
(2016) 12 UK CK 0004
In the Uttarakhand High Court
Case No : Second Appeal No. 12 of 2006

Sardar Balwinder Singh

APPELLANT

Vs

Rakesh, S/o Chattar Singh

RESPONDENT

Date of Decision : 27-12-2016

Acts Referred:

Contract Act, 1872 — Section 56
Specific Relief Act, 1963 — Section 16
Transfer of Property Act, 1882 — Section 55

Citation : (2017) AIR(Uttaranchal) 18 : (2017) 121 ALR 166 : (2017) 1 ARC 938 : (2017) 135 RD 235

Hon'ble Judges : Servesesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Siddhartha Singh, Advocate, for the Appellants; Mr. M.S. Tyagi, Advocate, for the Plaintiff/Respondent No. 1

Final Decision : Allowed

Judgement

Servesesh Kumar Gupta, J. - This second appeal has been preferred challenging the concurrent judgments and orders of two lower courts. An Original Suit No. 43/1993 was instituted on 11.3.1993 by the plaintiff Rakesh against the defendant Amreek Singh seeking specific performance of a registered agreement to sell dated 4.6.1991. Such suit was decreed by the learned Trial Court on 22.2.2001, where-against the First Appeal No. 24/2001 was preferred by the defendant Amreek Singh along with a subsequent purchaser Sardar Balwinder Singh and such appeal too could not find favour in adjudication done by the Additional District Judge and it was dismissed on 14.2.2006 affirming the decree passed by the learned Trial Judge.

2. Feeling aggrieved, the subsequent purchaser Sardar Balwinder Singh preferred this second appeal. During the long pending of almost a decade, Sardar Balwinder Singh passed away. Hence, his widow and two sons were substituted and they pursued this appeal against the plaintiff Rakesh. Amreek Singh, who

was the original defendant, has been impleaded as a proforma respondent herein this second appeal, which was admitted for hearing by a coordinate Bench of this Court on the following substantial questions of law:

(i) Whether, suit for specific performance of contract can be decreed pertaining to newly allotted chak during the consolidation operation instead of the old chak pertaining to which the agreement to sale was executed by the defendant?

(ii) Whether, suit for specific performance can be decreed against subsequent bona fide purchaser, or not?

3. The whole controversy of this litigation is based on the peculiar fact that as per the terms of agreement to sell, the sale deed had to be executed on or any time before 2.6.1992, but during this period the consolidation operations took place in the area and certain other plots were proposed for allotment to Amreek Singh wherefor Aakar Patra-23 was issued. Plaintiff Rakesh did not take any initiative up to 2.6.1992, the stipulated time, asking Mr. Amreek Singh to execute the sale deed and even thereafter he kept mum for further almost nine months. So, Mr. Amreek Singh executed a sale deed on 23.2.1993 in favour of Sardar Balwinder Singh, who was none other but his real son-in-law and originally a resident of District Karnal (Haryana).

4. Soon thereafter, Rakesh came to know this fact that Amreek Singh has executed a sale deed in favour of his son-in-law on 23.2.1993 for all the plots, which were proposed to him by the consolidation authorities by way of issuing the Aakar Patra-23. So, he instituted the Original Suit on 11.3.1993 for specific performance. In the plaint, the details of the property was mentioned in two schedules. One was in Schedule "A" which entailed the property as mentioned in the agreement to sell dated 4.6.1991, and another was Schedule "B", wherein the number of plots and areas, which were proposed to Amreek Singh for allotment by way of issuing the Aakar Patra-23, were described. He made a prayer that the defendant be asked to execute the sale deed, as per the terms of agreement to sell, of all the plots/property which have been now proposed to be allotted to him after consolidation.

5. There was also one more peculiar fact pertaining to same agreement to sell that at the time of its execution on 4.6.1991, Mr. Rakesh (proposed vendor) paid Rs. 1,39,500/-, in advance, out of the total consideration of Rs. 1,49,500/-. Thus, only Rs. 10,000/- had to be paid within next one year, i.e. up to 2.6.1992. The total area of the land covered under the agreement was 7 bigha 13 biswa 6 biswansi and 23 kachwansi. This area was of the period of pre-consolidation, while after the consolidation it was increased and became 8 bigha 3 biswa and 2 biswansi, the plots numbers thereof have been narrated in Schedule "B" of the plaint.

