
(2007) 07 MP CK 0099
In the Madhya Pradesh High Court
Case No : First Appeal No. 1 of 2002

Jagdish Kumar Balwani and others

APPELLANT

Vs

Gulam Hussain and others

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2007) 4 MPLJ 159

Hon'ble Judges : K.S. Chauhan, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Shobha Menon, with G.S. Namdeo, for the Appellant; Rakesh Jain, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Chauhan, J.

This appeal is filed u/s 96 of the CPC being aggrieved by the judgment and decree dated 12th September 2001 passed by II Additional District Judge, Bhopal in RCS No. 95-A/2000 whereby the suit filed by the plaintiffs/appellants for specific performance of contract, declaration and injunction has been dismissed.

The appellants' case was that they were the tenants of respondent No. 1 in the House No. 18 situate at Jumerati, Jawahar Chowk, Bhopal and they were carrying on their business of sale of general provisions and oil. In the month of August, 1991 respondent No. 1 expressed his desire to sell this house. Since the sale price spelt out by the said respondent No. 1 was exorbitant, therefore, the appellants declined. Thereafter in the month of September, 1991 the respondent No. 1 again expressed his desire to sell the said premises for Rs. 4,00,000/- but the price was not commensurate with the rate which was existing at that time, the appellants did not acceded to his offer. Later, in the month of October, the appellants agreed on the offer made by respondent No. 1 for the sale of said

premises and the amount that was spelt out by the appellants was Rs. 3,20,000/-. On 10-10-1991 an agreement was executed and the earnest money of Rs. 32,000/- was paid to respondent No. 1. The respondent No. 1 himself brought the stamp paper and thus the agreement was executed in between the parties. As per agreement, the respondent No. 1 was required to obtain the N.O.C. from Income Tax Department and also from Collector(Nazul) during the period of two months but this was not done. They were always ready and willing to perform the essential terms of the contract, which are to be performed by them. On the contrary, on 15th April, 1992 one general information for the public was published in daily newspaper Nav Bharat regarding the agreement of sale in between the respondent Nos. 1, 2, and 3 to sell the house. They contacted respondent No. 1 on 20th/21st April, 1992 but he threatened and was ready fight and stated that he will execute the sale deed in favour of respondents No. 2 and 3. The information by telegram was sent to the Advocate of the respondents but ultimately respondent No. 1 sold the said premises to respondent No. 4, therefore, the civil suit was instituted for specific performance of contract, declaration and injunction against the respondents.

The respondent No. 1 submitted the written statement wherein the averments made by the appellants in the plaint were specifically denied mainly contending that no advance was received by him and no agreement dated 10-10-1991 was executed by him. The agreement is forged one. Further he contended that that executed the agreement with respondent No. 3 Ghanshyam Das Agrawal and the publication was made by Ghanshyam Das Agrawal and the house was sold to Smt. Shanti Bai Agrawal the wife of Ghanshyam Das Agrawal, therefore, the request was made to dismiss the suit.

The respondent Nos. 2 and 3 also submitted the written statement mainly contending that the respondent No. 1 has not executed any agreement on 10-10-1991 in favour of the appellants. Moreover, respondent No. 2 Pankaj Kumar Jain and respondent No. 4 Smt. Shanti Bai have purchased the house from respondent No. 1 and now they have become the owner of the said house. They have also terminated the tenancy of their tenants. The objections were made that the appellants have not properly valued their suit.

The respondent No. 4 adopted the written statement submitted by defendants No. 2 and 3 and did not file any separate written statement.

On the basis of the rival contentions raised by the parties, the trial Court framed several issues. Both the parties adduced the evidence. The trial Court found the agreement dated 10-10-1991 forged and, therefore, dismissed the suit.

Being aggrieved by the judgment and decree passed by the trial Court, the instant appeal has been preferred by the appellants on the grounds mentioned in the memo of appeal.

The learned counsel for the appellants has submitted that the trial Court has not appreciated the evidence in the proper perspective and committed illegality in

disbelieving the evidence adduced by the appellants. The finding that the agreement dated 10-10-1991 was forged, is erroneous. The court has given undue importance to the fact that the stamp paper was brought on 26-9-1991 and the agreement executed on 10-10-1991. Looking to the fact that the respondent No. 1 expressed his desire to sell the premises way back in the month of August, 1991 itself, there was nothing illogical in purchasing the stamp paper before the execution of the date of the agreement. Therefore, the finding that the agreement was forged is perverse and deserves to be set aside. It was further contended that the appellants have proved their case by evidence in spite of the trial Court has dismissed the suit. Hence the judgment and decree be set aside.

