



2024 INSC 778

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.613 OF 2017

JANARDAN DAS & ORS. ...APPELLANT (S)

VERSUS

**DURGA PRASAD
AGARWALLA & ORS ...RESPONDENT(S)**

ORDER

1. The present appeal arises from the judgment and order dated 25.10.2013 passed by the High Court of Orissa at Cuttack in First Appeal No. 185 of 1997, wherein the High Court reversed the judgment of the Civil Judge (Senior Division), Baripada, dated 17.05.1997 in T.S. No. 103 of 1994. The High Court decreed the suit for specific performance filed by the plaintiffs (Respondent Nos. 1 & 2 herein), directing the defendants, including the present appellants (Defendant Nos. 9 to 11), to execute a sale deed in favour of the plaintiffs. Aggrieved by this decision, the

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Neetu Khatri
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Reason:

defendant nos. 9 to 11 have approached this Court by way of the present appeal.

2. The relevant facts giving rise to the original suit are as follows:

2.1. Late Surendranath Banerjee was the original owner of the suit property situated in Baripada, Odisha. Upon his demise on 03.07.1980, the property devolved equally among his five heirs: two sons—Defendant No. 1 (Binayendra Banerjee) and late Soumendra Nath Banerjee—and three daughters—Defendant Nos. 6 to 8 (Smt. Rekha Mukherjee, Smt. Sikha Das, and Smt. Monila Pal).

2.2. On 14.04.1993, an oral agreement was entered into between all the co-owners (Defendant Nos. 1 to 8) and the appellants (Defendant Nos. 9 to 11), wherein the co-owners collectively agreed to sell the suit property to the appellants for a total consideration of ₹4,20,000. This agreement was the culmination of mutual discussions and a longstanding understanding between the parties, reflecting the genuine intent of all co-owners to transfer the property to the appellants.

2.3. Meanwhile, on 06.06.1993, the plaintiffs (Respondent Nos. 1 & 2), who are dealers operating a petrol pump on the suit land under a dealership agreement with Defendant No. 12 (Hindustan Petroleum Corporation Limited), allegedly entered into an agreement to sell with Defendant No. 1 and late Soumendra for the purchase of the suit property for a total consideration of ₹5,70,000 paying ₹70,000 as earnest money. The agreement stipulated that the sisters (Defendant Nos. 6 to 8) would come to Baripada within three months to execute the sale deed, as they were unable to do so at the time of the agreement. As per the terms of the agreement, the sale deed was to be executed before 30.09.1993.

2.4. It is pertinent to note that the agreement dated 06.06.1993 was executed solely by Defendant No. 1 and late Soumendra, without any signatures, written consent, or explicit authorization from Defendant Nos. 6 to 8, who collectively held a significant 3/5th share in the property. The plaintiffs were aware that without the participation and consent of the sisters, a

valid and enforceable sale could not be completed.

2.5. The alleged authority of Defendant No. 1 to act on behalf of his sisters was based on an unregistered General Power of Attorney (GPA) dated 30.12.1982. However, this GPA was limited in scope, primarily authorizing Defendant No. 1 to manage certain aspects of the property, such as collecting rent. Moreover, the GPA was effectively revoked by a registered partition deed dated 17.02.1988, wherein the co-owners partitioned the property and specifically limited Defendant No. 1's authority to collection of rent, with no mention of any power to sell the property on behalf of the sisters.

2.6. In fulfilment of the prior oral agreement dated 14.04.1993, and after ensuring the participation and consent of all co-owners, Defendant No. 1, late Soumendra, and Defendant Nos. 6 to 8 executed a registered sale deed on 27.09.1993 in favor of the appellants (Defendant Nos. 9 to 11) for a consideration of ₹4,20,000. The appellants who are bona fide

purchasers, acted in good faith and completed the transaction with all the five rightful owners, and accordingly acquired valid title to the property.

- 2.7. The plaintiffs (Respondent Nos. 1 & 2), despite being aware of the necessity of obtaining consent from Defendant Nos. 6 to 8 and the limitations of Defendant No. 1's authority, filed T.S. No. 103 of 1994 before the Civil Judge (Senior Division), Baripada. They sought specific performance of the alleged agreement dated 06.06.1993 or, in the alternative, specific performance to the extent of the shares of Defendant No. 1 and late Soumendra. The plaintiffs, as dealers operating on the suit land, aimed to secure ownership of the property to further their commercial interests.
3. Before the Trial Court, the plaintiffs contended that they had entered into a valid and enforceable agreement to purchase the suit property from Defendant No. 1 and late Soumendra on 06.06.1993 for a total consideration of ₹5,70,000, paying ₹70,000 as earnest money. They asserted that Defendant No. 1 was authorized to act on behalf of Defendant Nos.

