
(2007) 08 UK CK 0022

In the Uttarakhand High Court

Case No : Second Appeal No. 1375 of 2001

Smt. Majidan and Others

APPELLANT

Vs

Ishaq (since deceased) through L.Rs. and Anr

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 100
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 5
Uttar Pradesh Reorganisation Act, 2000 — Section 35
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 155, 164

Citation : (2008) 3 UC 1520

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : M.C. Kandpal, assisted by, Preeta Bhatt, for the Appellant; M.S. Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This Second Appeal, preferred u/s 100 of the Code of Civil Procedure, 1908, is directed against the judgment and order dated 26-08-1987, passed by III Additional District Judge, Saharanpur, in Civil Appeal No. 24 of 1986, whereby the judgment and decree dated 20-01-1986, passed by the trial court (Civil Judge, Roorkee), in Original Suit No. 120 of 1970, decreeing the suit for specific performance of contract, is affirmed. (Earlier Tehsil Roorkee was part of District Saharanpur).

2. Heard learned Counsel for the parties and perused the lower court record.

3. Brief facts of the case are that Plaintiffs Ishaq and Hamid (Respondents No. 1 and 2) instituted Original Suit No. 120 of 1970, initially, against Defendant No. 1 Rahmati, for relief of injunction and later impleading other Defendants No. 2 to 9 (present Appellants / subsequent purchasers) sought relief of specific

performance of contract, executed by Smt. Rahmati (Defendant No. 1) on 21st July 1970, for sale of land in suit for Rs. 15,000/-, after accepting Rs. 9,000/- as payment of part consideration. The land in suit is situated in Village Mauja Kharenja Qutubpur and Mauja Nagla Khitab, both within the limits of Pargana Jawalapur details of which are at the foot of the plaint wherein, the plot numbers and the area are mentioned. The Plaintiffs' case is that Defendant Smt. Rahmati was required to execute the sale deed by 20-01-1971, as agreed by her, after accepting remaining Rs. 6,000/-, but instead of honouring the agreement of sale, she executed sale deed on 25-03-1971 in favour of Defendants No. 2 to 9. It is alleged in the plaint that Defendants No. 2 to 9 were fully aware of the agreement of sale between Rahmati and the Plaintiffs. It is further alleged in the plaint that the Plaintiffs were ready and willing to perform their part of contract and invited Rahmati to execute the sale deed. It is pleaded by the Plaintiffs that Defendants No. 2 to 9 are bound to honour with Defendant No. 1, to execute the sale deed in favour of the Plaintiffs in pursuance to the agreement of sale dated 21-07-1970.

4. Defendant No. 1 Smt. Rahmati filed her written statement before the trial court in which she admitted having executed agreement of sale on 21-07-1970 in respect of the land in suit. She also admitted having received part consideration of Rs. 9,000/- as pleaded by the Plaintiffs. However, in additional pleas she stated that being an old lady, she reposed her trust on her brother, who took her to Defendants No. 2 to 9 and got her thumb impression on some blank papers. In her written statement, she admitted having handed over possession of the land in suit to Plaintiffs, at the time of execution of agreement of sale.

5. But the Defendants No. 2 to 9 contested the suit and filed their written statement challenging the contents of the plaint. It is pleaded by the contesting Defendants (present Appellants) that no agreement was executed by Rahmati in favour of the Plaintiffs. It is further pleaded by them that Defendants purchased the land in March 1971, after making payment of Rs. 20,000/- to the transferor (Rahmati). It is further pleaded by the contesting Defendants / Appellants that had no knowledge of agreement of sale executed by Rahmati, in favour of the Plaintiffs.

6. On objection of the Defendants, legal guardian of Defendant No. 9 was appointed by the trial court, before proceeding further in the suit, who during the pendency of suit attained age of majority.

7. On the basis of the pleadings of the parties, following five issues were framed, by the trial court:

1. Whether the Defendant Rahmati executed an agreement of sale dated 21-07-1970 and received an amount of Rs. 9,000/- as earnest money, as alleged by the Plaintiffs ?

2. Whether the Defendants No. 2 to 9 are bonafide purchasers for consideration

and without notice, as alleged in their written statement ?

3. Whether the sale deed dated 26-03-1971 was obtained by the Defendants No. 2 to 9 by practicing fraud, as alleged in the written statement of Smt. Rahmati ?

4. Whether the Plaintiffs are in possession of the land in suit? Or, the Defendants No. 2 to 9?

5. To what relief, if any, are the Plaintiffs entitled ?

6. Whether there was any collusion between the Defendant No. 1 and the Plaintiffs, as alleged by the contesting Defendants, if so, its effect ?

7. Whether Defendant No. 1 was entitled to transfer the land to Defendants No. 2 to 9 and was the transfer hit by principle of lis pendence, as alleged by the Plaintiff ?

It appears that, initially, the suit was decreed ex-parte. However, the same was set aside under Order IX Rule 13 of the Code of Civil Procedure, and Defendants contested the suit. After recording the evidence and hearing the parties, the trial court earlier decreed the suit against which the Defendants No. 2 to 9 preferred a Civil Appeal No. 311 of 1980. Said appeal was decided by the lower appellate court, remanding the case back to the trial court, directing it to frame following additional issue:

8) Whether Plaintiffs had been ready and willing to perform their part of contract ?

