

The 3rd Mrinalini Devi Memorial National Moot Court Competition, 2022

Organised by

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MOOT PROPOSITION

Background: - The State of Gullu is the part of Union of Indistan with the applicability of the Code of Civil Procedure, 1908, Specific Relief Act of 1963, Indian Contract Act of 1872, Transfer of Property Act of 1882 and other laws.

Suraj Bagan is a resident of Gullu and owes 40*20 = 800 square feet bearing *khasra* number 26/11, surrounded by road on north, lane on south, house of Akash Benarjee of east and house of Dinesh Agarwal on west, a land of his ownership and possessory rights. On 06.12.2006 Mrs. Renuka Chakraborty, entered into a sale agreement for the purchase of this land for a consideration amount of Rs. 60 lacs. As earnest money she already made the part payment of Rs. 5 lacs with the promise to pay the balance amount of Rs. 55 lacs after six months at the time of registration of the sale deed. The time of six months was agreed so as to enable Mrs. Chakraborty to apply for loan with the bank for purchasing the suit land.

It is noteworthy here that the identification of the land was based on a map which was prepared by a local private surveyor and has not been updated in *patwari naksha*.

(Hereafter Mrs. Renuka Chakraborty will be referred to as Plaintiff and Mr. Suraj Bagan will be referred to as Defendant.) The agreement to sale which was executed between the plaintiff and the defendant specifically contained a clause that if the plaintiff demands, before the registration of the sale deed, the defendant will get the suit land measured and demarcated from the revenue officer by formally filing the application

before the revenue Court of respective jurisdiction. It also contained the clause that in case of breach of contract the earnest money will not be refunded.

On 21.07.2007 the plaintiff received the information that the defendant has agreed to sell the suit land to his neighbor Mr. Akash Benarjee for a consideration amount of Rs. 85 lacs. On obtaining this news the plaintiff on 22.07.2007 wrote a letter to the defendant that her loan from the bank is not yet approved and that she is still waiting for confirmation from the bank. She also stated that she has already paid the earnest money of Rs. 5 lacs and the land are still to be measured and demarcated by the revenue officer at the behest of the defendant. Notwithstanding this correspondence the defendant proceeded to execute the sale deed with Mr. Akash Benarjee and the date of 30.07.2007 was fixed for the registration of the sale deed in the office of Registrar between the defendant and Mr. Akash Benarjee. The plaintiff on the said date arrived at the office of the registrar and filed a protest application with a prayer that the sale deed be not registered between the plaintiff and Mr. Akash Benarjee. The Registrar unaffected by this protest application registered the sale deed between the plaintiff and Mr. Akash Benarjee.

Aggrieved by the same the plaintiff on 27.11.2011 filed a suit of specific performance of the sale agreement dated 06.12.2006 in the Honorable Court of Civil Judge Class – I at Gullu. It was pleaded by the plaintiff that the defendant committed a breach of contract. There was a condition precedent incorporated in the clause of the sale agreement that the defendant before 06.06.2007 will get the suit land measured and demarcated from the revenue officer. He did not comply with the said condition and in breach of which the suit land was sold to Mr. Akash Benarjee only for the higher consideration amount. It was also pleaded that the plaintiff also had the *malafide* intention to grab the earnest money. Therefore, she is entitled for a decree of the specific performance of contract or for the refund of the earnest money.

In the said suit the plaintiff did not implead Mr. Akash Benarjee as the defendant party.

Defendant entered his appearance and filed his written submissions –

The defendant in his written statement has denied the claim of the plaintiff. He pleads that in the agreement dated 06.12.2006 there was no condition precedent for the measurement of the suit land and that the dimensions and the identification of the land is already established. So even if there is a condition for the measurement of the land or demarcation, the same doesn't materially affect the fact that it was the plaintiff who failed to fulfill his part of the promise and that he was not ready and willing to perform his part of the contract. The defendant also pleads that before the due date of registration that is before 06.06.2007, an advance notice dated 05.06.2007 was issued to the plaintiff informing him about the execution of the sale agreement, and requesting to be present in the registry office. But the next day the plaintiff was not present at the registry office neither there was any reply to the notice dated 05.06.2007. The defendant has complied with his part of the contract. The contention of the plaintiff that he intends to grab the earnest money is false and misleading. He also pleads that in this case time was the essence of the contract. It was clearly informed to the plaintiff that he is in urgent need of money for his daughter's wedding and therefore the sale agreement must be executed by 06.06.2007. He has also made a plea that the suit filed by the plaintiff is barred by period of limitation.