6 to 8 by virtue of the General Power of Attorney dated 30.12.1982 (Ext.1), which empowered him to sell the property. The plaintiffs emphasized that the agreement stipulated the sisters (Defendant Nos. 6 to 8) would come to Baripada within three months to execute the sale deed, and they were assured by Defendant No. 1 and late Soumendra that the sisters had consented to the sale. They maintained that they were always ready and willing to perform their part of the contract, including paying the balance consideration and completing the sale. Furthermore, they argued that the subsequent sale deed executed on 27.09.1993 in favour of Defendant Nos. 9 to 11 was invalid and not binding on them, as it was executed with full knowledge of the prior agreement with the plaintiffs.

4. The defendants, in their respective written statements, refuted the plaintiffs' claims. They contended that Defendant No. 1 did not have the authority to sell the property on behalf of Defendant Nos. 6 to 8. They argued that the General Power of Attorney (Ext.1) was limited in scope and effectively revoked by the partition deed dated 17.02.1988 (Ext.6/a), which allocated specific shares to each co-

owner and only authorized Defendant No. 1 to collect rent, not to sell the property. The defendants maintained that the agreement dated 06.06.1993 was incomplete and unenforceable, as it was contingent upon obtaining the consent and participation of Defendant Nos. 6 to 8, which was never secured. They further asserted that the plaintiffs failed to fulfil the terms of the agreement, particularly in not ensuring the presence and consent of the sisters within the stipulated time, indicating lack of readiness and willingness to perform their obligations. The defendants highlighted that the sale deed executed on 27.09.1993 in favour of Defendant Nos. 9 to 11 was valid, having been executed with the full consent and participation of all co-owners, including Defendant Nos. 6 to 8. They asserted that the appellants were bona fide purchasers for value without notice of any enforceable prior agreement, rendering the plaintiffs' claims untenable

5. The Trial Court, after framing issues and examining the evidence, dismissed the suit of the plaintiffs for specific performance. The key findings of the Trial Court were as follows:

- 5.1. The Court found that the agreement dated 06.06.1993 was executed only by Defendant No. 1 and late Soumendra, without any signatures or explicit consent from Defendant Nos. 6 to 8. The agreement itself acknowledged that the sisters were not present and their willingness needed to be secured, stating that they would come to Baripada within three months to execute the sale deed.
- 5.2. The Trial Court examined the General Power of Attorney and concluded that it did not explicitly authorize Defendant No. 1 to sell the property on behalf of the sisters. Moreover, the GPA was impliedly revoked by the subsequent partition deed (Ext.6/a), which allocated specific shares to each co-owner and only authorized Defendant No. 1 to collect rent, not to sell the property.
- 5.3. The agreement was deemed incomplete and unenforceable against Defendant Nos. 6 to 8, as their consent and participation were essential for a valid sale. The agreement's reliance on future consent rendered it a contingent contract

that did not materialize within the stipulated time.

- 5.4. The Court observed that the plaintiffs failed to demonstrate continuous readiness and willingness to perform their part of the contract. They did not take effective steps to secure the consent and presence of the sisters within the three-month period specified in the agreement. Their inaction and reliance solely on Defendant No. 1 and late Soumendra indicated a lack of diligence and commitment to fulfilling the contractual obligations.
- 5.5. The Court considered whether specific performance could be granted for the 2/5th share belonging to Defendant No. 1 and late Soumendra. It concluded that such partial enforcement was impractical and inequitable, given the nature of the property and its existing lease to Defendant No. 12. Splitting ownership would complicate the tenancy and could not be reasonably executed.
- 5.6. The Court held that the sale deed dated 27.09.1993 executed in favour of Defendant Nos. 9 to 11 was valid and binding. The

appellants were bona fide purchasers who had completed the transaction with all rightful owners, including Defendant Nos. 6 to 8. The plaintiffs' prior agreement did not create any interest in the property that could invalidate the appellants' title. Recognizing that the plaintiffs had paid ₹70,000 as earnest money, the Court ordered that they were entitled to a refund of this amount with pendente lite and future interest at 6% per annum from Defendant Nos. 1 to 5 (the legal heirs of late Soumendra included).