Again, the trial court after recording the additional evidence and hearing the parties, decreed the suit for the third time, vide its judgment and decree dated 20-01-1986, passed in Original Suit No. 120 of 1970. By said decree the Defendants, including the Defendants No. 2 to 9, were directed to execute the sale deed in terms of agreement dated 21-07-1970. Aggrieved by said judgment and decree, Civil Appeal No. 24 of 1986 was preferred by the Defendants No. 2 to 9, and their legal representatives. After hearing the parties, said appeal was dismissed vide impugned judgment and order dated 26-08-1987, affirming the judgment and decree, passed by the trial court. Hence, this Second Appeal was filed before the Allahabad High Court, where it was admitted on 11-09-1987, on following two substantial questions of law:

1. Whether, in view of recital in sale deed that Plaintiff had delivered possession of the property, the same required registration and, consequently, was it hit by provisions of Section 154 and 155 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ?

2. Whether, in view of the fact that the right in an immovable property was created by virtue of an agreement of sale, the document was required to be registered and the view contrary taken by the courts below, is untenabl ?

This appeal is received by way of transfer to this Court from the Allahabad High

Court, u/s 35 of the U.P. Re-organization Act, 2000, for its disposal.

Answer to both the substantial questions of law:

8. There is concurrent finding of fact recorded by the trial court as well as by lower appellate court that Smt. Rahmati (Defendant No. 1) executed agreement of sale dated 21-07-1970 in favour of the Plaintiffs, agreeing to sell land in suit for Rs. 15,000/- out of which she received Rs. 9,000/- as part of consideration, at the time of execution of the agreement. There is also concurrent finding of fact recorded by the courts below that Smt. Rahmati failed to execute the sale deed, as agreed by her. There is also concurrent finding of fact of the courts below that Plaintiffs were ready and willing to perform their part of contract and getting the sale deed executed by making the payment of remaining Rs. 6,000/- to Defendant No. 1. There is also concurrent finding of fact to the effect that Defendants No. 2 to 9 were not bonafide purchasers for consideration, as they had knowledge of the agreement of sale executed by Rahmati in favour of the Plaintiffs, and also of the fact that the Plaintiffs are in possession of the land in suit.

9. Mr. M.C. Kandpal, learned Senior Counsel appearing on behalf of the Appellants drew attention of this Court to provisions of Section 154, 155 and 164 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred as the U.P. Act No 01 of 1951), and it is contended that the document dated 21-07-1970, executed by Smt. Rahmati, in favour of the Plaintiffs was not a registered document and neither it could have been read in evidence, nor a decree for its specific performance could be passed. However, learned Senior Counsel appearing for the Appellants failed to show, how in the year 1970 (i.e. prior to 01-01-1976), an agreement of sale was necessarily required to be registered. Section 17 of the Registration Act, 1908, as amended vide U.P. Act No. 57 of 1976, requires even agreement of sale of immovable property to be registered under the Registration Act. This amendment came into force w.e.f. 01-01-1976. The agreement of sale in question is of 20-01-1970 i.e. prior to 01-01-1976.

10. Learned Senior Counsel appearing on behalf of the Appellants further argued that u/s 164 of the U.P. Act No. 01 of 1951, every transfer with possession by a bhumidhar is a sale, and since, the consideration of the land in suit was Rs. 15,000/- (i.e. more than Rs. 100/-), as such, even prior to 01-01-1976, the agreement of sale was required to be registered. I am unable to agree with the learned Senior Counsel for the Appellants for the reason that the agreement of sale is not the transfer of the property. Expression "transfer of property" is defined in Section 5 of the Transfer of Property Act, 1882, which provides that "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons. The plain meaning of the "transfer of property" is transfer of interest in the property. Like transfer of interest by way of lease, transfer of interest by way of mortgage, or transfer of interest by way of sale etc.

But, by executing a mere agreement of sale, no interest in the property, as such, is transferred by the transferor to the transferee. Rather, two persons agree to be transferor or transferee on certain terms in respect of a property in which the interest would be transferred.

11. It is also submitted on behalf of the Appellants that u/s 164 of the U.P. Act No. 01 of 1951, any transfer of a holding or part thereof made by a bhumidhar by which possession is transferred to transferee, shall, notwithstanding anything contained in the document of a transfer, be deemed at all times to be a sale. On its basis, an attempt is made to argue that agreement of sale, in fact, means a sale by a bhumidhar of his agricultural land. I have examined the submission made by learned Senior Counsel for the Appellants. I see little force in the submission, for the reason that object of Section 164 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, is to protect the poor farmers from the clutches of moneylenders. What is essentially required for application of Section 164 of aforesaid Act is that the transfer or the deed must be executed by bhumidhar to secure the interest of the transferee regarding the payment of money advanced to the transferor by way of loan. In the present case, it is nobody's pleading that Smt. Rahmati took loan from the Plaintiffs or that, to secure the repayment of loan, Plaintiffs got executed agreement of sale from her.

12. Lastly, it is argued that since the possession of the land is transferred with the agreement of sale, as such, the interest in the property stood transferred. I am unable to agree with the contention advanced by learned Senior Counsel for the Appellants that delivery of possession at the time of executing the agreement of sale is a transfer of interest in the property. Similar view has been expressed by Allahabad High Court in Gulab Shankar Tiwari Vs. The Deputy Director of Consolidation and Others, and Umesh Chand and Ors. v. Board of Revenue, U.P. and Ors. reported in 2002 (93) R.D. 264.

Both the substantial questions of law are answered, accordingly, in favour of the Plaintiffs/ Respondents.

13. For the reasons as discussed above, this appeal has no force. The trial court has rightly decreed the suit for specific performance of contract against the Defendants No. 2 to 9, who entered into the shoes of the Defendant No. 1, after she executed sale deed in their favour, regarding which they could not prove to be the bonafide purchasers for consideration, without notice. The appeal is dismissed. No order as to the costs of this appeal.