

(2013) 08 RAJ CK 0110
In the Rajasthan High Court
Case No : Civil First Appeal No. 5 of 1990

Chhitar Mal (since deceased) through his LRs and Another	APPELLANT
Vs	
Radhey Shyam and Others	RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2013) 08 RAJ CK 0110

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : J.P. Goyal, with Ms. Manish Surana, for the Appellant; S.M. Mehta with Mr. Harsh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This civil first appeal u/s 96 of CPC impugns the judgment and decree dated 20.11.1989, passed by the Additional District and Sessions Judge No. 4, Jaipur City, Jaipur accepting the suit of the plaintiffs (now the respondents before this Court) for specific performance of a contract with reference to an agreement to sell dated 05.12.1978 for sale of a shop situate outside Chandpole Gate, Sansar Chandra Road, Jaipur for a sum of Rs. 37,500/-. I have heard Mr. J.P. Goyal, Sr. Advocate with Ms. Manisha Surana, on behalf of the defendants-appellants (hereinafter "the defendants") and Mr. Sagar Mal Mehta, Sr. Advocate with Mr. Harsh Sharma, on behalf of the plaintiffs-respondents (hereinafter "the plaintiffs").

2. The facts of the case are that relying upon an agreement to sell dated 05.12.1978, in respect of shop No. 26 situate outside Chandpole Gate, Sansar Chandra Road, Jaipur, the plaintiffs filed a suit for specific performance on 11.02.1981 before the District and Sessions Judge, Jaipur City, Jaipur. The said suit was subsequently transferred to the Court of the Additional District and Sessions Judge No. 4, Jaipur City, Jaipur for adjudication. The plaintiffs' case in the suit was that shop No. 26 situate outside Chandpole Gate, Sansar Chandra

Road, Jaipur was in the ownership of the defendants Chhitarmal and Manmauj (since deceased and now represented by their legal representative). It was submitted that for the sale of the aforesaid shop, a sum of Rs. 35,000/- in cash was paid to the plaintiffs at the time of the execution of the agreement to sell dated 05.12.1978 and the remainder amount of Rs. 2,500/- was to be paid as agreed, by the plaintiffs to the defendants at the time of the registry of the duly executed sale-deed. As per the agreement dated 05.12.1978, NOC from the competent authority was to be obtained by the defendants and the plaintiffs were to be informed whereupon they were to pay the remainder amount of Rs. 2,500/- and have the sale-deed duly registered within a period of one month of the information of the NOC having been received. The case of the plaintiffs was that subsequent to the agreement to sell dated 05.12.1978, the defendants informed the plaintiffs vide letter dated 27.01.1980 of having obtained the requisite NOC. Thereupon the plaintiffs immediately purchased the requisite stamp papers for an amount of Rs. 3,420/- on 29.01.1980 and prepared a sale-deed for the purpose of the registration of the sale, of the shop in issue, in their favour. It was submitted that the defendants however did not adhere to their obligation under the agreement to sell dated 05.12.1978 and in spite of the receipt of Rs. 35,000/- under the agreement aforesaid did not accept the remainder Rs. 2,500/- under the agreement to sell or execute the sale-deed and have it registered. In these circumstances, the plaintiffs issued notice to the defendants demanding execution of sale-deed of shop No. 26, but to no avail. Repeated request and notice thereafter also failed to make the defendants adhere to their obligation under the agreement dated 05.12.1978. Hence this suit for specific performance.

3. On notice, written statements of denial were filed by the defendants. The execution of the agreement to sell dated 05.12.1978 was denied as was the receipt of Rs. 35,000/- by the defendants. It was instead stated that the agreement to sell dated 05.12.1978 was a forged document. On the basis of the pleadings, the trial court framed four issues. The plaintiffs aside of their three witnesses, relied upon Ex-P/1 agreement to sell dated 05.12.1978, Ex-P/2 sale-deed which was got scripted on stamp papers by the plaintiffs, Ex-P/3 map of the disputed shop and Ex-P/4 original of the previous sale-deed by which the defendants had come into the ownership of shop in issue. The defendants in turn only examined DW-1 Chhitarmal in respect of their case that the suit for specific performance was without force, based on forged agreement to sell dated 05.12.1978 and no consideration as alleged had been received by them.

