

Court No. - 21

Case :- SECOND APPEAL No. - 203 of 1997

Appellant :- Hanuman Singh

Respondent :- Badri Bishal Singh

Counsel for Appellant :- B.K.Shukla,Mohan Singh

Counsel for Respondent :- Balram Yadav,Balram Yadava,Ram Chandra Pathak

Hon'ble Jaspreet Singh, J.

1. Heard Shri Mohan Singh, learned counsel for the appellant. None has put in appearance on behalf of the respondent. The appeal is of the year 1997. In the aforesaid circumstances, the Court has proceeded to hear the counsel for the appellant in absence of the respondent.

2. The instant second appeal preferred by the plaintiff against the judgment of reversal passed by the District Appellate Court in Civil Appeal No.135 of 1986, whereby the defendants' first appeal has been allowed. Consequently, the suit for Specific Performance of Contract which was decreed in favour of the plaintiff has been dismissed by means of judgment and decree dated 12.03.1997 which is assailed in the instant second appeal.

3. Briefly, the facts giving rise to the instant appeal are being noticed hereinafter. An agreement to sell dated 12.08.1975 is said to have been executed by Shiv Swaroop Singh in favour of Bajrang Singh for selling 1/4th undivided share of Shiv Swaroop Singh in Khata Nos.138 and 448 as recorded in Khatauni 1376 fasli to 1378 fasli for a total sale consideration of Rs.18,000/-, out of which Rs.14,000/- was paid and Rs.4000/- was to be paid at the time of execution of the sale deed and four years time was available for getting the sale deed executed. It is stated that Shiv Swaroop Singh died and thereafter the original plaintiff Bajrang Singh requested the

son of Shiv Swaropp Singh, namely, Badri Vishal Singh to execute the sale deed. However, he avoided to comply with his obligation. The plaintiff sent two notices to Badri Vishal Singh dated 10.08.1981 and 26.08.1981, but he did not respond nor he came forward to execute sale deed.

4. On the contrary, Badri Vishal Singh sold the property in question to Bharat Bahadur Singh the defendant no.2. It is in the aforesaid backdrop that the plaintiff filed a suit for Specific Performance of Contract which was registered as Regular Suit No.146 of 1981. The suit was contested by the defendants who filed their separate written statement. As far as Badri Vishal Singh is concerned, he denied the execution of the agreement dated 12.08.1975 by his father and he also disputed that no consideration was received either by the father of the defendant no.1 nor by the defendant no.1 himself. It was also stated that the agreement dated 12.08.1975 was a fake document. The defendant no.2 Bharat Bahadur Singh filed his separate written statement and raised the defence that he was a bonafidie purchaser for valuable consideration without notice.

5. The trial court upon exchange of pleadings framed four issues. However, for the controversy in question it was issue no.1 which was important and that is whether the father of the defendant no.1 Shiv Swaroop Singh had executed any agreement to sell dated 12.08.1975 and if so its effect. The parties led evidence both oral and documentary and the trial court while considering the issue no.1 found that the agreement dated 12.08.1975 was duly proved and by means of judgment and decree dated 31.03.1986 decreed the suit.

6. The defendant no.2 assailed the judgment and decree dated 31.03.1986 by filing a regular civil appeal under Section 96 CPC before the

District Appellate Court which came to be registered as Appeal No.135 of 1986. During pendency of the appeal, upon an application moved under Order 41 Rule 27 CPC certain additional evidence was brought on record. The District Appellate Court after considering the entire matter set aside the judgment of the trial court dated 31.03.1986 and dismissed the suit of the plaintiff by means of judgment and decree dated 12.03.1997 which is under challenge before this Court.

7. The instant second appeal was admitted on 31.03.2015 on a solitary substantial question of law as framed at serial no.(v) in the memo of appeal which reads as under:-

"Whether the lower first Appellate Court was justified in discarding the alleged agreement to sell dated 12.08.1975 on the ground of non registration particularly when no registration was required at all on the relevant date?"

8. Shri Mohan Singh, learned counsel for the appellant while attacking the judgment and decree of the first appellate court has submitted that the agreement to sell was dated 12.08.1975. At the relevant time, the agreement to sell was not required to be registered compulsorily in law.

9. It is further submitted that the amendment in the Transfer of Property Act was made in the year 1977 and it is only thereafter that any agreement to sell relating to an immovable property over the value of Rs.100/- was required to be registered in law. Thus, it is urged that on this very ground itself the first appellate court has committed an error.

10. It is further urged that the first appellate court failed to consider that the agreement to sell dated 12.08.1975 on record was duly proved and the statement of the witnesses clearly stated that the entire consideration paid by the appellant to the vendor was proved. The said witness was further

cross examined but no adverse statement could be elicited from his testimony. It is also submitted that the appellant had issued two notices to Badri Vishal Singh son of Shiv Swaroop Singh but he did not respond rather he sold the property to Bharat Bahadur Singh. In the aforesaid circumstances where the agreement was duly proved the suit was rightly decreed by the trial court but incorrectly reversed by the first appellate court hence, in the aforesaid circumstances the instant second appeal deserves to be allowed.

11. The Court has heard the learned counsel for the appellant and also perused the material on record.

12. In so far as the correct position of law is concerned, it will be relevant to notice that Section 54 of the Transfer of Property Act was amended in the State of U.P. by the amending Act No.57 which came into effect from 01.01.1977 and the amended Section 54 of the Transfer of Property Act reads as under:-

"Section 54- "Sale" defined - "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Contract of sale- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Such contract can be made only by a registered instrument."

