
(2009) 06 SHI CK 0007
In the High Court Of Himachal Pradesh

Chaman Lal

APPELLANT

Vs

Krishan Chand Katoch

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 54

Citation : (2009) 06 SHI CK 0007

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—This appeal has been directed against the judgment, decree dated 23.6. 1997 passed by Additional District Judge, Kullu in Civil Appeal No. 14 of 1995 affirming the judgment, decree dated 4.11.1996 passed by Senior Sub Judge, Lahaul and Spiti at Kullu exercising the powers of Sub Judge 1st Class, Kullu in Civil Suit No. 113 of 1991.

2. The facts, in brief, are that appellant had filed a suit for specific performance of contract on the basis of agreement dated 20.4.1990 regarding land comprised in Khata/Khatauni No. 328min/533min, Khasra Nos. 1404 and 1405 measuring 0-4-0 bigha, Phati Shamshi, Kothi Khokhan, Tehsil and District Kullu, H.P. It was pleaded that respondent on behalf of other co-owners and himself entered into an agreement with appellant on 20.4.1990 to sell the suit land for total sale consideration of Rs. 1500/-, out of which Rs. 1000/- were paid to respondent on 20.4.1990 and balance Rs. 500/- was to be paid to respondent at the time of registration of sale deed. It was alleged that the possession was handed over to appellant at the time of execution of the agreement dated 20.4.1990. The readiness and willingness on the part of the appellant to perform his part of the contract was pleaded and when, according to appellant, the respondent failed to perform his part of the contract, the suit was filed.

3. The respondent contested the suit and took objections of non-joinder,

maintainability. It was pleaded that respondent and other co- owners were in possession of the suit land in the year 1970. The respondent himself and on behalf of other co-owners had executed an agreement to sell the suit land with the appellant on 20.4.1970 for total sale consideration of Rs. 1500/-. The respondent was ready and willing to perform his part of the contract. The appellant failed to perform his part of the contract and, therefore, Rs. 1000/- were returned to appellant and the agreement was destroyed. The appellant kept the receipt dated 20.4.1970 and refused to return the same to the respondent. The appellant tampered with the date so as to read the same 20.4.1990 instead of 20.4.1970. It was denied that possession of the suit land was handed over to appellant. The agreement dated 20.4.1990 was denied. The respondent and other co-owners prior to 20.4.1990 had disposed of the suit land in favour of Rawdu, Tasi and Tulsi etc. and handed over the possession to them, who had constructed their houses on the suit land. The market value of the suit land in the year 1990 was not Rs. 1500/-, it was not less than Rs. 2,00,000/-.

4. On the pleadings of the parties the following issues were framed:

1. Whether the defendant executed agreement dated 20.4.1990 as alleged ? OPP.
2. If issue No. 1 is proved, whether the defendant was owner in possession of the suit property? OPP.
3. Whether the agreement dated 20.4.1990 is for consideration ?OPP.
4. Whether the plaintiff has been and is ready and willing to perform his part of the agreement? OPP
5. Whether the plaintiff is entitled to the decree for specific performance as prayed? OPP
6. Whether the suit is bad for non-joinder of necessary parties? OPD.
7. Whether the suit in the present form is not maintainable? OPD.
8. Relief.

The issues No. 1 to 5 were answered in negative, issue No. 6 in affirmative, issue No. 7 was not pressed and the suit was dismissed by the trial Court on 4.11.1994 and the appeal has also been dismissed by the lower Appellate Court on 23.6.1997, hence the plaintiff has come in second appeal which was admitted on 30.7.1998 without reference to any substantial questions of law. However, along with the memorandum of appeal, the appellant had filed the following substantial questions of law:

1. Whether both the Courts below were right in ignoring the provisions of Section 58 of the Evidence Act?
2. Whether the Courts below were right in putting the owners (sic, onus) on the plaintiff to prove the date of execution of the agreement.

3. Whether the Courts below ignored the fact have been invited when consideration of these sale amount had been specifically acknowledged?

4. Whether the learned Courts below were right in rejecting the application under Order 18 Rule 17-A and the application Under Order 41 Rule 27 CPC, which were relevant for the decision of this case?

5. The above substantial questions of law were on the file on 30.7.1998 when the appeal was admitted, therefore, I have heard the appellant on the above substantial questions of law.

6. Heard and perused the record. I have heard Mr. Anand Sharma, Advocate, learned Counsel for the appellant but none appeared on behalf of the respondent. On behalf of the appellant, it has been submitted that the execution of the agreement was not denied. The onus of execution of agreement was wrongly placed on appellant. The Courts below have erred in not decreeing the suit. The Courts below have erred in rejecting the applications under Order 18 Rule 17A and under Order 41 Rule 27 CPC.

