
(2012) 05 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil First Appeal No. 122 of 2012

Rajesh Kumar Yadav

APPELLANT

Vs

Kamal Nayan Sharma

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2012) 2 WLN 608

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Sanjay Sharma, for the Appellant; Ashok Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present appeal is directed against the judgment and decree dt. 5.1.12 passed by the Addl. District Judge (Fast Track) No. 3, Jaipur Mahanagar, Jaipur (hereinafter referred to as "the trial court") in Civil Suit No. 45/10, whereby the trial Court has dismissed the suit of the appellant-plaintiff. The appellant-plaintiff filed the suit against the respondent-defendant before the trial Court seeking specific performance of the agreement dt. 02.06.2005 allegedly executed by the respondent in favour of the appellant in respect of the land in question and for permanent injunction. The said suit has been dismissed by the trial Court after appreciating the evidence on record. Being aggrieved by the same, the present appeal has been filed under Sec. 96 of CPC.

2. It has been sought to be submitted by the learned counsel Mr. Sanjay Sharma for the appellant that the trial Court had mis-appreciated the evidence on record and in not appreciating the fact that in the reply given by the respondent-defendant to the notice given by the appellant-plaintiff, the execution of the agreement in question was admitted by the respondent. It was further submitted that the appellant-plaintiff was ready and willing to perform his part of contract and had also sent a notice to the respondent prior to filing of the suit and there was also no delay on the part of the appellant to file the suit in question for

specific performance of the said agreement.

3. However, the learned counsel Mr. Ashok Dubey for the respondent relying upon the copy of the agreement in question submitted that no such agreement was ever executed in favour of the present appellant. He further submitted that in the reply to the notice given by the appellant also, the respondent had stated that Rs. 5,000/- was received by him from Ramkripal Meena and not from the present appellant. According to him the said agreement was neither registered nor properly stamped and, therefore, the trial Court has rightly not treated the same as admissible in evidence and dismissed the suit.

4. Having regard to the submissions made by the learned counsels for the parties and to the impugned judgment passed by the trial Court, it clearly transpires that the agreement allegedly executed by the respondent-defendant on 02.06.2005 was on the simple piece of paper. There is nothing to suggest that the said agreement was executed in favour of the appellant-plaintiff. It runs into hardly four-five sentences. It is true that the learned counsel for the appellant had served the notice to the respondent-defendant prior to the filing of the suit and the respondent-defendant had given reply to the same. However, merely because his presence was mentioned alongwith Ramkripal Meena, who had paid Rs. 5,000/- to the respondent-defendant on 02.06.2005 on which date the agreement to sell was allegedly executed by the respondent, it could not be said that there was an agreement to sell the land in question in favour of the present appellant-plaintiff. In absence of any agreement between the parties, as such the suit for specific performance for agreement could not be maintainable. It is further pertinent to note that the so-called agreement was neither registered nor properly stamped and the trial Court has rightly not treated it to be admissible in evidence. The trial Court having properly appreciated the evidence on record and dismissed the suit, this Court does not find any illegality and perversity in the said judgment passed by the trial Court. In that view of the matter, there being no substance in the appeal, the same deserves to be dismissed and is accordingly dismissed.