
(2010) 05 AHC CK 0093
In the Allahabad High Court
Case No : Second Appeal No. 547 of 2010

Jai Nath (Since Deceased) and Others	APPELLANT
Vs	
Girija Shankar and Others	RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Specific Relief Act, 1963 — Section 20

Citation : (2010) 05 AHC CK 0093

Hon'ble Judges : Rakesh Tiwari, J

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the appellants and perused the record.

2. This second appeal has been filed challenging the validity and correctness of the judgment and decree dated 18.2.2010 passed by the Additional District Judge, Court No.6, Allahabad in Civil Appeal No. 96 of 1998 arising out of the judgment and decree dated 25.4.1998 passed by the Additional Civil Judge, (Junior Division), Court No.1, Allahabad in Original Suit No. 17 of 1985, Jai Nath Mishra ver*sus Chauharja and others.

3. The appellants in this second appeal filed Original Suit No. 17 of 1985 for specific performance of agreement to sell against respondent no.1 Chauharja.

4. The suit was filed claiming that respondent Chauharja was an agriculturist and owner of the property in dispute which was in his possession. There was an old litigation going on regarding the land in dispute between defendant Chauharja and Kashi Prasad and others resident of village Naripur, District Jaunpur since long. The dispute between defendant Chauharja and Kashi Prasad and others was pending in the High Court since 1976, and the defendant had taken loan for meeting the expenses in the High Court, hence he decided to sell the land in order to pay the loan. In the circumstances, the plaintiff had purchased the land for a sum of Rs.15,000/ and on 13.6.1976 a sum of Rs. 12,000/ was paid as advance for execution of the agreement to sell on the condition that if the case pending in the High Court was decided in favour of the defendant he shall seek

necessary permission from the Consolidation Officer and inform the plaintiff for execution of a registered sale deed for which he shall be paid balance of Rs.3,000/ by the plaintiff. The case pending in the High Court in respect of the land in dispute was decided in favour of respondent Chauharja and against Kashi Prasad on 22.1.1981.

5. According to the learned counsel for the plaintiff, inspite of having won the case from the High Court, defendant Chauharja was avoiding to execute the agreement to sell as he neither took permission from the Consolidation Officer, Allahabad nor gave any written information to the plaintiff showing willingness of execution of registered sale deed in favour of the plaintiff. It is also stated that many a times the plaintiff informed the defendant to execute the registered sale deed in his favour and also sent registered notices dated 18.10.1984 and 18.12.1984 under certificate of posting and registered post respectively for execution of the registered sale deed but no action was taken by the defendant on his notices. It is also stated that the plaintiff was always ready and willing to perform his part of agreement but the respondent was avoiding to execute the same due to malafide intention and cause of action arose on 13.6.1976 when the respondent had entered into an agreement to sell by taking Rs.12,000/ as advance from total consideration of Rs.15,000/.

6. The trial Court on the basis of the pleadings of the parties framed following issues.

1. Whether the defendant no.1 agreed to sell the disputed land to the plaintiff for Rs.15,000/ on 13.6.1976 and executed the deed of agreement on the same day, if so its effect ?

2. Whether the defendant no.1 received Rs.12,000/ as earnest money in view of agreement, if so its effect ?

3. Whether the defendant no.2 has knowledge about agreement deed dated 13.6.1976 ?

4. Whether the defendant no.2 is bonafide purchaser for value without notice ?

5. To what relief, if any, is the plaintiff entitled ?

7. The trial Court after considering the entire evidence on record decreed the suit of the plaintiff with cost vide judgment and decree dated 25.4.98 directing the respondent to execute the sale deed in favour of the plaintiff after taking permission for sale from the Settlement Officer within 3 months otherwise the plaintiff would be entitled to get the decree executed in accordance with law. The operative portion of the judgment and decree dated 25.4.1998 of the trial Court is as under:

8. Aggrieved by the aforesaid judgment and decree dated 25.4.1998 of the trial Court, defendants respondent filed Civil Appeal No. 96 of 1998, Girija Shankar and others ver*sus Jai Nath Mishra (since deceased) and others before the first

appellate Court, which also concurred with the view taken by the trial Court on all the issues except issue no.4 holding that though Sri Amrit Lal, defendant no.2 was a bonafide purchaser of the land by virtue of the provisions contained in Section 22 of the Specific Relief Act, the suit for specific performance of agreement to sell can not be decreed. The first appellate Court further ordered for refund of the earnest money with 6% simple interest.