6. Although it has been argued on behalf of the learned Counsel for the appellants that such agreement to sell, in fact, was not to be given effect to ever, and its real purpose was to secure the advance/loan taken by Amreek Singh.

Otherwise, there was no reason that out of total sale consideration of Rs. 1,49,500/-, more than 90 per cent of the same was paid by the proposed vendee Rakesh, leaving only Rs. 10,000/- to be paid later.

7. This Court is not inclined to enter deep into that aspect by analysing the evidence on factual points dealing these things, but it can be discerned. However, what is needed to adjudicate the substantial questions herein is to understand and have a look on the detailed chart, which will display the plot numbers in six columns. The first column will manifest the plot and the area thereof owned by the defendant Amreek Singh in the fasli 1385-90. The second column tells the plots as proposed to be allotted and mentioned in Aakar Patra-23. Third column adverts the plots as mentioned in agreement to sell. Fourth column reflects the plots as mentioned in sale deed dated 23.2.1993 executed in favour of Sardar Balwinder Singh. Fifth column reveals the plots mentioned in Schedule "B" of the plaint and the sixth column shows the plots as mentioned in Schedule "A" of the plaint.

I

II

III

IV

V

VI

Plots as mentioned in Khatauni Fasli 1385 to 1390 F.

Plots as proposed to be allotted mentioned in Aakar Patra-23

Plots as mentioned in agreement to sale/area dated 4.6.1991

Plots mentioned in sale deed dated 23.2.1993 executed to Balwinder Singh

Plots mentioned in Schedule "B" of the plaint

Plots as mentioned in Schedule "A" of the plaint

348/1

4-12-7

312/5

0-10-6

348

4-12-7

312/5

0-10-6
312/5
0-10-6
348/1
4-12-07
348/2
9-12-00
312/7
0-8-4
348 Min.
1-12-0
312/7
0-8-4
312/7
0-8-4
348/2
9-12-0
348/2
0-05-00
312/8
0-4-0
348 Min.
0-5-0
312/8
0-4-0
312/8
0-4-0
348/2
0-5-00
321/1

2-0-0

312/11

0-2-6

321/5

2-0-0

312/11

0-2-6

312/11

0-2-6

321/1

2-0-0

317/3

0-17-0

317/1

0-4-14

317/3

4-17-0

317/1

0-4-14

317/1

0-4-14

317/3

0-17-0

Total No. = 5

317/3

0-0-0-12

317/2

0-4-17

317/2

0-4-17

Total No. = 5

Total Area = 9-06-7

Total Area = 7-13-6-2/3

317/4

1-13-5

317/3

0-0-12

317/3

0-0-12

319

1-4-0

317/4

1-13-5

317/4

1-13-5

320/1

0-2-4

319

1-4-0

319

1-4-0

320/2

0-4-13

320/1

0-2-4

320/1

0-2-4

320/3

0-5-16

320/2

0-4-13

320/2

0-4-13

Total No. = 11

320/3

Total area = 8-3-2

320/3

0-5-16

320/3

0-5-16

320/4

0-14-0

320/4

0-14-0

320/5

0-2-4

320/5

0-2-4

318/2

0-3-0

318/1

1-0-0

347

0-13-12

318/2

0-3-0

348/2

0-3-09

347

0-13-12

321/5

0-2-0

Pukhta

348/2

0-3-9

Total No. = 18

321/5

0-2-0

Total Area = 7-3-2

Pukhta

Total No. = 19

Total Area = 8-3-2

8. It can be looked that in agreement to sell dated 4.6.1991, which was the basis of the suit, few number of plots are not exactly the same which were under the ownership of Amreek Singh. For example, Amreek Singh was the owner of plot no. 348/1 and 348/2, but in the agreement to sell it was simply 348 minzumla and 348. Similarly, he was the owner of plot number 321/1, while in agreement to sell the number was 321/5.

