equity. Therefore, in the Specific Relief Act, 1963, even while providing for various factors and parameters for specific performance of contract, the provisions are made regarding the contracts which are not specifically enforceable as also the persons for or against whom the contract may be specifically enforced. In this scheme of the Act, Section 16 thereof provides for personal bars to the relief of specific performance. Clause (c) of Section 16 with the explanation thereto, as applicable to the suit in question, had been as follows:-***
>
> ***"16. Personal bars to relief.- Specific performance of a contract cannot be enforced in favour of a person-***
> ***(a) *** *** ******
> ***(b)*** *** ******
> ***(c) [who fails to aver and prove] 1 that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.***
> ***Explanation:--For the purpose of clause (c),---***
> ***(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;***
> ***(ii) the plaintiff [must aver]2 performance of, or readiness and willingness to perform, the contract according to its true construction."***

7. On the other hand, Mr. S.M. Chakraborty, learned Senior Counsel, assisted by Ms. P. Chakraborty, learned counsel for the respondent-plaintiff, submitted that wrong citation or omission

of any provision does not vitiate the order of the Court below. His client is the victim of suppression of facts because his client was not aware that the suit property had been mortgaged by the appellant. Nowhere in the agreement does it state that after his client pays the money to the appellant, he shall release the property from the mortgage and then execute the sale deed. This amounts to suppression of facts. His client had full intent to pay the money as Rs. 40 lakhs had already been paid in advance, and the remaining amount would have been paid in cash after the execution of the sale deed. In fact, on the date fixed for registration, his client went to the Registry office and issued the two cheques mentioned above in favor of the appellant, but after receiving the cheques, the appellant went away and did not return. In fact, the appellant was not in a position to execute the sale deed because the property was mortgaged to the Bank.

To support his argument, learned Senior Counsel relied upon ***Para-3*** of the Hon'ble Supreme Court Judgment reported in ***AIR 1985 SC 470*** *titled as* **State of Karnataka Vs. Muniyalla**. The same is produced herein under:

> ***"3. Now it is obvious that the Judgment of the High Court is patently wrong and cannot be sustained and in fact Mr. Kapil Sibbal appearing on behalf of the respondent, with his usual candour and frankness, slated that it was difficult for him to support the Judgment. We may proceed on the basis that the VIth Additional City Civil and Sessions Judge could try only such Sessions Cases as were***

made over to him by the Principal City Civil and Sessions Judge in exercise of the powers conferred under Section 194 of the Criminal Procedure Code, though we are not at all sure that, even if the VIth Addl. City Civil & Sessions Judge tried a Sessions Case which was not formally made over to him, the trial would be invalid, because in any event the VIth Addl. City Civil & Sessions Judge would have inherent jurisdiction to try the Sessions Case. We need not however, go into that question because we find that there was an order made by the Principal City Civil & Sessions Judge on 30th January 1981 making over Sessions Case No. 17/79 to the VIth Addl. City Civil & Sessions Judge, Bangalore. Undoubtedly this order was purported to be made by the Principal City Civil and Sessions Judge in exercise of the powers conferred under Section 409 of the CrPC and this Section did not confer power on the Principal City Civil and Sessions Judge to make over Sessions Case No. 17/79 to the VIth Additional City Civil and Sessions Judge. But it is now well-settled that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of Invalidating an order which is otherwise within the power of the authority making it. Here the Principal City Civil and Sessions Judge had power under Section 194 of the CrPC to make over Sessions Case. No. 17/79 to the VIth Additional City Civil and Sessions Judge and the order made by him on 30th January 1981 was clearly within his authority and the only error was that he recited a wrong Section of the CrPC. The order dated 30th January 1981 made by the Principal City Civil and Sessions Judge must be read as an order made under Section 194 of the CrPC in so far as the direction making over Sessions Case No. 1,7/79 to the VIth Additional City Civil & Sessions Judge is concerned. We are therefore of the view that Sessions Case No. 17/79 was validly made over to the VIth Additional City-Civil & Sessions Judge and he had jurisdiction to try that Sessions Case. The Judgment of the High Court setting aside the conviction and sentence recorded against the respondent on the ground that the VIth Additional City Civil & Sessions Judge has no jurisdiction to try Sessions Case No. 17/79, must consequently be held to be erroneous."

8. Heard and perused the evidence on record.

9. It is apparent from the record that the defendant-landlord did not indicate in the agreement that two of his properties were mortgaged, one of which is the subject property of this sale deed. It is also evident from the testimony of P.W.-4, Sri Dipak Chowdhury, the deed writer, who, in his cross-examination, clearly

indicated that the defendant-landlord had not disclosed or instructed him regarding the said mortgage.

10. The forfeiture clause of the Deed of Agreement dated 03.06.2016 between the involved parties is as follows:-

> " **.....If the First party fails to pay the remaining amount of money(of valuation) left after 'baina' (advance payment) to the second party, within the stipulated time then the total amount paid by the first party shall be forfeited or shall be treated as cancelled or else if the first party desires to pay.....**"

11. In view of the above clause, the learned Counsel for the appellant-defendant vehemently argued that the amount already paid by the plaintiff stands forfeited since the balance amount was not paid, and the sale deed was not executed and registered.

12. It is an admitted fact that a sum of Rs. 40 lakhs was received by the defendant-landlord. This Court finds the claim for forfeiture of Rs.40 lakhs under the forfeiture clause to be unreasonable. The defendant argues that the Specific Relief Act supports his right to forfeiture. However, this Court does not accept the appellant-defendant's case, as the agreement is silent regarding the mortgage and the fact that the defendant-landlord would have to release the property from the mortgage before proceeding with

the sale deed. The non-disclosure of this crucial fact, both in the Statement and the written statement, leads the Court to draw an adverse inference against the appellant's conduct for suppressing this vital information regarding the land in question. In any transaction between parties, fair play and trust are essential elements. In this case, the appellant-defendant has failed to exhibit fair play, and trust has been compromised for the reasons stated above. In the absence of fair play, it is not appropriate for the appellant to rely on the Specific Relief Act.

13. With the above observations, this appeal is dismissed, and the impugned Judgment and Decree dated 14.03.2023 and 16.03.2023 are hereby confirmed. As a result, any stay, if in effect, is vacated. Pending applications, if any, are also dismissed.

B. PALIT, J **T. AMARNATH GOUD, J**

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