
(2009) 12 MP CK 0051
In the Madhya Pradesh High Court
Case No : S.A. No. 4 of 2000

Anant Singh (Dead) through LRs. Harnam Singh and Others	APPELLANT
Vs	
Haricharan and Others	RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : (2011) ILR (MP) 953

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—This Second Appeal has been filed at the instance of Defendants as the suit for possession has been decreed by the learned trial Court and appeal which was filed by the Defendants has been dismissed by the learned Lower Appellate Court. Original Plaintiffs are Ram Prasad and Siriya and the original Defendants are Anant Singh, Bhagat Singh and Shivram Singh.

2. During pendency of Civil Suit, both the Plaintiffs died and the present Respondents were brought on record. Similarly one of the Defendants-Shiv Ram Singh also died and his legal representatives were brought on record.

3. According to the Plaintiffs they are Bhumiswami of the suit property and are possessing the same, but, the Defendants who are Ex-Zamindar are resourceful persons and by exercising their muscle power they illegally took possession of the suit property which is an agricultural land and hence the suit has been filed by them praying to deliver possession of the said property.

4. Defendants by filing written statement denied the plaint averments. In the special plea, it has been pleaded by the Defendants that Plaintiff No. 1 Ram Prasad entered into an agreement of sale with the minor son of the Defendant No. 1 Anant Singh, namely, Raghunath Singh and by obtaining the consideration amount of Rs. 1,300/- delivered the possession of the suit property to Raghunath

Singh and the possession was obtained by his natural father Anant Singh for his minor son. This document of agreement of sale is dated 22.05.1968 and since then Appellants are in possession of the suit property. It has been further pleaded by the Defendants that in the document of agreement of sale no fix date has been mentioned to get the sale deed executed, however, Defendant No. 1 was always ready and willing to perform his part of contract but the Plaintiffs avoided to execute the sale deed and were saying that because Defendants are possessing the suit property, therefore, at any time the sale deed will be executed.

5. Learned trial Court framed necessary issues and after recording the evidence of the parties came to hold that the parties did not enter into any agreement of sale but real transaction between them was a loan was transacted and in order to secure loan, document of agreement of sale was got executed. Learned trial Court, hence decreed the suit of Plaintiffs and appeal which was filed by the Defendants before the learned Appellate Court has also been dismissed by the impugned judgment and decree.

6. In this manner this Second Appeal has been filed by the Appellants/Defendants assailing judgment and decree passed by two Courts.

7. This Court on 10.02.2003 admitted the appeal on the following substantial question of law:

Whether in view of the pleadings of the parties and the findings recorded by the Courts below, Defendants are entitled to protect their possession u/s 53A of the Transfer of Property Act?

8. The contention of Shri Rathi, learned Counsel for the Appellants is that learned two Courts below failed to consider this material aspect of the matter that because document of agreement of sale has been proved and it is proved that in pursuance to the document of agreement of sale, the minor son of the Defendant No. 1 entered into the possession of the suit property and because the minor son of the Defendant No. 1 has died prior to filing of the suit, it would be deemed that his rights were devolved in favor of the Defendant No. 1 who is his father, and since Defendants are in possession the suit property in pursuance to the agreement of sale, therefore, they are entitled for protection of their possession as envisaged u/s 53A of the Transfer of Property Act, 1882 (hereinafter referred to as Act 1882). In support of his contention learned Counsel for the Appellant has placed heavy reliance on the judgment of Supreme Court in the case of Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, .

9. Per contra, Shri Shishir Saxena learned Counsel for the Plaintiffs/Respondents argued in support of impugned judgment and has submitted that the provision of Section 53A of the Act would be applicable and the Defendants were entitled to protect their possession on the basis of agreement of sale only when it is pleaded and proved by them that they abide all the necessary ingredients to this Section.

Since there is neither any pleading of the Defendants nor it has been so proved that they have sent any notice to the Plaintiffs to get the sale deed executed, it is difficult to infer that the Defendants were ready and willing to perform their part of contract. In support of his contention learned Counsel for the Respondent has placed heavy reliance on the judgment of Supreme Court in the case of Ramesh Chand Ardawatiya v. Anil Panjwani reported 2003 (4) MPLJ 439.

10. After hearing learned Counsel for the parties I am of the considered view that this appeal deserves to be dismissed.

Regarding substantial question of law framed.

11. On going through the document (Ex. D/1) which is agreement of sale as well as the findings of two Courts, this Court finds that the learned two Courts below have found the execution of this document to be proved.

12. The question which now hinges is as to whether even if this document has been taken to be a document of agreement of sale whether Defendants are entitled to protect their possession within the sphere of Section 53A of the Act. On going through the judgment passed by the learned First Appellate Court, this Court finds that the learned First Appellate Court did not find this document to be an agreement of sale. This Court is not paying any heed to this finding for this simple reason that I am of the view that Defendants are not entitled for the protection of their possession u/s 53A of the Act, for the simple reason that all these facts are neither pleaded nor has been proved by them that they ever sent any sent any notice to the Plaintiffs to get the sale deed executed in order to demonstrate that they are ready and willing to perform their part of contract. According to me, the doctrine of part performance is a weapon of the defense, however, if the Defendants are seeking protection of this doctrine as envisaged u/s 53A of the Act, they are required to discharge all the statutory obligations as provided u/s 53A of the Act. Since there is nothing on record that Defendants ever sent any notice to the Plaintiff to get the sale deed executed in order to prove their readiness and willingness, according to me, in stricto sensu they have not discharged the statutory obligations. In these state of affairs, I am of the view that the decision of Supreme Court Ramesh Chand Ardawatiya (supra) placed heavy reliance by Shri Saxena learned Counsel for the Respondents/ Plaintiffs is squarely applicable in the facts and circumstances of the present case. The decision of Supreme Court in the case of Shrimant Shamrao Suryavanshi (supra) placed heavy reliance by the learned Counsel for the Appellants is not contrary to the stand taken by the Plaintiffs, rather it helps them for the simple reason that in this case also it has been held by the Supreme Court that the protection u/s 53A would be given to the Defendants only if they fulfill the requirements prescribed under this section. Since it has already been held hereinabove that the Defendants were not ready and willing to perform their part of contract, accordingly to me although they are in possession of the suit property, but they are not entitled for protection u/s 53A of the Act.

13. The substantial question of law is thus answered against the Appellants and it is hereby held that the Appellants are not entitled for the protection u/s 53A of the Act.

14 For the reasons stated herein above this appeal is found to be bereft of substance, hence it is hereby dismissed with costs. Counsel fee Rs. 3,000/- if pre-certified.