
(2002) 09 JH CK 0033
In the Jharkhand High Court
Case No : LPA No. 511 of 1999 (R)

Rajasthan Bhawan Trust

APPELLANT

Vs

Most. Pradlya Devi and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : (2003) 2 CCC 98 : (2003) 1 JCR 486

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Debi Prasad and L.K. Lal, for the Appellant; P.P.N. Roy, D.K. Prasad, Praveen Kumar, R.P. Singh and S. Khanna, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal by the defendant appellant under Clause 10 of the Letters" Patent directed against the judgment dated 13.10.1999 passed by the learned Single Judge whereby the appeal filed by the appellant against the judgment and decree passed in Title Suit No. 36/74 has been dismissed.

2. The plaintiffs-respondents 1 and 2 filed the aforementioned Title Suit No. 36/74 for a declaration that the sale deed dated 19.4.1981 with respect to 24 and 3/4 decimals of land out of plot No. 21/68 and 21/1769 situated at village Chandwa, P.S. Chandwa, district-Palamau executed by defendant No. 1 in favour of defendant No. 2 is illegal, void, inoperative and without jurisdiction.

3. The plaintiffs case, is brief, is that one Balmukund Nath Shahdeo, father of the plaintiffs and defendant No. 1 acquired the aforementioned plot by means of three registered sale deeds and after purchase, the father of the plaintiffs demolished the kacha house and constructed pucca building thereon. The said property was allotted by Balmukund Nath Shahdeo to his three sons, namely, the plaintiffs and defendant No. 1 who came in possession of the same having 1/3rd shares each in the said property. It is stated that the plaintiffs-defendant No. 1

started feeling difficulty in the joint enjoyment of the property and, as such, they decided that if any of them becomes ready to purchase the shares of the remaining brothers, if offered to them the same shall be done. Accordingly defendant No. 1 offered to purchase the shares of the plaintiffs and the latter agreed to the said proposal and, accordingly, sale deed was executed on 12.12.1961 for 2/3rd share of the plaintiffs in favour of the appellant-defendant. However, on the same day a separate agreement was executed by and in between the parties wherein it was agreed that in case defendant No. 1 decides to sell the property in question he will be bound under the agreement to offer the property to the plaintiffs first for purchase and only when the plaintiffs either jointly or severally declined the purchase the property, the defendant No. 1 would be at liberty to sell the same to any person. Plaintiffs case is that in breach of the terms of the agreement the defendant No. 1 all of a sudden sold the property to defendant No. 2 by a registered sale deed dated 19.4.1971 without offering the property to the plaintiffs for purchase. Further case of the plaintiffs is that in order to bring the registration within the jurisdiction of Ranchi Sub-Registration Office the defendant No. 2 made a showy sale of 0.10 acres of land of village Mesra. Ranchi to defendant No. 1 by means of a registered sale deed dated 16.4.1971. Just after three days the defendant No. 2 on 19.4.1971 got the sale deed registered by defendant No. 1 for the suit property. The plaintiffs therefore, sought declaration that the sale deed dated 19.4.1979 is illegal void and without jurisdiction.

4. Defendant No. 2 contested the suit by filing written statement starting inter alia that the suit is barred u/s 34 of the Specific Relief Act. Defendant's case is that before purchasing the suit property it was offered to the plaintiffs by sending registered notice which was refused by them.

5. The trial Court decreed the suit in part. The trial Court held that since the plaintiffs did not seek relief for specific performance of the contract and only a declaratory relief was sought for the suit was decreed in part.

6. Aggrieved by the said judgment and decree of the trial Court the defendant-appellant filed First Appeal No. 112/85. The learned Single Judge after reappraisal of the evidence and after hearing the parties dismissed the said appeal and affirmed the judgment and decree passed by the trial Court.

7. Mr. Debi Prasad learned Sr. Counsel appearing on behalf of the defendant-appellant assailed the impugned judgment as being illegal and contrary to facts and evidence on record. Learned counsel submitted that the suit itself for mere declaration is barred u/s 34 of the Specific Relief Act inasmuch as the only remedy available to the plaintiffs was to file a suit for specific performance of the agreement. Learned counsel submitted that there is no illegality in the registration of the sale deed at Ranchi when admittedly the land situated at village- Mesra was included the sale deed and so Ranchi Registration Office has got jurisdiction for registration of the said document. Learned counsel further submitted that the plaintiffs had full knowledge about the transaction between

defendant Nos. 1 and 2 as they were duly informed through registered notice but in fact they were not ready to purchase the property.

8. On perusal of the trial Court judgment it appears that the trial Court framed the following issues for consideration.

(i) Is the suit, as framed, maintainable.

(ii) Have the plaintiffs got any cause of action for the suit.

(iii) Is the suit barred by estoppel, waiver and acquiescence.

(iv) Is the sale deed dated 19.4.1971 executed by defendant No. 1 in favour of defendant No. 2 illegal, void without jurisdiction and bad in the eye of law in view of the terms and conditions of the registered agreement dated 16.12.1961.

