

(2010) 07 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition 979 of 2005 (M/S) & Writ Petition No. 979 (M/S) of 2005

Jai Bhagwan and Others

APPELLANT

Vs

Bachhi Ram Dimri and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
General (Civil) Rules — Rule 37

Citation : (2011) 112 RD 362 : (2010) 2 UC 1258

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Shri Sharad Sharma, the learned senior Counsel duly assisted by Shri Kovid Bhatt, the learned Counsel for the Defendants/ Petitioners and Shri Arvind Vashisth, the learned Counsel for the Plaintiff's/Respondents. The Plaintiff's/opposite party filed a suit for specific performance in the year 1993 praying that the Defendant Nos. 1 to 4 be directed to execute the sale deed in favour of the Plaintiff's. The suit was filed on the premise of an execution of an unregistered agreement of sale by Defendant No. 1 in favour of the Plaintiff's. It was alleged that the Defendant No. 1 had made some kind of an internal arrangement to sell the property to Defendant Nos. 2, 3 and 4. Subsequently, the plaint was amended in the year 2001 and the relief clause was also amended wherein a decree for specific performance was sought against Defendant No. 1 for possession.

2. It transpires that the heirs of Defendant Nos. 3 and 4 filed an additional written statement indicating thereof that they are in possession of the property in question. Based on such admission, the Plaintiff's filed an application 215-ka dated 28th March, 2005 praying that the relief of possession against Defendant Nos. 3 and 4 be also granted in favour of the Plaintiff's in the event it was found that the said Defendants are in possession of the property in question. This

application was allowed by the impugned order dated 30th July, 2005 against which the Defendant Nos. 3 and 4 have filed the present writ petition.

3. Shri Sharad Sharma, the learned senior Counsel submitted that the relief of possession cannot be granted in favour of the Defendant Nos. 3 and 4 when there was no relief for specific performance against them, especially, when the sale deed dated 15.12.1992 had been executed by Defendant No. 1 in their favour which sale deed has not been questioned by the Plaintiff's nor any prayer has been made for its cancellation. The learned Senior Counsel submitted that if the sale deed was not questioned nor challenged by the Plaintiff's, the question of giving relief of possession over the said property does not arise. The learned Counsel submitted that the prayer for amendment of the plaint seeking the relief of possession against the Defendant Nos. 3 and 4, namely, the Petitioners cannot be granted and that the amendment application could not have been allowed by the Court below. The learned Counsel also placed reliance upon Rule 37 of the General Rule Civil, which stipulated that where an amendment application is allowed, all consequential relief should be incorporated. In that scenario, the learned Counsel submitted that once an amendment was granted where the relief of specific performance was incorporated in the year 2001, all consequential amendment for relief of possession should have been incorporated at that stage and, consequently, the second amendment application should not have been allowed.

4. Having heard the learned Counsel for the Petitioners, this Court finds that the submission raised by the learned Counsel for the Petitioner is wholly untenable and bereft of merit. In the first instance, there is no such document which has been brought on the record to indicate that a sale deed was executed by Defendant No. 1 in favour of Defendant Nos. 3 and 4 on 15.12.1992. The learned Counsel for the Petitioner placed reliance on paragraph 8 of the plaint to show that the sale deed was executed on 15th December, 1992, but, on a closer scrutiny of paragraph 8 of the plaint, as amended in the year 2001, indicates that the averments of execution of the sale deed is against the Defendant No. 2 and not against the Defendant Nos. 3 and 4, i.e., the Petitioners. On the other hand, the averments made in the plaint, especially, paragraph 19 thereof indicates that some internal arrangement had been made between the Defendant No. 1 and Defendant Nos. 3 and 4 with regard to the execution of the sale deed which had not been done and, consequently, the Plaintiff had prayed for the execution of the sale deed by all the Defendants in favour of the Plaintiff's. Since the Court does not find any execution of a sale deed in favour of the Respondent Nos. 3 and 4, the plea that possession cannot be directed from them is patently erroneous and misconceived. The Defendant Nos. 3 and 4 have been arrayed as necessary parties and once it has come on record from the averment made by the heirs of Respondent Nos. 3 and 4 that they are in possession, the relief of possession claimed by the Plaintiff was done at the earliest opportune moment. Consequently, the order allowing the amendment application does not suffer from any error of law.

5. On the question that no relief has been sought from the Defendant No. 3 with regard to the execution of decree for specific performance and that no relief of possession could have been granted. The Supreme Court in *Durga Prasad and Anr. v. Deep Chand and Ors.*,¹ has held as under:

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the Plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the Plaintiff. He does not join in any special covenants made between the Plaintiff and his vendor. All he does is to pass on his title to the Plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin*, AIR 1931 Cal 67 (C). and appears to be the English practice. See *Fry on Specific Performance*, 6th Edn., p. 90, para 207; also *Potter v. Sanders*. 1846 (67) ER 1057(D). We direct accordingly.

6. The Supreme Court was of the opinion that it was not necessary to pray for the cancellation of the sale deed and that the proper form of decree was to direct specific performance of the contract between the vendor and the Plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the Plaintiff. This view has been consistently followed since then and has been reiterated by the Supreme Court in *Soni Lalji Jetha (deceased) through his Soni Lalji Jetha and Others Vs. Soni Kalidas Devchand and Others*, . *Ramesh Chandra Chandiok and Anr. v. Chuni Lal Sabharwal (dead) by his R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others*, . *Babu Lal Vs. Hazari Lal Kishori Lal and Others*, . *HPA International Vs. Bhagwandas Fateh Chand Daswani and Others*, and *Seenivasan Vs. Peter Jebaraj and Another*, . In the light of the consistent stand taken by the Supreme Court, the submission of the learned senior Counsel for the Petitioners is bereft of merit.

7. In so far as Rule 37 of General Rule Civil is concerned, the contention of the learned Counsel for the Petitioner is patently misconceived. The relief which was sought and which was allowed in the year 2001 was only against the Defendant Nos. 1 and 2 and that no amendment was sought against Defendant Nos. 3 and 4. Consequently, the amendment application against the Defendant Nos. 3 and 4 was done in accordance with the provision of Order VI, Rule 17 of the Code of Civil Procedure

8. In view of the aforesaid, this Court does not find any error in the impugned order. The writ petition fails and is dismissed.

9. The Court finds that the suit is of the year 1993. Consequently, direction is issued to the trial Court to decide the suit positively within one year and proceed with the case on day-to-day basis.