On the contrary, the learned counsel for the respondents supported the judgment and decree passed by the trial Court and submitted that the trial Court has rightly concluded that the agreement is forged and dismissed the suit hence it does not call for any interference.

The main point for consideration in this appeal is that whether the trial Court has committed any illegality in dismissing the suit of the appellants for specific performance of contract, declaration and injunction?

We have perused the entire record and evidence adduced in the case.

The appellants were the dependants of respondent No. 1 in house No. 18 situate at Jumerati, Jawahar Chowk, Bhopal and respondent No. 1 used to give the rent receipts. Such receipts Ex.P/1 to Ex.P/21 has been produced by Rajendra Kumar Jain(PW-1).

Rajendra Kumar Jain (PW-1), Jagdish Kumar (PW-3) have stated that respondent No. 1 agreed to sell the disputed house on consideration of Rs. 3,20,000/- and the earnest money of Rs. 32,000/- was paid to him. The agreement Ex.P/22 contains the signature of Sudhir Kumar Gupta (PW-5) and Ramesh Kumar (PW-6) who are the witnesses of this document.

They have further deposed that it was agreed that respondent No. 1 will obtain N.O.C. from Income Tax and Nazul Department within two months and will execute the sale deed thereafter but he did not do so and avoided the execution of sale deed. However, they were ready to perform their part as agreed. The respondent No. 1 did not execute the sale deed in their favour but ultimately sold the house to respondent Nos. 2 and 4 hence the suit was filed.

Mulla Gulam Hussain (DW-1) has stated that he has never entered any agreement to sell this house and Ex.P/22, agreement does not contain his signature. However, he stated that he used to supply the rent receipts and Ex.P/1 to Ex.P/21 contains his signature.

Ex.P/22, the so-called agreement is an important document on which the entire case of the appellants is based, therefore, we will consider whether this document was executed by respondent No. 1 or not.

According to the appellants the stamp paper of this document was purchased by respondent No. 1 himself. Gyanchand Jain (PW-7) has stated that the stamp was sold by him on 26-9-1991 to Gulam Hussain but he himself has admitted that he does not know Gulam Hussain. He has further stated that he keeps the register for making the entry but no such register has been produced. He does not know the value of the stamp required to be paid for the purpose of agreement on 26-9-1991. It is very strange that this witness being the Stamp Vendor does not know the value of the stamp required for the purpose of agreement on such date.

Respondent No. 1 has denied specifically to purchase such stamp paper on 26-9-1991.

As it is manifestly clear that the agreement is said to be executed on 10-10-1991 then what was the necessity to purchase the stamp paper on 26-9-1991 by respondent No. 1. Since no agreement or terms and conditions were settled before 10-10-1991, therefore, there was no occasion to purchase the said stamp papers before 15 days prior to execution of agreement hence the evidence of respondent No. 1 seems to reliable that he did not purchase the stamp paper on 26-9-1991.

Sudhir Kumar Gupta (PW-5) and Ramesh Kumar (PW-6) are the witnesses of Ex.P/22, therefore, we will consider their evidence with respect to this document.

Sudhir Kumar Gupta (PW-5) has deposed that he used to purchase the grocery articles from the shop of Rajendra Kumar Jain (PW-1), therefore, he went to his shop where he came to know that he was at the shop of Babulal, therefore, he went there and signed over agreement Ex.P/22 but he has admitted that he does not know respondent No. 1. The ExP/22 was kept there typed on which he signed and appellants also signed. No any terms and conditions were settled before him. The document was not laminated and there were no holes on this document at that time.

From his evidence, it is clear that he was not knowing the respondent No. 1 and no terms and conditions were settled before him.

Ramesh Kumar (PW-6) has deposed that he used to go at the shop of appellant Maghandas for purchasing the grocery articles and, therefore, on that date he went there at his shop but found that he has gone to the shop of Babulal hence went there where he was apprised with respect to contract of house and the written agreement. He signed in this document ExP/22. Appellants also signed. He does not know respondent No. 1. He does not remember whether the respondent No. 1 signed or not.

He has further stated that Sudhir Kumar Gupta did not sign before him. He did not know this man. He does not know the signature of other appellants except Maghandas. No any terms and conditions were settled in between the parties before him. He does not know when the Ex.P/22 was typed.

