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2021

CAN 1 of 2021
In
SAT 6 of 2021

Sri Prabal Basu
VS
Smt. Chanda Pal

Mr. Partha Pratim Ray,
Mr. Avirup Mondal,
Ms. Ahana Ghosh,

... For the Appellant.

Mr. Probal Mukherjee,
Ms. Shebatee Dutta,

... For the Respondent.

The suit for specific performance of an agreement for sale is dismissed by both the Courts below and assailed in the instant appeal.

Admittedly, the property belonged to Gopi Chand Paul (since deceased) and the appellant was a tenant of one shop room being shop room no. 4 therein. It is alleged by the plaintiff/appellant that the said owner was in need of money and approached the plaintiff/appellant, who agreed to purchase two and a half cottah of land together with two shop rooms being shop room nos. 4 and 5 situated in the ground floor therein at a consideration of Rs. 25,000/- and earnest money of Rs. 5,000/- was paid on the date of execution. Admittedly, the alleged agreement is made on a non-judicial stamp paper of Rs. 5/- and written in the hand of the plaintiff/appellant. It is further stated that the plaintiff wrote on the said stamp paper on the dictation of the said owner and thereafter the witnesses also put their signatures thereupon.

It appears that two eviction suits were filed against the appellant, which ended into the dismissal on compromise. Subsequent to the alleged agreement, a deed of settlement was executed by the said owner divesting right, title and interest in favour of daughter-in-law which has not been disputed anywhere.

It was a specific stand of the defendant/respondent, being the heirs of the original owner as he died in the meantime, that their predecessors never intended to sell the proposed two and a half cottah of land together with two shop rooms for a consideration mentioned therein in favour of the plaintiff/appellant nor there was ever any agreement executed by him. It is submitted that a further tenancy in respect of the shop room no. 5 was created in favour of the plaintiff/appellant and he is occupying the same as tenant therein. The alleged agreement is forged and manufactured having obtained on blank stamp paper for the purpose of the tenancy being created in respect of the shop room no. 5 and there have been interpolation of several sentences and/or words in order to change the nature of the said agreement.

Both the Courts disbelieved the statement of the plaintiff/appellant as they found that the purported agreement had two parts:- the first part relates to creation of tenancy in favour of the shop room no. 5 and the second part allegedly contains the statement relating to the alleged sale of two and a half cottah of land together with two shop rooms.

Mr. Partha Pratim Ray, learned advocate appearing for the appellant submits that the Court ought to have drawn an adverse inference against the defendant for non-production of the duplicate copy of the agreement and should have decreed the suit in favour of the plaintiff.

The attention of this Court is drawn to the observations of the trial Court recorded in this regard wherefrom it appears that the agreement was made in duplicate but such agreement according to the defendant was an agreement for creation of a tenancy in respect of the shop room no. 5 only and not the proposed sale of the two and a half cottah of land together with two shop rooms.

As indicated above, both the Courts after perusing the original purported agreement held that there is an apparent and evident mismatch in the handwriting as well as the pattern of writing contents thereof and came to a positive finding that it is conceivable that the original owner ever intended to sell the property in favour of the plaintiff.

We also had an occasion to peruse the photocopy of the purported agreement and we find that in the first part of the agreement the creation of the tenancy in respect of shop room no 5 is imminent and evident and simultaneously the sale of the said shop also appears to have been incorporated therein in the later part. If the intention of the owner was to sell the said shop room to the intending purchasers, it is improbable and against normal course and conduct that the tenancy would be created.

Both the Courts have concurrently held that there is interpolation in the documents and non-production of the duplicate copy does not act as a deterrent to the defendant to draw an adverse inference. Furthermore, the plaintiff never asked for the production of the duplicate copy in order to show his bona fide in the transactions having entered into.

Since we do not find that the concurrent findings of facts require any interference, it does not involve any substantial question of law under Section 100 of the

Code of Civil Procedure.

The appeal along with the connected application are dismissed.

(Harish Tandon, J)

(Kausik Chanda , J)