6. Aggrieved by the Trial Court's judgment, the plaintiffs filed a first appeal before the High Court of Orissa. On appeal, the High Court reversed the Trial Court's judgment and decreed the suit in favour of the plaintiffs. It held that the General Power of Attorney dated 30.12.1982 was valid and conferred authority upon Defendant No. 1 to act on behalf of Defendant Nos. 6 to 8, rejecting the notion that it was impliedly revoked by the partition deed dated 17.02.1988. The High Court found that the alleged revocation of the GPA was forged and not genuine. It concluded that the agreement dated 06.06.1993 was valid and

enforceable against all defendants, including the sisters, and that the plaintiffs were always ready and willing to perform their part of the contract. Consequently, the High Court granted specific performance of the contract, directing all defendants, including Defendant Nos. 9 to 11 (appellants herein), to execute the sale deed in favour of the plaintiffs upon payment of the balance consideration.

7. Aggrieved by the judgment and decree of the High Court, the appellants (Defendant Nos. 9 to 11) have preferred the present appeal before this Court. Having heard the learned counsel for both parties and perused the records, the following main issues arise for determination:

I. Whether the plaintiffs proved their continuous readiness and willingness to perform their part of the contract as mandated under Section 16(c) of the Specific Relief Act, 1963.

II. Whether the agreement to sell dated 06.06.1993 was valid and enforceable against Defendant Nos. 6 to 8, considering that Defendant No. 1 lacked the authority to act on their behalf without a valid and subsisting General Power of Attorney.

III. Whether the relief of specific performance, being discretionary, having been denied by the Trial Court was rightly granted by the High Court in the facts and circumstances of the present case.

I. Readiness and Willingness of the Plaintiffs to Perform the Contract

8. Section 16(c) of the Specific Relief Act, 1963, mandates that a plaintiff seeking specific performance of a contract must aver and prove that they have performed or have always been ready and willing to perform the essential terms of the contract which are to be performed by them. This requirement is a condition precedent and must be established by the plaintiff throughout the proceedings. The readiness and willingness of the plaintiff are to be determined from their conduct prior to and subsequent to the filing of the suit, as well as from the terms of the agreement and surrounding circumstances. The rationale behind this provision is to ensure that a party seeking equitable relief has acted equitably themselves. Specific performance is a discretionary relief, and the plaintiff must come to the

court with clean hands, demonstrating sincerity and earnestness in fulfilling their contractual obligations. Any laxity, indifference, or failure to perform their part of the contract can be a ground to deny such relief. The importance of readiness and willingness for enforcement of specific performance has been summarized by this Court in **U.N. Krishnamurthy v. A.M. Krishnamurthy**¹, as follows:

“23. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

24. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a

¹ (2023) 1 SCC 775

contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

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45. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

9. The Trial Court rightly concluded that the plaintiffs failed to demonstrate continuous readiness and willingness to perform their part of the contract. The agreement dated 06.06.1993 explicitly required the plaintiffs to ensure that Defendant Nos. 6 to 8 would come to Baripada within three months to execute the sale deed. The plaintiffs, however, did not take any concrete steps to secure the consent or presence of the sisters within the stipulated period. They relied solely on Defendant No. 1 and late Soumendra to procure the sisters, despite knowing that the sisters were not signatories to the agreement and held a significant share in the property. The Trial Court observed that the plaintiffs did not issue any notices or correspondence to Defendant Nos. 6 to 8 during the three-month period, nor did they make any efforts to communicate with them directly to expedite the execution of the sale deed. This inaction on the part of the plaintiffs indicated a lack of diligence and earnestness in fulfilling their contractual obligations. Furthermore, the plaintiffs continued to operate their petrol pump on the suit land without taking proactive steps to complete the purchase, suggesting complacency and a lack of urgency.

10. The High Court, in contrast, summarily concluded that the plaintiffs were always ready and willing to perform their part of the contract. It stated that there was an abundance of evidence on record to establish the plaintiffs' financial capacity and willingness. However, the High Court did not delve into the specifics of the plaintiffs' conduct or address the Trial Court's findings regarding their inaction. The High Court's assessment on this crucial aspect was cursory and lacked a thorough examination of the evidence and circumstances that demonstrated the plaintiffs' lack of readiness and willingness.
11. Upon perusal of the records and submissions, we find merit in the appellants' contention that the plaintiffs failed to prove their continuous readiness and willingness as required under Section 16(c) of the Specific Relief Act. The terms of the agreement imposed specific obligations on the plaintiffs, particularly in ensuring that Defendant Nos. 6 to 8 would participate in the execution of the sale deed within three months. The plaintiffs' failure to take any initiative in this regard is indicative of their lack of commitment to perform the contract. It is pertinent to note that the plaintiffs were aware that Defendant

Nos. 6 to 8 were not parties to the agreement and that their consent was crucial for the completion of the sale. Despite this knowledge, the plaintiffs did not attempt to contact the sisters or address any correspondence to them. The plaintiffs also did not furnish any evidence to show that they had arranged the balance consideration amount or were prepared to pay it upon execution of the sale deed.