Evidences presented before the Trial Court

Evidence of the Plaintiff

The plaintiff examined herself as P.W.1 and filed her affidavit under order XVIII rule 4 of the Code of Civil Procedure, 1908. In the said affidavit she stated that on 06.12.2006 she entered into an agreement with the defendant for the purchase of the suit land. It was agreed that the registration of the sale deed will be done after six months that is on date 06.06.2007 after she secures a loan from the bank. She also stated that there was a condition precedent in the sale agreement that the defendant will first get the suit land measured and demarcated from the office of the revenue officer and thereafter he

will inform the plaintiff about the same after which both the parties will proceed for the registration of the sale deed. On being cross examined she admitted that there is a map prepared by the private surveyor which clearly identifies the land and its dimensions. In her cross examination she also admitted that she has sent the letter dated 22.07.2007 only after the expiry of the due date of 06.06.2007 for the registration of the sale deed. But she also deposed that she orally informed the defendant before 06.06.2007 that her loan from the bank is not approved and it may take some time and that she requested the defendant to extend the time which was duly agreed to by the defendant. She denied the suggestion in the cross examination that it was agreed with the defendant that the date of 06.06.2007 was essence of the contract.

As part of documentary evidence, she has presented the copy of the sale agreement dated 06.06.2007 as Exhibit P1 and copy of letter dated 22.07.2007 as Exhibit P2 and protest letter dated 30.07.2007 filed before the office of Registrar as Exhibit P3.

Evidence of the Defendant

The defendant examined himself as D.W. 1 and filed his affidavit under Order XVIII Rule 4 of the Code of Civil Procedure. He stated that the identification of the plot is clearly known to the plaintiff and there was no such condition precedent. Further he deposed that such process of demarcation was to be initiated only on the application of the plaintiff but no such application of such request was received by the defendant. He further deposed that on 05.06.2007 he wrote a letter to the plaintiff requesting her to be present in the registrar office for the registration of the sale deed but she was not present. He further stated that at the time of sale agreement that is on date 06.12.2006 it was duly informed to the plaintiff that he is in urgent need of money for his daughter's wedding and therefore sale deed must be registered on 06.06.2007. He however, admitted this fact in his cross examination that the identification of the suit land is based on the survey conducted by a private surveyor and that the same is not updated in revenue officer map.

Judgement of the Trial Court

The trial court after appreciating all the evidences brought on records framed the following issues:-

1. Whether the suit of the plaintiff is barred by the period of limitations.
2. Whether there was the condition precedent in the sale agreement dated 06.12.2006 to get the suit land measured and demarcated by the revenue officer at the behest of the defendant.
3. Whether time was the essence of the contract.
4. Whether the plaintiff was ready and willing to perform his part of the contract.
5. Whether the plaintiff is entitled for the refund of earnest money and for the relief of specific performance of the contract.
6. Relief and costs

The trial court with regard to issue number one considered the paragraph in the plaint under order 7 rule 6 specifying the grounds on which the delay of sixteen months in filing the suit and the interest of justice condoned the delay with regard to issue number two the court was the opinion that the dimension of the disputed property and its identifications cannot be ascertained by a map prepared by a private surveyor referring to section 75 and section 87 of the Evidence act the map prepared by the private surveyor is the private document which does not holds much evidentiary value with regard to the identification of the disputed property therefore it was incumbent upon the defendant to get the suit land measured and demarcated from the revenue officer and thereby issued have noticed to the plaintiff informing her about the fulfillment of the condition precedent and thereafter should have waited for the proposal from the plaintiff. Therefore holding that the agreement deed contained the condition precedent the issue number two was decided as proved with regard to issue number three and four the court was of the opinion that since the readiness and willingness of the plaintiff can be considered only from his conduct after the fulfillment of condition precedent hence

this factor does not come into consideration unless the cause of action for the plaintiff to initiate the correspondence with the defendant for the registration of the sale deed does not arise.

Therefore, on these grounds the court found the plaintiff entitled for the decree of specific performance of contract.

Defendant files the first appeal

The first appellate court didn't find any infirmity in the decree passed by the court of first instance and thereby dismiss the appeal.

Defendant files the second appeal

The defendant is now approaching the Honorable High Court of Judicature at Gullu under section 100 of the code of civil procedure of 1908. One of the substantial question of law as framed is as follows: -

1. What is the relevancy of the demarcation report and the measurements of the land done by revenue officer.
2. Whether the map prepared by the private surveyor does not have any evidentiary value under section 75 and 87 of the Indian evidence act.

The candidates are free to frame any other substantial question of law and they are also free to discuss any other issues or evidence which they think ought to have been discussed or deliberated in the court of first instance or in the court of first appeal based upon the facts and circumstances of the case.

NOTE:

1. The Laws and Constitution of Indistan as well as the courts and the Judicial System, are in *pari materia* to the laws and Constitution, Courts and Judicial System of India. Any law, legislation, amendments of any law and/or judgments by any courts, shall be *pari passu* with the laws, amendments and judgments in India.
2. Here the word *patwari* shall have the same meaning as that of Revenue Officer.