9. The findings recorded by the first appellate Court on issue no.4 have been assailed in this second appeal on the ground that they are perverse and not based on cogent evidence. It is stated that though the first appellate Court has held Sri Amrit Lal to be bonafide purchaser for the value but since the saled deed in question does not contain a recital that there is already an agreement to sell between Jai Nath plaintiff and Chauharja (since deceased) defendant, hence the recital made therein between Chauharja and Amrit Lal is not binding upon the plaintiff and could not have been used against the plaintiffs appellant.

10. It is assailed on the ground that since the agreement to sell dated 13.6.1976 entered into between Jainath plaintiff and Chauharja defendant was under consolidation operation in the village, no tenure holder could transfer the land except by permission in writing by the Settlement Officer of Consolidation as provided under Section 5 (1)(c)(ii) of the U.P. Consolidation of Holdings Act but he did not do so and by ignoring the agreement to sell, he executed a saled deed in favour of Amar Nath. The rigour of Section 5(1)(c) (ii) of the U.P. Consolidation of Holdings Act was applicable which was amended vide U.P. Act No. 30 of 1991 w.e.f. 19.2.1991 whereby clause (c)(ii) of Section 5 has been omitted as such the said amendment brought during the pendency of the suit will not disentitle the plaintiffs appellants to file suit for specific performance of the contract and in the circumstances, the first appellate Court has misread, misinterpreted and misapplied the amendment.

11. It is then submitted that in the facts and circumstances of the case Amrit Lal was not bonafide purchaser of the land in dispute which aspect was considered by the trial Court but not by the first appellate Court and that the saled deed executed in favour of Amrit Lal is itself void, as such the first appellate Court has committed error in law by not dismissing the appeal and decreeing the suit.

12. It is lastly submitted that court has not acted in accordance with the provisions of Section 20 of the Specific Relief Act. The first appellate Court having concurred with the findings recorded by the trial Court and saled deed in favour of Amrit Lal being void itself, the suit for specific performance must have been decreed.

13. The plaintiff had prayed in the instant suit for a direction to the respondent to execute the saled deed within a time bound frame after taking permission from the Settlement Officer, Consolidation and taking balance amount of Rs.3,000/ towards sale consideration for execution of a registered saled deed. He had also prayed for the decree of the suit with cost against the defendant as well as for

any other reliefs which the Court may deem fit and proper in the facts and circumstances of the case.

14. The first appellate Court though concurred with the findings of the trial Court, has allowed the third relief of return of the amount of Rs.12,000/ of advance payment with 6% simple interest on it which was prayed by the plaintiff in the alternate instead of allowing the first relief prayed by him for directing the defendant to execute the saledeed for specific performance of the contract or agreement to sell. Therefore, the contention of the learned counsel for the appellants that the first appellate Court has committed an illegality in the eye of law has no force as the first appellate Court has only granted the alternate relief prayed by him instead of first relief.

15. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction of the Court to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

16. Emphasis has been laid by Sri R.C. Singh, learned counsel for the appellants upon subclause (2) of Section 20 of the Specific Relief Act, which provides three cases in which the Court may properly exercise discretion not to decree specific performance, which are as under:

?(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its nonperformance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation I Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation II The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b), shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in

any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.?

17. Since the jurisdiction of the court below for issuing a decree for specific performance is discretionary, it has to be judicious. The first appellate Court, in my considered view was not bound to grant relief merely because it was lawful to do so and its discretion was based on sound and reasonable principle.

18. In the instant case, the plaintiff had himself prayed for an alternative relief in the suit which was granted by the first appellate court in the peculiar facts and circumstances of the case, hence it can not be said that the view taken by the first appellate court was not judicious and unreasonable or was based on unsound principle of law. In fact, Section 20 of the Specific Relief Act, 1963 itself provides that the first appellate Court is capable of correction of the decree passed by it and it should be guided by the judicial principle.

19. For all the reasons stated above, in my considered opinion, no substantial question of law arises in this second appeal in the facts and circumstances of this case. The second appeal is accordingly, dismissed.

(Appeal dismissed)