

(2018) 09 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1852 of 2018
Rohtash @APPELLANT@Hash Ramkishan

Date of Decision : 13-09-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2018) 09 RAJ CK 0033

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Suresh Shrimali, G.R. Bhari

Final Decision : Dismissed

Judgement

This appeal is directed against the order dated 21.06.2018 passed by the Additional District Judge No.2, Nohar, District Hanumangarh, whereby the application filed by the appellant under Order XXXIX, Rule 1 & 2 CPC has been rejected.

The appellant filed a suit for specific performance of an agreement dated 18.03.2015 in respect of agriculture land situated at Chak 2, RMS, Parlika. It was inter-alia claimed that the land in question is in khatedari of defendant, for which agreement for a consideration of Rs.15 lacs was executed and a sum of Rs.11 lacs was received by the defendant from the plaintiff and the possession of the land in question was handed over to the plaintiff, balance amount of Rs.4 lacs was agreed to be paid at the time of execution of the sale deed.

It was contended by the plaintiff that he approached the defendant to get the sale deed executed but defendant though assured that he was prepared to execute the sale deed, but on the pretext of family dispute sought time for doing the needful.

It was further averred that in May, 2016, a criminal case regarding murder of defendant's wife was registered, whereafter it was claimed that

after the case would be decided, the defendant would do the needful. It was then contended that on 02.05.2018, the plaintiff met defendant in Sub-Jail,

Nohar where he was in detention since 12.05.2016, he refused to execute the sale deed; it was indicated as the cause for seeking specific

performance and relief for permanent injunction was also sought.Â Â

Alongwith the suit, an application under Order XXXIX, Rule 1 & 2 CPC was filed seeking temporary injunction against the defendant from executing

the sale deed in favour of any one else and not to raise loans on the agriculture land and also sought restraint against interference in his possession.

The defendant filed his response, resisted the case of the plaintiff and denied the execution for the agreement to sale and claimed that before the

defendant was detained, he had given 1/2 share of the land to one Shyolal & his son and that on 30.05.2018, he had submitted an application before

the Court of Additional District Judge No.1 for authorising one Praveen Kumar to protect his agriculture land.

The plea was also raised that as the defendant had necessity of some money and when he sought help from the plaintiff, an affidavit was sought from

the defendant, which was given on a stamp of Rs.10/-.

Submissions were also made that 1/2 share of the land was sold to Keshrichand for fulfilling the requirements of money and when the stamp paper

was sought back, the same has been misused.

The trial court, after hearing the parties, came to the conclusion that though the defendant has accepted his signatures on the agreement, however, the

affidavits of the witnesses to the agreement were not produced and therefore, the validity of the same would be required to be determined by the

Court. It was further observed that though plea of possession has been raised by the plaintiff, no clear facts in this regard have been averred and an

application seeking protection of the land was also moved before the trial court, wherein one Praveen Kumar was authorised to do the same, prima

facie the plaintiff was not in possession of the land in question and therefore, there was no prima facie case in favour of the plaintiff.

The issues pertaining to balance of convenience and irreparable loss were also held against the plaintiff and the application was rejected.

It is submitted by learned counsel for the appellant that the trial court committed error in rejecting the application filed by the appellant. It was

submitted that the defendant has admitted his signatures on the agreement and has taken a false plea regarding executing the said document as an

affidavit for obtaining loan from the plaintiff. It was submitted that the plaintiff is in possession of the land in question pursuant to the agreement and

that merely because the document has been executed on a stamp of Rs.10/-, it could not be said that the document was not executed at all.

Further submissions were made that the defendant has taken a false plea regarding the Court of Additional District Judge authorising Praveen Kumar

to look-after the land in question, which fact is fortified from the order dated 13.07.2018 passed by the said Court when the plaintiff filed application in

this regard, wherein the Court has observed that the said order was passed only permitting the defendant to give authority to Praveen Kumar and that

same had nothing to do with the sanction of the Court authorising Praveen Kumar and therefore, the trial court fell in error in coming to the conclusion

that there was a dispute pertaining to the possession of the land.

Submissions were also made that the plaintiff had made specific averments pertaining to the possession, which aspect could not be denied by the

respondent, however, several conflicting pleas in this regard were taken regarding handing over the land for agriculture operations to other persons

and disputes being raised with them and therefore, the entire conduct of the defendant being shady, the trial court could not have rely on the plea taken

in this regard and therefore, the order impugned deserves to be quashed and set-aside and the application filed by the appellant deserves to be

accepted.

Learned counsel appearing for the respondent vehemently opposed the submissions.