(v) Has any fraud been practiced on the law of registration while executing sale deed dated 19.4.1971.

(vi) To what relief of reliefs, if any, the plaintiff is entitled.

9. The trial Court answered issue Nos. 1, 2, 3 and 6 in paragraph 22 of the judgment. Paragraph 22 of the trial Court judgment reads as under :

"Issues No. 1, 2, 3 and 6 although the contesting defendant had raised the formal objections regarding the maintainability of the suit on the ground of estoppel, waiver and acquiescence but the learned Advocate for the contesting defendant has not pressed these objections during the course of his argument.

Therefore, I hold that the suit is neither barred by estoppel, nor by waiver and acquiescence, the learned Advocate for the defendants has not also pointed out any defect, during the course of his argument, regarding the maintainability of the suit nor do I find any such defect in the same. Therefore, I hold that the suit, as framed, is very much maintainable. The plaintiffs have also prayed for a declaration that they are the only persons to purchase the suit house and to get a sale deed executed in their favour for the property in question and accordingly defendant No. 1 or defendant No. 2 also be directed to executed severally or jointly sale deed for the said house in their favour. It may be mentioned here that the plaintiffs have filed a simple declaratory suit after paying a fixed court fee amounting to Rs. 45/- only but now they have prayed for the second relief which is only possible to be granted in a case of specific performance of contract. But evidently, the plaintiffs have not filed any such suit against the defendants nor the present suit, as framed, can be treated as one under the Specific Relief Act. Therefore, the second relief, as prayed for the plaintiffs can not be granted in the instant suit."

10. From the findings recorded by the trial Court it is clear that the plaintiffs instituted the suit seeking only a declaratory relief after paying a fixed court fee. The trial Court declined the prayer of the plaintiffs for the second relief for specific performance holding that it could be granted only in a suit for specific

performance of contract. The question, therefore, that arises for consideration is whether in the facts of the present case a suit for mere declaration is hit by Section 34 of the Specific Relief Act. Section 34 of the Specific Relief Act reads as under :

"Discretion of Court as to declaration of status or right.--Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of the title, omits to do so."

11. From bare perusal of the provision of Section 34 of the Specific Relief Act, and its proviso it is manifest that any person entitled to a legal character or any right in a property, may institute a suit against any person denying, or interested to deny his title to such character or right, and the court may in its discretion, make a declaration that he is so entitled. The proviso to this section says that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. The emphasis is on the words "further relief which means a relief which is inherent in the original declaration claimed, a relief without which a declaratory relief claimed would be ineffective, infructuous and unworkable.

12. In the instant case, as noticed above, the plaintiffs sold the suit property to the defendant No. 1 purchaser by a registered deed of sale dated 12.12.1961 and on the same day a separate agreement was executed by and between the plaintiffs and defendant No. 1 whereby it was agreed that in case defendant No. 1 decides to sell the property, he will be bound under the agreement to offer the property to the plaintiffs first for purchase and only on refusal of the plaintiffs the defendant No. 1 would be at liberty to sell the same to any person. The plaintiffs' case is that in breach of the terms of agreement defendant No. 1 all of a sudden sold the property to defendant No. 2 by registered deed of sale dated 19.4.1971 without offering the property to the plaintiffs for purchase. The plaintiffs, therefore, claim that in terms of the agreement they are entitled to purchase the property from defendant No. 1 who illegally sold it to defendant No. 2. The relief, therefore, available to the plaintiff was to seek a decree directing the defendant No. 1 along with defendant No. 2 to transfer the suit property in their favour in terms of the agreement. A mere declaration to the effect that the sale deed executed by defendant No. 1 in favour of defendant No. 2 is null and void is of no effect unless a decree for specific performance is sought for in the said suit. Such a declaratory relief without seeking the main relief, in my opinion, is ineffective, infructuous and is hit by the provisions of Section 34 of the Specific Relief Act. The trial Court rightly held that the second relief for specific performance cannot be granted in the suit as the suit was not framed as one under the Specific Relief Act.

13. From perusal of the judgment of the learned single Judge it appears that this aspect of the matter with regard to maintainability of the suit has neither been discussed nor any finding has been recorded in the judgment. Consistent case of the defendants was that the suit was barred under the proviso to Section 34 of the Specific Relief Act. Admittedly the plaintiffs only sought a declaration to the effect that the sale deed dated 19.4.1971 executed by defendant No. 1 in favour of defendant No. 2 is illegal, void and without jurisdiction. No further relief for recovery of possession or for a decree directing the defendants to transfer the property in their favour was sought for which was admittedly available to the plaintiffs at the time to institution of the suit. In my considered opinion, therefore, the suit instituted by the plaintiff-respondents is barred by the provision of Section 34 of the Specific Relief Act.

14. For the reasons aforesaid this appeal is allowed and the impugned judgment passed by the trial Court and the learned Single Judge are set aside. Consequently the suit is dismissed as not maintainable.

Hari Shanker Pd.

15. I agree.