From the evidence of Ramesh Kumar (PW-6) also, it is crystal clear that he does

not know the respondent No. 1. No any terms and conditions were settled before him between the parties. He signed over the documents because Maghandas wanted to do so.

From perusal of the evidence of these witnesses, it is manifestly clear that they were not knowing respondent No. 1. No any terms and conditions were settled before them. They went there for purchasing the articles as stated above and signed because they were the customers of appellants Rajendra Kumar Jain and Maghandas.

On perusal of their entire evidence, it appears that they are the cooked up witnesses because if they went at the shops of Rajendra Kumar Jain and Maghandas for purchasing the grocery articles then they would have purchased the same from the shops and returned home thereafter what was the occasion to search Rajendra Kumar Jain and Maghandas on the shop of Babulal, therefore, they are incredible witnesses and no reliance can be placed upon their evidence. These witnesses are of different locality where the shops of appellants Rajendra Kumar Jain and Maghandas are situated. One belongs to Arera Colony and another of Rajdev Colony near Gufa Mandir, Lalghati, Bhopal. They are the chance witness. They happen to be there because of purchasing the grocery articles from the shop of Rajendra Kumar Jain and Maghandas. Why the persons belonging of that locality were not made the witness of document Ex.P/22.

Apart from it the discrepancy appears to be in the evidence of Rajendra Kumar Jain (PW-1) and Jagdish Kumar (PW-3) with regard to settlement of terms and conditions and execution of documents. According to Rajendra Kumar Jain (PW-1), the terms of the contract were agreed after 2-4 days when respondent No. 1 came to realize the rent but according to Jagdish Kumar (PW-3) the terms of the contract were settled on the same date when he came to realize the rent and he brought the stamp paper within 1-2 hours and the agreement was executed on the same day.

As it is manifestly clear that all the appellants were businessman but strangely enough that they have created the evidence for obtaining the money for purchasing this house from other persons. Rajni Jain (PW-2) is the daughter of Babulal Jain and in government service. She has stated that she had withdrawn amount of Rs. 19,000/- on 9-10-1991 from Punjab National Bank and out of which Rs. 10,000/- was given to her father Babulal Jain and Rs. 9,000/- to Rajendra Kumar Jain and pronotes were executed by Babulal and Rajendra Kumar Jain. She has admitted in cross-examination that after this date there is no any entry of withdrawal or deposit of any amount in her pass book. It is very strange that the daughter got executed the pronote from her father after withdrawal of said amount from bank but there is no other entry in her pass book regarding withdrawal and deposits of other amount than this. Moreover when the agreements is said to be executed on 10-10-1991 then what was the use of borrowing money by Rajendra Kumar Jain and Babulal from Rajni Jain before one day of entering into agreement. It clearly indicates that the evidence is created

in this regard.

Likewise is the evidence of Ramgopal Gupta (PW-4) who has stated that he has given Rs. 10,000/- to appellant Maghandas on 9-10-1991 on Hundi Ex.P/34. Similar is the evidence of Jagdish Kumar (PW-3) who has stated that he has entered the amount of Rs. 8,000/- given to respondent No. 1 as an earnest money in Khata Ex.P/32 and Ledger Ex.P/33.

By this evidence the appellants tried to show their bona fides that they provided the earnest money of Rs. 32,000/- to the respondent No. 1 by taking such amounts from these sources shared by Rs. 8,000/- each but the evidence appears to be created and not reliable.

It is manifestly clear that the appellants did not produce the original document at the time of institution of suit. The photocopy was produced. On perusal of it, it reveals that it does not contain the signature of Deputy C of C before whom it was produced.

On perusal of record, it reveals that the plaintiffs sought the permission to adduce secondary evidence regarding this document on the ground that the original document was lost on 27-5-1992 and its photocopy has already been filed with the plaint. On 10-1-1995 the trial Court gave the permission to produce such evidence but the defendants filed the Civil Revision No. 454/95 before this court which was decided on 13-8-1999 rejecting the order of the trial Court and only thereafter the plaintiffs produced the original document Ex.P/22 before the trial Court. The appellants have adduced the evidence as to how the documents was lost and found.

The appellants have stated that the original document was given to Babulal and its photocopy was given to other plaintiffs. Babulal Jain is now no more. Sanjay Jain (PW-8) is his son. He has stated that his father kept the bag at a wall while giving the money of petrol filled in his scooter to the petrol dealer, one boy came there and taken away the bag. The report was lodged at police station Hanumanganj by his father then he carried his father to Advocate Rajkumar Jain who resides at Shahjahanabad, Bhopal. His father and Shri Jain advocate discussed the matter.