It was submitted that a bare look at the agreement would reveal that the same is a concocted document, inasmuch as, the signatures of the defendant

appear after the signatures of the so-called witnesses. The stamp paper admittedly was purchased for execution of an affidavit and therefore, it is

apparent that the stamp paper which was purchased and got signed for execution of the affidavit has been misused for indicating an agreement

pertaining to the sale of land in question and therefore, no relief could be

granted based on the said document. It was submitted that the allegations made by the plaintiff regarding the alleged denial of the defendant in executing the document and showing the same as cause of action is ex-facie false, inasmuch as, the defendant admittedly is in jail since 12.05.2016 and the plaintiff has not visited the defendant even once and therefore, there was no question of any cause of action having arisen to the plaintiff in this regard. Further submissions were made that the plea regarding the plaintiff being in possession of the land in question is also baseless and incorrect as the plaintiff failed to place on record any document or material in this regard. Factually, the land continues to be in possession of the defendant through the persons who have been authorised to undertake agricultural operations on his behalf and therefore, the order impugned does not call for any interference.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

While the case of the plaintiff is that the agreement to sale was executed by the defendant on 18.03.2015 pertaining to the land in question, the defendant though has admitted his signatures, has specifically taken a plea that the signatures were put on a blank stamp paper purchased for the execution of an affidavit as he was in requirement of certain funds from the plaintiff, which has been misused for executing the agreement.

Learned counsel for the petitioner has placed a copy of the agreement for perusal of the Court.

Both the learned counsels as noticed herein-before made submissions on the validity of the document itself.

Whenever, a plea is raised regarding the misuse of a particular document, anti-dating or post-dating of a document and/or a bald denial regarding execution of the document, there are several features, which are available in a document, which if noticed appropriately can through some prima facie light on the conflicting pleas taken by the parties.Â

In the present case, the document in question is a one page document dated 18.03.2015 which bears a Rs.10/- special adhesive stamp and has been issued by the Sub-Treasury, Nohar on 19.06.2014. The same has been sold by the stamp vendor on 18.03.2015 in the name of defendant Ramkishan.

The purpose though indicated, is not very explicit. The placing of the signatures

on the document are very significant wherein though the place marked for signatures of the executant as per the agreement i.e. around 10 cm above, the actual signatures of the defendant, are almost at the end of the stamp paper and under his signatures there are signatures of the plaintiff. However, the signatures of the witnesses Pramod and Banwari are all well above the signatures of the defendant and plaintiff.

The placing of the signatures from the place different than the indicated place i.e. around 10 cm, gives a prima facie impression that the

document has been transcribed on a signed stamp paper and thereafter, the signatures of the witnesses as well as the plaintiff

have been appended. The placing of the signature on the document is also significant, inasmuch as, in normal practise,

as is well known, the same is placed in the centre and at the top of the agreement whereas the same in the present case has been placed parallel

to the signature, which appears to have been done for incorporating the entire subject matter well within the same paper.

The above features, prima facie gives credence to the plea raised by the respondent that the agreement has been transcribed on a pre-signed stamp paper.

Whether the stamp paper was purchased for agreement to sale and in fact, a transaction as alleged took place between the parties, would require

evidence to be led by the parties, however, mere reliance on the document transcribed on a pre-signed stamp, does not invoke much confidence in

support of the plea raised by the plaintiff-appellant. A huge amount of Rs.11 lacs is claimed to have been paid to the defendant for which there is

apparently no separate receipt and the receipt has been indicated in the agreement itself also is uncharacteristic.

So far as the issue pertaining to the possession is concerned, except for the plea as raised in the application regarding possession, the plaintiff

apparently has not placed any material on record to support his plea pertaining to the possession of the land in question. There appears to be various

conflicting actions being taken by the plaintiff and the defendant seeking to establish their right pertaining to land in question wherein even criminal

proceedings have also been initiated by the defendant wherein though no allegations were made against the plaintiff, the police has made observations

that action against some third party was initiated for pressurizing the plaintiff.

The observations made by the trial court regarding the authorisation to Praveen Kumar to look after the land, are not of much significance.

In view of the above fact situation, wherein the agreement to sale as relied on, prima facie does not evoke much confidence and as the trial court has

found no material available on record establishing the possession of the plaintiff, it cannot be said that the trial court committed any error in rejecting

the application.Â

In view thereof, no interference is called for in the order impugned. There is no substance in the appeal, the same is, therefore, dismissed. However, it

goes without saying that the observations made herein-before have been made only for examining the prima facie case of the plaintiff and the same

shall not effect the final out-come of the suit pending before the trial court.Â Â