13. Apparently, the agreement to sell dated 12.08.1975 was prior to the amendment in the Transfer of Property Act as noted above, hence as a

proposition it is correct that an agreement to sell executed on 12.08.1975 did not require compulsory registration, in law.

14. Be that as it may, what is to be seen is whether the said agreement dated 12.08.1975 has been proved in accordance with law or not. This is important for the reason that Badri Vishal Singh, son of Shiv Swaroop Singh in his written statement had clearly denied the said agreement to sell. It was stated that neither his father had any inclination to sell nor he was in need to sell the property.

15. It is in the aforesaid context, agreement to sell was sought to be proved by introducing expert evidence. This became necessary for the reason that the plaintiff/appellant herein had examined the stamp vendor who is said to have sold the stamp paper upon which the agreement to sell dated 12.08.1975 was written and executed. The said stamp vendor denied his signature affixed alongwith the rubber stamp on the obverse side of the stamp paper during his deposition before the Court as P.W.2 (the stamp vendor).

16. An expert report was submitted by Shri Madan Mohan Kakker who gave his opinion that the signature on the obverse side of the stamp paper matched with the signature of the person who has deposed before the Court as P.W.2 (stamp vendor). Another expert report of Shri Rakesh Trivedi was placed on record who opined that the signature on the stamp paper was not of the person who had deposed as P.W.2.

17. Noticing the aforesaid the District Appellate Court examined the matter and found certain discrepancies in the agreement to sell dated 12.08.1975 and recorded a finding that the said agreement to sell was not proved and was not genuine. It is in the aforesaid context that the counsel

for the appellant has urged that this finding recorded by the District Appellate Court is not based on proper appreciation of the evidence or the law.

18. This Court finds that in so far as the agreement dated 12.08.1975 is concerned, it does not clearly indicate the property which was the subject matter of the agreement. The original document is available on record as exhibit 1. The property in question is referred to the agreement as Khata Nos.138 and 448 of Khatauni 1376 to 1378 fasli. In this context, if the plaint is seen, it would indicate that in paragraph-10, the plaintiff had initially mentioned and described the property as of Khata No.384 and plot Nos.469-Aa, 351, 469-Ba from the east relating to 1/4th share of Shiv Swaroop Singh. This paragraph was amended and plot no.350 alongwith its area was also amended and incorporated in the plaint in suit.

19. Another aspect that needs to be seen that at the time when the agreement to sell dated 12.08.1975 was executed the consolidation proceedings had already finished. However, the agreement only mentioned the khata number but did not incorporate the plot numbers and the respective area. In the plaint in suit, it was stated by the plaintiff that the said area was covered under the agreement to sell taking it from the east side. However, no such mention was made in the agreement to sell. Moreover, the notice sent by the plaintiff addressed to Badri Vishal Singh also did not specify the plot number. The notice dated 10.08.1981 is bearing paper No.C-52. While the second notice dated 26.08.1981 marked as exhibit no.4 on the record also referred to the property of Khata Nos.138 and 448 and not the plot number. The agreement dated 12.08.1975 though typed on a stamp paper but did not bear the signature of either the vendor or

the vendee. It is only on the second page that the alleged signatures of Shiv Swaroop Singh and Bajrang Singh is present as well as the signatures of two witnesses. However, there is no mention or signature of the person who is said to have typed the said agreement. This also raised a concern over the genuineness of the said document which has been noticed by the District Appellate Court.

20. The plaintiff as witness stated that he had got the agreement prepared from an Advocate's clerk, however, the other witness examined on behalf of the plaintiff stated that the sale consideration of Rs.14,000/- was paid to Shiv Swaroop Singh in front of the Advocate. However, what is conspicuously absent in the statement is the fact as to who was the Advocate or who was the Advocate's clerk who had got the agreement prepared. No explanation could be furnished as to why the agreement to sell did not contain the signature of any of the contracting parties on page-1 and it has not been indicated as to the fact that despite consolidation proceedings have been concluded yet in the agreement there was no mention of plot number rather it only mentioned the khata number. Also no explanation was furnished that the agreement or the notice sent by the plaintiff did not refer to the plots nor the direction but it was introduced for the first time in the plaint. In paragraph-10, an another plot number was added by amendment after about four years from the institution of the suit. There was no clear evidence regarding payment of sale consideration as they were discrepancy in the testimony of the plaintiff and his other witness. All these factors have been noticed by the first appellate court while reversing a finding and setting aside the judgment of the trial court.

21. This Court further finds that the relief for Specific Performance of Contract is purely equitable in nature. Even if at all the necessary ingredients, for getting a relief of specific performance is made out even then it is not necessary that the suit has to be decreed as it is a purely discretionary relief.

22. Taking note of the aforesaid and the fact that the discrepancies which have been noticed by the District Appellate Court was not considered by the trial court. The findings of fact which has been recorded by the District Appellate Court are based on appreciation of evidence which cannot be said to be perverse. These findings of fact are to be normally accepted by the court in exercise of its jurisdiction under Section 100 CPC unless it is shown that the findings are not based on any evidence on record or is based on inadmissible evidence or the conclusion arrived at by the court is such that no prudent person can reach at such a conclusion in the given facts and evidence. Needless to say the aforesaid three contingencies are not present in this case and thus this Court is unable to persuade itself to interfere in the matter.

23. This Court is of the clear view that the judgment and decree passed by the District Appellate Court dated 12.03.1997 passed in Civil Appeal No.135 of 1986 does not suffer from any error. Consequently, the same is upheld. Costs are made easy. The record of the trial court be returned forthwith.

(Justice Jaspreet Singh)

Order Date :- May 13, 2024
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