12. The reliance placed by the plaintiffs on Defendant No. 1 and late Soumendra to bring their sisters for execution cannot absolve them of their responsibility to demonstrate readiness and willingness. In contracts involving multiple parties with distinct interests, especially when some parties are absent or not signatories, the onus is on the plaintiff to ensure that all necessary consents and participations are secured. The plaintiffs' passive approach and failure to act proactively undermine their claim of readiness and willingness. Moreover, the plaintiffs did not raise any objection or take legal action immediately after the expiry of the three-month period specified in the agreement. Their delay in asserting their rights and pursuing the completion of the contract further indicates a lack of earnestness. It was only after the

sale deed was executed in favour of the appellants that the plaintiffs sought to enforce the agreement, which suggests an afterthought rather than genuine intent.

13. In light of the above reasoning, we agree with the Trial Court's findings that the plaintiffs failed to prove their continuous readiness and willingness to perform their part of the contract as mandated under Section 16(c) of the Specific Relief Act. The High Court erred in not adequately addressing this critical aspect and in overlooking the plaintiffs' inaction and lack of diligence. The plaintiffs' failure to comply with the essential terms of the agreement and to take necessary steps within the stipulated time demonstrates a lack of readiness and willingness, which is fatal to their claim for specific performance.

II. General Power of Attorney and validity of the Sale agreement dated 06.06.1993.

14. In contracts involving multiple owners of property, it is imperative that all co-owners either personally execute the agreement to sell or duly authorize an agent to act on their behalf through a valid and subsisting power of attorney. An agent's authority

must be clear and unambiguous, and any limitations or revocations of such authority must be duly considered. Without proper authority, an agent cannot bind the principals to a contract of sale.

15. The Trial Court examined the General Power of Attorney dated 30.12.1982, purportedly executed by Defendant Nos. 6 to 8 and late Soumendra in favour of Defendant No. 1 and held that the GPA was unregistered and executed over a decade prior to the agreement to sell. Moreover, the Trial Court also observed that GPA was not referenced or relied upon in the agreement dated 06.06.1993 and there was no mention that Defendant No. 1 was acting as an agent on behalf of his sisters under the GPA. It was held that the Defendant No. 1 signed the agreement solely in his personal capacity, and there was no indication that he was executing it on behalf of Defendant Nos. 6 to 8. The High Court disagreed with the Trial Court, holding that the GPA was valid and in force at the time of the agreement. It opined that the lack of explicit reference to the GPA in the agreement did not invalidate Defendant No. 1's authority to act on behalf of his sisters.

16. In our considered opinion, the High Court erred in its assessment of the authority of Defendant No. 1 to bind Defendant Nos. 6 to 8. While it is legally permissible for an agent to bind a principal even if the agency relationship is not disclosed, this principle applies when the agent has valid and subsisting authority. In the present case, the GPA was executed in 1982 and was unregistered. The subsequent registered partition deed in 1988 allocated specific shares to each co-owner and delineated their rights and authorities. Moreover, The partition deed dated 17.02.1988 impliedly revoked any prior authority granted under the GPA concerning the sale of the property. By specifying that Defendant No. 1 was authorized only to collect rent, it limited his authority and implicitly withdrew any broader powers previously granted. It must be emphasized that the agreement dated 06.06.1993 did not mention the GPA or indicate that Defendant No. 1 was acting on behalf of his sisters. He signed the agreement solely in his capacity, and there was no representation made to the plaintiffs that he had the authority to bind the sisters. This omission is significant, as the plaintiffs were aware that the

sisters' consent was essential, which is evident from the agreement's stipulation that the sisters would come to execute the sale deed within three months.

17. The plaintiffs were cognizant of the fact that Defendant Nos. 6 to 8 were not parties to the agreement and that their willingness and participation were necessary for a valid sale. This is further corroborated by the plaintiffs' own admissions that they were assured by Defendant No. 1 and late Soumendra that the sisters would be brought to execute the sale deed. Thus, the plaintiffs cannot claim that they believed Defendant No. 1 had the authority to bind the sisters without their explicit consent. The appellants have rightly pointed out that an agent's authority must be explicit, and any limitations or revocations thereof must be given due consideration. In the absence of a valid and subsisting power of attorney authorizing Defendant No. 1 to sell the property on behalf of Defendant Nos. 6 to 8, the agreement cannot be enforced against them.