4. The trial court on consideration of the evidence before it held that the agreement to sell dated 05.12.1978 was fully proved by the statement of Anant Ram (PW-3) and also of the plaintiff Radhey Shyam (PW-1). It held that Bhuramal (PW-2) did not appear in the right state of mind and even though he did not support the case of the plaintiff, it was of little consequence in evaluating the veracity and authenticity of the plaintiffs' case as adequate evidence of the agreement to sell otherwise obtained on the record. On the issue of readiness

and willingness of the plaintiffs to act in accordance with the agreement to sell dated 05.12.1978, the learned trial court noted that no sooner information with regard to the receipt of NOC by the defendants was conveyed to the plaintiffs on 27.01.1980, the plaintiffs had purchased the stamp papers for a sum of Rs. 3420/- on 29.01.1980 and had even prepared the sale-deed on the said stamp papers. The trial court also noted the fact that the plaintiffs were in possession and had filed and proved Ex-P/4 which was the original sale-deed by which the defendants had come into possession of the shop in issue. Based thereon, the trial court concluded that the case set up by the plaintiffs with regard to the execution of the agreement to sell dated 05.12.1978 was fully proved as was the passing of part consideration of Rs. 35,000/- out of the consideration of Rs. 37,500/- agreed between the parties for the sale of shop No. 26 situate at Sansar Chandra Road, Jaipur. The trial court negatived the defence of the defendants with regard to lack of competence in the defendants to enter into the agreement to sell dated 05.12.1978 purportedly on the ground of the shop in issue being ancestral property in respect of which there were other persons with proprietary right aside of the defendants. The reasoning of the trial court was based on the judgment of this Court in the case of Deenanath Vs. Chunnilal, wherein this Court had held that the executor of a document could not deny the execution thereof on the specious ground of his not being authorised to execute the document as such a plea was hit by estoppel.

5. Mr. J.P. Goyal, Sr. Advocate, appearing for the defendants has reiterated in this appeal the very same case as agitated by the defendants in defence before the trial court. He has submitted that Bhuramal (PW-2) not having supported the case of the plaintiffs with regard to execution of the agreement to sell dated 05.12.1978 and passing of consideration of Rs. 35,000/- out of the agreed amount of Rs. 37,500/-, the trial court ought to have disbelieved the case of the plaintiffs with regard to the execution of agreement to sell dated 05.12.1978 by the defendants notwithstanding the evidence of independent witness Anant Ram (PW/3) and Radheyshyam (PW-1) plaintiff himself and also the fact that the original sale-deed i.e. Ex.-P/4 - evidencing ownership of the defendants, was in possession of the plaintiffs. He has further submitted that there was no adequate material before the trial court with regard to the plaintiffs being ready and willing to perform their part of the agreement to sell dated 05.12.1978.

6. Mr. S.M. Mehta, Sr. Advocate appearing for the plaintiffs, has supported the judgment and decree dated 20.11.1989 passed by the trial court.

7. In my considered opinion, there is no substance in the appeal and the arguments of Sr. Advocate, Mr. J.P. Goyal made on behalf of the defendants are mechanically - only to be noticed to be rejected. The trial court from the evidence on record relying upon the statement of the plaintiff Radhey Shyam (PW-1) and Anant Ram (PW-3) as also the factum of original sale-deed (Ex-P/4) by which the defendants came into possession of the shop in issue being in the possession of the plaintiffs rightly came to the conclusion that on the state of

evidence before it, it was proved to the requisite preponderance of probability that the agreement to sell dated 05.12.1978 was indeed executed between the plaintiffs and the defendants and a sum of Rs. 35,000/- paid to the defendants at the time of execution thereof. Aside of the aforesaid, in my considered opinion, the fact that the defendants had sent information with regard to the receipt of NOC on 27.01.1980 would by itself be indicative of the factum of the agreement to sell dated 05.12.1978 having been executed as otherwise there would have been no occasion for the conveying of such information. I am therefore of the considered view that there is no occasion to interfere with the findings of the trial court on issue No. 1 holding that agreement to sell dated 05.12.1978 was indeed executed between the plaintiffs and the defendants for the sale of shop No. 26 at Sansar Chandar Road, Jaipur for a total consideration of Rs. 37,500/- out of which Rs. 35,000/- was already paid by the plaintiffs to the defendants on the date of execution of the agreement. As far as the issue of readiness and willingness of the plaintiffs to perform their part on the agreement to sell dated 05.12.1978 is concerned, evidence on record, oral and documentary, clearly establishes that the plaintiffs had purchased the requisite stamp papers necessary and got prepared the sale-deed on 29.01.1980 i.e. within two days from the receipt of information with regard to the NOC at the hands of the defendants. No better evidence/proof of readiness and willingness can be asked for in a suit for specific performance of an agreement to sell of immovable property. The suit was also thereafter filed on 11.02.1981, well within limitation, after several request had been made by the plaintiffs to the defendants to execute the sale-deed in their favour and have it registered in terms of the agreement to sell dated 05.12.1978. No other issues were seriously agitated in this appeal by the counsel for the defendants.

8. Consequently, in my considered view, there is no illegality or perversity in the impugned judgment dated 20.11.1989 passed by the trial court. On the contrary, the judgment dated 20.11.1989 is a well considered and able order. Consequently, I find no force in appeal and the same is therefore dismissed.