

## **Surya Narain Upadhyaya vs Ram Roop Pandey And Others on 28 January, 1992**

**Equivalent citations: AIR1994SC105, 1995SUPP(4)SCC542, AIR 1994 SUPREME COURT 105, 1993 AIR SCW 3734, 1993 ALL. L. J. 1363, 1995 (4) SCC(SUPP) 542, (1994) 1 APLJ 17**

**Bench: K. Ramaswamy, S. Mohan**

### **JUDGMENT**

1. This appeal by special leave arises against the judgment of the High Court of Allahabad in Second Appeal No. 2385 of 1974 dated September 26, 1979. A suit was filed for the specific performance of the agreement of sale dated January 25, 1969. The total consideration for the contract was Rs. 12,000/- and a sum of Rs. 3,000/- was paid as earnest money. The contract was to be executed within a period of one year thereafter. Instead of executing the sale deed in favour of the appellant, the first respondent started disposing of the properties. He executed a gift deed on February 24, 1969 in favour of the respondents Nos. 2 and 3, who in turn seem to have further alienated the ; properties in favour of respondent No. 8 and others. All the respondents were impleaded and a suit for specific performance was filed by the appellant. The trial Court decreed the suit and the first appellate court confirmed the same.

2. In the second appeal, the High Court reversed the judgment and decree and dismissed the suit on the main ground that the appellant did not pay sufficient court-fee on the date of presenting the plaint and the deficit was not made good for some time thereafter. It would show that the appellant had no capacity to pay the consideration and willing to perform his part of the contract.

3. We are wholly unable to subscribe to the views expressed by the High Court. Section 16 of the Specific Relief Act, 1963 mandates the plaintiff to aver in the plaint and establish as a fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. The failure thereof is fatal to maintain the suit and entails with its dismissal. It is seen that the appellant has specifically pleaded in his plaint that he has been ready and willing to perform his part of the contract. He also further stated that he was ready to deposit the balance consideration of Rs. 9,000/- and get the sale deed executed and registered in his favour in terms of the contract. The High Court also found that the appellant had deposited Rs. 9,000/- within the time allowed by the trial court and the suit was decreed. That would clearly show that the appellant had the capacity to pay the balance consideration and he was always ready and willing to perform his part of the contract.

4. Though the decree for specific performance is a discretionary power, yet the court, is not bound to grant such a 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 of law and capable of correction by a court of appeal. Therefore, the discretion should be properly exercised keeping in view the settled

principles of law as envisaged in Section 20 of the Act. This case demonstrates that the High Court took irrelevant consideration into account to refuse to grant the decree for specific performance. It also committed manifest illegality in reversing the concurrent finding of facts recorded by the trial court as well as as the first appellate court, namely the appellant has always been ready and willing to perform his part of the contract.

5. However, in view of the long lapse of time, and appreciation of the value of the property (in this case urban property) it was suggested to the appellant and the appellant had agreed, very fairly, to pay a further sum of Rs. 12,000/-. Accordingly, the appellant is directed to deposit a further sum of Rs. 12,000/- to the credit of the suit in the trial court within a period of two months from today and on the deposit so made, the appellant shall be entitled to have the sale deed executed within a period of three months thereafter. In case the respondents refuse to execute the sale deed, it is open to the appellant to get the sale deed executed through the trial court. The direction to pay a sum of Rs. 12,000/- is in addition to the sum already deposited and lying in the court.

6. The appeal is allowed in the above terms. But in the circumstances the parties are directed to bear their own costs.