Jagdish kumar (PW-3) has deposed that he received the information from Shahjahanabad, Bhopal that the document has been found then he obtained the order form A.D.M. Bhopal and got document Ex.P/22.

The appellants have not produced the document relating to the F.I.R. lodged by Babulal at police station Shahjahanabad, Bhopal. No any copy of such order passed by the A.D.M. Court was produced. Therefore, the fact that the document Ex.P/22 lost and thereafter found has not been established. This evidence appears to have been created to establish the fact that the appellant did not produce the original document at the time of filing the suit when the permission of producing the secondary evidence was refused by this court the document was

produced.

The appellants have also produced Naveen Chandra Deshpandey (PW-9) Handwriting Expert who compared the standard and questioned signature of Gulam Hussain, respondent No. 1 and found that they were the same. He has produced the grounds of his opinion vide Ex.P/46. He has also produced the photographs Ex.P/47 to Ex.P/55.

From his evidence it reveals that Pradeep Jain gave these documents to compare them. He has admitted that he has not examined these documents by the orders of the Court. How Pradeep Jain was concerned with these documents has not been established. Why he gave these documents for examination by Handwriting Expert and that too without the orders of the Court has also not been established. It clearly indicates that the evidence was created only to show that the document Ex.P/22 contains the signature of respondent No. 1 Gulam Hussain.

On the contrary, Shri M.M. Nema (DW-4) Handwriting Expert has also examined the documents on the basis of the Court order and has come to the conclusion that the signature marked by Q-1 to Q-3 on the disputed document has not been written by Gulam Hussain respondent No. 1 and all these signatures are forged. He has given the grounds of his opinion for coming to the conclusion that the signatures are forged on the disputed document. There is nothing to disbelieve the statement of the Handwriting Expert Shri Nema (DW-4).

Furthermore, the trial Court itself has compared the documents which is said to be the photocopy of the original document filed at the time of institution of suit with the original document Ex.P/22 and has noticed that there are some dissimilarities in both these documents. The dissimilarities have been mentioned in para No. 50 and 51 of the judgment. We also noticed such dissimilarities hence finding of trial Court in this regard is proper.

Mulla Gulam Hussain (DW-1) has clearly stated that no such agreement Ex.P/22 was executed and the document is made forged.

Pankaj Kumar Jain (DW-2) has also stated in the same manner. Further he has stated that respondent No.1 executed the agreement to sell house vide Ex.D/1. The respondent No. 1 also gave the document relating to family settlement Ex.D/2. In pursuance to the agreement of sale the house has been purchased by him and by respondent No. 4 vide two registered sale deeds dated 25-4-1992 and 27-4-1992 respectively made by respondent No. 1 in their favour.

Yogesh Verma (DW-3) has also stated that the publication of Ex.P/23 was made by his father and the entry of such publication has been made in the diary maintained for the purpose.

By the aforesaid evidence the defendants have tried to establish that no agreement Ex.P/22 was executed by respondent No. 1 in favour of appellants. Moreover, after publication the agreement Ex.D/1 was made and consequently the respondent No. 1 sold the dispute house vide registered sale deeds dated

25-4-1992 and 27-4-1992 in favour of respondents No. 2 and 4 respectively. Thus now they have become the owner of the disputed house and from the evidence of Pankaj Kumar Jain (DW-2) it reveals that the notices have been given to the tenants for eviction of the disputed house and the suit regarding eviction is pending before competent court. They are now in the possession of the disputed property and, therefore, no injunction can be granted against them. No declaration can be made in favour of appellants that they are the owner of this house. No decree for specific performance of contract can be granted because the agreement Ex.P/22 is forged and the appellants have created the evidence anyhow to obtain the house from respondent No. 1. The appellants did not come with the clean hands and hence no discretionary relief can be granted in their favour. The trial Court has rightly dismissed the suit, such finding is affirmed.

We find no merit in this appeal and hence deserves to be dismissed.

Resultantly the appeal fails and is dismissed accordingly. The judgment and decree passed by the trial Court is hereby affirmed. The appellants to bear the cost throughout. The counsel's fee according to the schedule if quantified. Decree be drawn up accordingly.

Before parting with the judgment we find that the document Ex.P/22 has been made forged and the evidence fabricated, therefore, we direct to launch the prosecution against those responsible for committing such serious kind of forgery and fabricating the evidence. The trial Court to look into the matter seriously and proceed as per provisions of law.