18. In view of the above, we hold that Defendant No. 1 lacked the authority to bind Defendant Nos. 6 to 8 in the agreement to sell dated 06.06.1993. The General

Power of Attorney did not confer upon him the power to sell the property on behalf of his sisters at the time of the agreement, having been impliedly revoked by the partition deed. The agreement was, therefore, incomplete and unenforceable against Defendant Nos. 6 to 8, who collectively held a majority share in the property. The plaintiffs' knowledge of the necessity of obtaining the sisters' consent, coupled with their failure to secure such consent, renders the agreement ineffective against Defendant Nos. 6 to 8. Consequently, the agreement cannot be specifically enforced against them, and the plaintiffs cannot claim any right over their shares in the property based on the said agreement.

III. Discretionary Nature of Granting Specific Performance

19. The relief of specific performance under the Specific Relief Act, 1963, is discretionary in nature. Section 20 of the Act (applicable to this case as it predates the 2018 amendment) explicitly stated that the court is not bound to grant such relief merely because it is lawful to do so. The discretion must be exercised judiciously and based on sound principles, ensuring

that granting specific performance is just and equitable in the circumstances of the case.

20. In the present case, several factors weigh against granting specific performance. The agreement to sell was incomplete and unenforceable against Defendant Nos. 6 to 8, who held a majority share in the property; enforcing such an agreement would be inequitable. The plaintiffs failed to demonstrate readiness and willingness to perform their obligations and did not take necessary steps to secure the consent of all co-owners. Granting specific performance would unfairly prejudice the defendants, especially Defendant Nos. 6 to 8, who never consented to the sale to the plaintiffs. Furthermore, the plaintiffs can be adequately compensated by a refund of the earnest money with interest; there is no evidence to suggest that monetary compensation would not suffice.
21. Section 20 of the Specific Relief Act, 1963 prior to amendment by Act No. 18 of 2018 which was brought into effect w.e.f. 1.10.2018 categorically provided that the relief of specific performance is discretionary in nature and the court is not bound to grant such relief merely because it is lawful to do so. But the discretion

of the court has to be on sound and reasonable principles.

22. In the present case, the plaintiffs have sought specific performance of the agreement dated 06.06.1993 whereunder the sale deed was to be executed before 30.09.1993 after obtaining the consent of the sisters (Defendant Nos. 6 to 8) as they had not joined the agreement. However, all the co-owners of the property transferred the suit property in favour of the appellants vide sale deed dated 27.09.1993 for a consideration of Rs. 4,20,000/-. The appellants are the bona fide purchasers in good faith of the suit property for valuable consideration. Therefore, once they have acquired the rights in the property way back on 27.09.1993, there was no justification to disturb the said sale deed by decreeing the suit for specific performance of the agreement dated 06.06.1993 which was not even signed by all the co-owners specially the three sisters (Defendant Nos. 9 to 11). The aforesaid sale deed was not even challenged though it had come into existence at the time of filing of the suit for specific performance, therefore, when the Trial Court had exercised its discretion not to decree the suit for specific

performance, it was not open for the appellate court to decree it affecting the rights of the bona fide purchasers i.e. the appellants.

23. In conclusion, considering the discretionary nature of the relief and the principles governing its exercise, we find that granting specific performance in this case would be neither just nor equitable. The plaintiffs' failure to fulfil essential contractual terms, coupled with the lack of authority to bind all co-owners, renders the grant of specific performance inappropriate. The equitable remedy sought by the plaintiffs cannot be granted in light of their conduct and the circumstances of the case.
24. In view of the foregoing analysis, we conclude that the plaintiffs failed to demonstrate their continuous readiness and willingness to perform their contractual obligations, and that Defendant No. 1 lacked the authority to bind Defendant Nos. 6 to 8 in the agreement dated 06.06.1993. Given the incomplete and unenforceable nature of the agreement, we find it neither just nor equitable to grant the relief sought by the plaintiffs.
25. Accordingly, the appeal is allowed. The judgment and decree dated 25.10.2013 passed by the High Court of

Orissa are set aside. The judgment dated 17.05.1997 passed by the Trial Court dismissing the suit for specific performance is restored. Furthermore, the appellants are directed to refund to the plaintiffs (Respondent Nos. 1 & 2) a sum of ₹10,00,000 (Rupees Ten Lakhs) within a period of two months from the date of this order. This amount includes the earnest money paid by the plaintiffs and accounts for any interest and expenses incurred.

26. There shall be no order as to costs.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PANKAJ MITHAL)

.....**J.**
(PRASANNA B. VARALE)

NEW DELHI
SEPTEMBER 26, 2024