

112.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.4166 of 2015 (O&M)

Date of decision: 14.12.2015

Mahender Kumar

... Appellant

versus

Sita Ram Mandir

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Savita Bhandari, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

CM No.15187-C of 2015

For the reasons stated in the application, the same is allowed and the appeal is restored to file.

Regular Second Appeal No.4166 of 2015

1. The appeal is brought at the instance of the defendant who has suffered a decree for specific performance in both the courts below. The plaintiff has filed a suit for enforcement of the agreement of sale said to have been executed on 31.10.2006 undertaking to sell the suit property for ₹2,60,000/-, having received ₹50,000/- as advance and the balance of ₹2,10,000/- to be paid at the

time of registration on 31.10.2006. The plaintiff's contention was that the party described in the plaint was Shri Sita Ram Mandir through mahant Sitaram Dass and the document had been signed by Shri Sita Ram Mandir through Nanak Chand son of Soni Ram and the defendant had also signed. There were two witnesses and scribed by a counsel at Palwal. The defendant's contention was that it was brought about by coercion and he was not a willing party to the document. The contention was that he had registered the complaint with the police stating that the signature was taken from the defendant at Hasanpur. The complaint was investigated by the police and it was closed as not making out any criminal case as complained upon. The report made reference to a statement alleged to have been given by the defendant at Tehsil Hodal and there was said to be seemingly a contradiction about the place of execution, whether at Hasanpur, where defendant stated that his signatures were taken or at Palwal, the place which the plaintiff stated that the agreement had been executed or at Tehsil Hosal, the place where the police had recorded a statement made by the defendant and with all the contradictions, the plaintiff could not have been granted a decree.

2. There was a further contention that the suit itself was not competent, having been instituted by a person who was not a juristic person and hence, was not capable of enforcing the agreement.

It was also the contention that there had been an important interpolation as regards the name of the plaintiff, for, what was stated in the agreement was only Shri Ram Mandir, while the plaintiff was described as Shri Sita Ram Mandir. Yet another objection was that the mandir was said to have been represented by the mahant Sita Ram Dass, but his signature was not found in the document but only the signature of a person by name Nanak Chand found the place in the agreement.

3. All these contentions in defence were rejected and being satisfied about the execution of the agreement, the trial court proceeded to grant a decree. The appellate court also confirmed the same.

4. The learned counsel for the defendant would contend that the important contradictions regarding the place of execution had not been properly noticed. Several other contentions raised in defence, which we have outlined above, were reiterated and the defendant would seek for a fresh consideration in second appeal in the light of the objections made.

5. The copy of the agreement filed in court itself shows that there has been interrelation with reference to Shri Sita Ram to make it read as Shri Sita Ram Mandir. If there had been an important contradiction with reference to when this interpolation was made and that it was without the concurrence of the defendant, it must be

really a matter that must have been brought out at the trial. Similarly, the contradiction with reference to the place of execution as found in the plaint and the place as recorded where the defendant was said to have marked his presence and admitted to the execution and recorded by the police must have been brought out at the evidence before the courts below. Since I did not find in any reference to the contradiction as regards the place of execution in the manner urged by the counsel, I requested to the counsel to inform me about the examination of the witnesses and what was elicited about the obvious contradiction as regards the place of execution. I could not secure appropriate assistance whether there has been even any line of cross examination adopted about how the police had recorded the fact that the defendant admitted the execution of the agreement at Tehsil Hodal. If vital issues of fact cannot be explained with reference to how the trial progressed and there was also no reference at all about the so-called contradiction with reference to the place of execution, I would take the argument made as regards the contradiction as without any basis.

6. The argument that Shri Sita Ram Mandir is not juristic person has no meaning, for, the suit has been instituted by the party named in the agreement. A Hindu mandir or a religious institution could be represented by any worshipper. If one of the parties in the agreement is referred to as a mandir and represented through a

mahant, such a representation itself must be taken to be a person lawfully competent to enter into any agreement. There is no legal fetter for a worshipper or a mahant to enter into a transaction on behalf of the religious institution. There is no requirement that a mandir could be represented only through a society or that such society must be registered. There is a long string of authorities to the effect that idol is a perpetual minor and it could be lawfully represented by any worshipper. I find no merit in an argument that one of the parties is not a legal entity and, therefore, the suit could not be instituted.

7. The further argument that the mahant himself has not signed the document carries no legal substance. The Specific Relief Act, 1963 contains an important exception to mutuality under Section 20 (4), which reads as under:-

“The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

8. The want of mutuality is not a ground under the Specific Relief Act, 1963 to deny the plaintiff the right of enforcement. If the vendor is an identifiable person and he has signed an agreement, the fact that the vendee did not sign can have no legal effect to deny the right of enforcement. We have already observed that Sita Ram

Mandir through the mahant ought to be taken as a person lawfully competent to represent the deity and the religious institution, namely, the mandir and there can be no difficulty about taking the benefit of a transaction of purchase, for, any minor can take the benefit of a person without any legal fetter.

9. The legal contentions which are sought to be raised are all against the plaintiff and I cannot reopen an issue of fact that the defendant was coerced to execute the document. The police report that there was no coercion might not conclude the fact but when the execution was spoken to by the witnesses who have signed as such in the agreement and that had been taken as sufficient on proving the validity of the agreement, I will not interfere with the findings recorded.

10. There is no merit in the second appeal and it is dismissed.

(K.KANNAN)
JUDGE

14.12.2015
sanjeev