2025 INSC 1030

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.11080 of 2014

Syed Basheer Ahmed

...Appellant

Versus

M/s. Tinni Laboratories Private Limited & Anr.

...Respondents

O R D E R

1. A suit for specific performance was decreed by the trial court, which was dismissed by the High Court in appeal, reversing the judgment and decree. The suit was filed by the plaintiff, the appellant herein, alleging that an agreement was entered into with the 1st defendant, the 2nd respondent herein, for purchase of two properties which are more fully described as Item No.1 and Item No.2. Admittedly, Item No.2 belonged to a third party and Item No.1 was owned by the 2nd respondent. The 2nd respondent made the plaintiff believe that he was in possession of Item No.2 property which he had agreed to purchase from its real owner. The 1st respondent

who was the 2nd defendant in the suit later purchased both Item No.1 and 2 and made valuable constructions thereon. The trial court based on the evidence, found that the plaintiff was always ready and willing to pay the balance consideration and time was never the essence of contract since it stood extended from time to time till 12.02.1985. The trial court rejected the contention raised regarding material alteration in the agreement and decreed the suit.

2. The High Court, however, on a reading of the basic document produced, the sale agreement, found that there is clear alteration in so far as the recitals with respect to Item No.2, which was also written in a different ink. Relying on ***Seth Loonkaran Sethiya v. Mr. Ivan E. John and Ors.***[1]***,*** the High Court found material alteration and reversed the decree of the trial court.

3. Mr. G. Sivabalamurugan, learned counsel appearing for the appellant argued that on 15.07.1984, an agreement was entered into for sale of 2.40 acres, for a total sale consideration of Rs.56,000/- and an advance of Rs.1,000/- was paid. The

[1] (1977) 1 SCC 379

agreement referred to both Item Nos.1 and 2, the former belonging to the 1st defendant and the later belonging to the second. The period within which the sale deed was to be executed was three months. The plaintiff was always ready and willing to pay the balance sale consideration and on 11.10.1984, within the three month period, a notice was issued to the 1st defendant, expressing the readiness and willingness to pay the balance consideration and requiring the execution of the sale deed. The 1st defendant replied by a letter dated 22.01.1985, demanding the balance amount with 18% interest. On 11.02.1985, the 1st defendant sold Item No.2 to 2nd defendant and later on, a demand draft of Rs.1,000/- was sent, purportedly in refund of the advance which was returned by the plaintiff. Subsequently, on 09.03.1985 again, 1st defendant sold Item No.1 to 2nd defendant, before which the suit for specific performance was fled on 01.03.1985.

4. The learned counsel read over to us the judgment of the trial court and argued that the High Court erred in reversing the findings and the judgment and decree passed by the trial court. It is pointed out that there was clear evidence regarding

the agreement and having established the readiness and willingness, the trial court had rightly passed the decree, especially when there was no evidence led on behalf of the 1st defendant. The alteration was never urged before the trial court by the 1st defendant nor was there any deposition to that extent. An alteration could not have been found by the High Court merely on looking at the documents and it should have been properly analyzed with an expert as provided under Section 73 of the Indian Evidence Act, 1872.

5. Mr. D. Ramakrishna Reddy learned counsel for the respondents, on the other hand points out that the 2nd defendant was always in possession of the property. The interpolation found by the High Court was on a mere reading of the documents, which is permissible, and Section 73 has no application. The High Court observed that the interpolation is so blatant, the agreement having been written in two different inks, there is no cause for interference to the judgment of the High Court.

6. Trite is the principle that the plaintiff should establish his case before the defendant is called upon to offer his

defense by disproving the case of the plaintiff and rebutting any presumption that could have been drawn from the circumstances. The relief of specific performance was sought for, based on the agreement produced by the plaintiff himself. The High Court has looked at the agreement to find material alteration which according to the High Court is clearly discernible; especially when two inks were used in the agreement. The details of Item No.2 as also the alleged agreement to sell that plot, was found to be clearly interpolated in the agreement. The agreement, hence, was found to be tainted and in those circumstances, the suit had no legs to stand.

7. True, the 1st defendant did not enter the box to give evidence but filed a written statement pointing out the material alteration. The 2nd defendant, who stepped into the shoes of the 1st defendant entered the box and gave evidence. Hence, it cannot be said that there was no plea regarding material alteration, which was found by the High Court on a mere perusal of the document; on which document, the entire suit was based on.

8. In this context we cannot but notice that the agreement, a translated copy, produced at Annexure-1 speaks first of an extent of 1.40 acres, presumably Item No.1 with total consideration fixed at Rs.56,000/- @ Rs.40,000/- per acre. Then the agreement speaks of Item No.2 with an extent of 1acre as having been included in the agreement to sell. However, the Schedule shows a total extent of 2.40 acres from which 50 cents is sold. No reliance can be placed on such an agreement with different extents in the recitals and the schedule, to grant specific performance. Further, the readiness and willingness established is by account statement of the plaintiff showing credit of Rs. 70,500/-. If both items of property are included in the sale agreement, then the total consideration would be Rs. 96,000/- @ Rs.40,000/- per acre. Deducting the advance the balance sale consideration will be Rs.95,000/-. The claim of readiness and willingness of the plaintiff hence falls flat.

9. Pertinent is also the fact that the plaintiff before the trial court gave up his claim for conveyance of the 2nd item and pressed only the first part of the agreement clearly putting to

peril his prayer for specific performance based on the tainted agreement. We are not convinced that Section 73 has any application and in finding material alteration the courts are not obliged to always refer it to an expert; especially when it is clearly discernible on a mere perusal of the document, that too written in a different ink. Even otherwise, as found by us, the plaint fails.

10. We find absolutely no reason to interfere with the judgment of the High Court and reject the appeal. No costs.

11. Pending application(s), if any, shall stand disposed of.

..... J.
(PRASHANT KUMAR MISHRA)

.....J.
(K. VINOD CHANDRAN)

New Delhi;
August 21, 2025.