9. It is true that Amreek Singh executed a sale deed dated 23.2.1993, in favour of his own real son-in-law, of all those plot numbers which were proposed to be allotted to him at the end of Chakbandi, as shown in Aakar Patra- 23 and mentioned here in column II. Although the issue has been raised by the respondent that Sardar Balwinder Singh was not a bona fide purchaser and it was quite a sham transaction between father-in-law and son-in-law and the motive of the same was to save the property from executing the sale deed in favour of the plaintiff Rakesh, but this is a factual controversy, wherefor the facts have been analysed and marshalled and this Court at the stage of second appeal is not inclined to go in such controversy again. This aspect shall be discussed a little later.

10. Here, the main question which will determine the whole controversy is the finding on the first substantial question of law i.e. whether, suit for specific performance of contract can be decreed pertaining to newly allotted chak during the consolidation operation instead of old chak pertaining to which agreement to sale was executed by the defendant?

11. In this regard, learned Counsel on behalf of the appellant has relied upon two precedents of Hon"ble Apex Court rendered in Piarey Lal v. Hori Lal, AIR 1977 SC 1226, and second one was delivered in case of Smt. Baikunthi Devi and Others v.

Mahendra Nath and Another, AIR 1977 SC 1514. In Piarey Lal case, the Hon''ble Apex Court has dealt with similar controversy. Piarey Lal was the proposed vendor, while Hori Lal was the vendee. After agreement to sell, the consolidation operations took place and the number of plots was changed. When Piarey Lal refused to execute the sale deed in terms of the agreement, then suit was instituted by Hori Lal for specific performance. Piarey Lal pleaded that as new plots had been allotted as a result of the consolidation of his holding under the Act, he could not perform the agreement for sale and the contract had become void under Section 56 of the Contract Act. Hon''ble Apex Court dealt with the scope of Section 30 of the U.P. Consolidation of Holdings Act and interpreted such provision, which deals with the consequences ensuing on exchange of possession as a result of the allotment of a "chak" to the tenure-holder. Hon''ble Apex Court has observed as under:

"Clauses (a) and (b) of Section 30 of the Act provide as follows,--

"30. Consequences which shall ensue on exchange of possession.--With effect from the date on which a tenure-holder enters, or is deemed to have entered into possession of the chak allotted to him, in accordance with the provisions of this Act, the following consequences shall ensue--

(a) the rights, title, interests and liabilities--

(i) of the tenure-holder entering, or deemed to have entered, into possession, and

(ii) of the former tenure-holder of the plots comprising the chak, in their respective original holdings shall cease; and

(b) the tenure-holder entering into possession, or deemed to have entered into possession, shall have in his chak the same rights, title, interests and liabilities as he had in the original holdings together with such other benefits of irrigation from a private source, till such source exists, as the former tenure-holder of the plots comprising the chak had in regard to them."

It would thus appear that while clause (a) deals with the rights, title, interests and liabilities of the tenure-holder entering into possession of the "chak", as well as of the former tenure-holder of the plots comprising the "chak", in their respective original holdings, and provides that those rights, title, interests and liabilities shall "cease", clause (b) provides that the tenure-holder entering into possession of the "chak" shall have, in that "chak", the same rights, title, interests and liabilities "as he had in the original holdings." The expression "chak" has been defined in section 3(1-A) of the Act to mean "the parcel of land allotted to a tenure-holder on consolidation." The two clauses therefore are quite simple and clear, and do not raise any real problem of interpretation, but the question is whether there is justification for the argument, in the facts and circumstances of this case, that the expression "liabilities" would cover the liability of the seller (i.e. the defendant), under the aforesaid agreement for the

sale of his original holding ?

As is obvious, clause (a) of section 30 does not bear on the question in controversy because it only provides for the cessation of the rights, title, interests and liabilities both of the tenure-holder to whom the "chak" has been allotted, and of the former tenure-holder of the plots comprising the "chak" in their respective "original holdings".