7. The substantial questions of law No. 1 to 3 are being taken up collectively for disposal. The substantial question of law No. 3 is not at all understandable. At the most through substantial question of law No. 3 the appellant wants to convey that since the respondent had not denied the sale consideration of the agreement, therefore, the Courts below have erred in not properly construing the case of the appellant. The simple case of the respondent is that he had executed an agreement with the appellant on 20.4.1970 for selling the suit land for a sale consideration of Rs. 1500/-. The appellant failed to honour his part of the agreement and, therefore, the amount of Rs. 1000/- was returned to the appellant. The owners of the suit land later on sold the suit land to Rawdu, Tasi, Tulsi etc. before 20.4.1990 when appellant claims that the agreement mark "A" was executed. The sale consideration of Rs. 1500/- was admitted by respondent in the context of agreement dated 20.4.1970 and not in the context of mark "A" dated 20.4.1990. The appellant from this stand of the respondent cannot take any advantage. The appellant has alleged that on 20.4.1990 respondent had agreed to sell the suit land to the appellant for a consideration of Rs. 1500/-. The respondent has denied that mark "A" was executed on 20.4.1990, he has rather stated that mark "A" was executed on 20.4.1970.

8. PW-1 Chaman Lal has stated that mark "A" was written by respondent himself. The date 20.4.1990 was in dispute but despite that PW-1 in his statement has nowhere stated that date 20.4.1990 was put by the respondent himself at the time of execution of mark "A". PW-1 has stated that when mark "A" was written two persons were there in the house and he knows them. They were sitting with Krishan Chand. But appellant has not examined them in support of his case that mark "A" was executed on 20.4.1990 by respondent. It was specifically put to appellant in cross-examination that date 20.4.1990 encircled in red was written lateron. The respondent has denied that he had written any

agreement in favour of the appellant on 20.4.1990. He has also stated in cross-examination that the date mentioned in red encircle is not written by him. He has been rather given suggestion which he has accepted correct that Rs. 1000/- as per mark "A" as earnest money received by him in the year 1970. In other words, by putting this suggestion, the appellant has also accepted the case of the respondent that agreement was executed in the year 1970. In the written statement, the respondent has denied the execution of agreement dated 20.4.1990. In these circumstances, Section 58 of the Evidence Act does not apply. It was for the appellant to prove that the agreement mark "A" was executed by the respondent on 20.4.1990 which he has miserably failed to prove. It is the case of the respondent that the suit land was transferred to Rawdu, Tasi, Tulsi Ram etc. before 20.4.1990 and they have constructed houses on the suit land. The appellant on the basis of mark "A" has claimed possession on the suit land. He has even stated that the possession of the suit land is with him. The appellant has placed no revenue record to show his possession on the suit land. He has shown his ignorance that Rawdu, Tasi and Tulsi Ram have constructed their houses on the suit land after purchase. The appellant has produced no worth believing evidence in support of his contention that he had constructed two kachha rooms on the suit land.

8. DW-1 Krishan Chand has stated that his mother had died in the year 1988. Captain Ramesh was his brother, who also died in the year, 1988. Ranjeet Singh had cancelled power of attorney which was in his favour in the year 1990. He has stated that his mother and brother through power of attorney had sold the land in the year 1987 to Rawdu, Tasi and Tulsi Ram. It is thus clear that the suit land was sold to Rawdu, Tasi and Tulsi Ram prior to 20.4.1990 but those persons have not been impleaded as party in the suit. The suit land was sold to Rawdu, Tasi and Tulsi Ram in the year 1987. The respondent could not have entered into agreement on 20.4.1990 on behalf of other co-owners when it has come on record that mother and brother of respondent had died and Ranjeet Singh another brother of respondent had cancelled power of attorney. The appellant has miserably failed to prove that respondent has executed agreement on 20.4.1990. The two Courts below have rightly appreciated the material on record. The substantial questions of law No. 1 to 3 are decided against the appellant.

9. The application under Order 18 Rule 17A CPC dated 7.4.1994 was filed by the appellant to prove the sale deed dated 14.8.1975 which was allegedly executed by the respondent in favour of the appellant. This application was dismissed by the trial Court on 28.4.1994. The appellant filed application under Order 41 Rule 27 CPC dated 6.1.1997 before the lower Appellate Court. In that application the reference of application under Order 18 Rule 17-A CPC which was filed by the appellant in the trial Court was also given. The application for additional evidence was dismissed by the lower Appellate Court on 22.2.1994. It was held that sale deed dated 14.8.1975 is not relevant. The dispute in the case is with respect to the date which according to respondent was forged by the appellant and this

controversy can be decided even without the sale deed dated 14.8.1975. No fault can be found with the reasoning given by the lower Appellate Court. In the present case the dispute is with respect to execution of agreement to the effect whether it was executed on 20.4.1970 or on 20.4.1990 and for deciding this controversy, the sale deed dated 14.8.1975 is not relevant. The substantial question of law No. 4 is decided against the appellant.

10. The two Courts below have rightly appreciated the material on record, the view taken by the Courts below emerges from the record. The learned Counsel for the appellant has failed to make out any case for interference. There is no merit in the appeal which is liable to be dismissed.

11. No other point was urged.

12. The result of the above discussion, the appeal fails and is accordingly dismissed with no order as to costs.