12. It was held that the agreement for sale did not give rise to any interest "in" the original holding of the defendant as the tenure-holder. That being so, there could be no occasion for the transfer of any such liability "in" the new land or "chak" of the defendant so as to attract clause (b) of Section 30 of the Consolidation Act. In fact, what the defendant was bound to do under Section 55(1)(d) of the Transfer of Property Act was to execute a proper conveyance of "the property" which was the subject-matter of the contract for sale, and not of any other property. So when he lost that property as a result of the scheme of consolidation and his rights, title and interests ceased in that property by virtue of clause (a) of Section 30 of the Consolidation Act, the agreement for sale became void within the meaning of Section 56 of the Contract Act, and it is futile to urge that they were saved by clause (a) or clause (b) of Section 30 of the Act. Therefore, the Hon"ble Apex Court was of the view that the plaintiff-respondent's suit for specific performance of the agreement for sale was liable to dismissal, and the High Court as well as the courts below erred in taking a contrary view.

13. In Smt. Baikunthi Devi case, another precedent cited by learned Counsel for the appellants, a Constitution Bench of Hon"ble Apex Court found that the suit was decreable because substantially the same land less a tiny bit of Ac. 0-06 was allotted to the owner in the new chak after the consolidation. So in that eventuality, Hon"ble Supreme Court was of the view that there was no bar in the decree being granted. Otherwise, contract for sale of agricultural land becomes frustrated and unable to be specifically performed if substantially the land/plot numbers of the chak have been changed and it shall be deemed that previous chak of the vendor, which was subject-matter of the agreement to sell, has lost its identity and new chak has emerged.

14. Learned Counsel of the respondent has relied upon a contrary view of the Hon"ble Apex Court rendered in case of Rajeshwar v. Board of Revenue, 1995 AIR (SCW) 54. In the said case, the Hon"ble Court held that "We do not think that the change of identity of lands in the course of consolidation proceedings has any effect upon the rights of the parties. It would only be a case of substitution of one property for the other. The title in the previous property gets attached to the substituted property."

15. I think that although this view is contrary, but the view taken by the same Supreme Court in earlier two judgments (supra) and one of these was delivered by a Constitution Bench was not considered in Rajeshwar case and the ratio as

laid down in this case was specifically confined to the declaration of rights under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act and, in that perspective, it was held that the change of numbers during the course of consolidation proceedings will not have effect upon the rights of the parties.

16. It is pertinent to mention here that agreement to sell does not create or confer any right upon the proposed vendee. It is just simply an obligation of the proposed vendor. So in that sense also, the applicability of this precedent of Hon'ble Supreme Court, as laid down in Rajeshwar case, will not be suitable in the present controversy.

17. In view of what has been set forth above, I answer the first substantial question of law in favour of the appellants.

18. As regards the second substantial question of law, learned Counsel for the respondents has tried to argue that Balwinder Singh was not a bona fide purchaser for so many reasons. To buttress his argument he has relied upon the precedents rendered in (i) Zorawar Singh v. Sarwan Singh (dead) by LR., 2002 AIR (SCW) 1653, and (ii) Jugraj Singh v. Labh Singh, 1995 (1) LJR 39.

19. I think that the above aspect is not to be considered. Furthermore, even if assuming that Balwinder Singh was not a bona fide purchaser and the sale deed dated 23.2.1993 was simply a sham transaction and the land is still in the possession as well as under the de facto ownership of Amreek Singh, then also the agreement to sell, which is the basis of the suit, cannot be given effect to and it has now become frustrated under Section 56 of the Contract Act.

20. The issue of readiness and willingness has also been raised by the learned Counsel for the respondents. I think such issue is not also relevant to be discussed because it is simply a factual issue and when the legal aspect is clear, then this Court is not inclined to enter into the controversy dealing all these issues and analysing the whole evidence on such factual aspects.

21. The second substantial question of law is, accordingly, answered in favour of the appellant and against the respondents.

22. In the result, appeal is allowed. Impugned judgments and orders, passed by the Courts below, are set aside with the result the Original Suit No. 43/1993 stands dismissed. However, at the same time, I direct the appellants to return Rs. 1,39,500/-, which had been received by Amreek Singh, along with six per cent annual compound interest w.e.f. 4.6.1991 till the date of actual payment. Let the LCR be sent back.