(2017) 01 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No.3924 of 2010 (O&M)

Union of India — APPELLANT

Vs

Sanjeev Gupta — RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Indira Vikas Patras Rules, 1986 — Rule 7

Citation : (2017) 2 PLR 529

Hon'ble Judges : Mrs. Sneh Prashar, J.

Bench : Single Bench

Advocate : Mr. G.C. Babbar, Advocate, for the Appellants; Mr. Sunil Narang, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sneh Prashar, J.—This was Regular Second Appeal filed by appellants-defendants Union of India and others (hereinafter referred to as the "appellants") impugning the judgment and decree dated 10.06.2008 passed in Civil Suit No.128 of 19.04.2004 by learned Civil Judge (Junior Division), Chandigarh, vide which the suit for declaration, mandatory injunction and permanent injunction filed by plaintiff-respondent Sanjeev Gupta (hereinafter referred to as the "respondent") was decreed and the same was upheld by the first appellate Court vide judgment dated 20.05.2010.

2. The facts garnered from the record are as under:-

3. Respondent Sanjeev Gupta filed a suit for declaration to the effect that he is sole and absolute owner of Indira Vikas Patras (for short, "IVPs") bearing certificate No.667633, 667634, 667635, 667636, 667637, 667638 of the total face value of Rs.5,000/- each having registration No.3652 dated 14.10.1998 (maturity date 14.04.2004), certificate No.667639, 667640, 667641, 667642, 667643, 667644 of the total face value of Rs.5,000/- each having registration No.3653 dated 14.10.1998 (maturity date 14.04.2004), certificate No.667645,

667646, 667647, 667648, 667649 of the total face value of Rs.5,000/- each having registration No.3654 dated 14.10.1998 (maturity date 14.04.2004), certificate No.639029, 639030, 639031, 639032, 639033, 639034, 639035, 639036 of the total face value of Rs.5,000/- each having registration No.3672 dated 27.10.1998 (maturity date 27.04.2004) and certificate No.639037, 639038, 639039, 639040, 639041, 639042, 639043, 639044 of the total face value of Rs.5,000/- each having registration No.3673 dated 27.10.1998 (maturity date 27.04.2004), all of which were purchased by him from Post Office, Sector-14, Punjab University, Chandigarh.

4. The respondent pleaded that on 14.10.2000, while going from his father''s house in Sector 22-B, Chandigarh to his shop in Sector 22-A, Chandigarh, he lost the said IVPs along with some other documents including a registry of plot situated in village Manakpur, Pinjore-Nalagarh Road, Pinjore. He gave information about the incident to the police but they did not register either a First Information Report or a Daily Diary Report on that day. After several requests, the police registered D.D.R. No.23 dated 23.10.2000 regarding loss of the IVPs and other documents. When despite efforts, he was unable to find the IVPs, he approached Post Office Sector- 14, Chandigarh and appraised the Postmaster with regard to loss of IVPs, but he was told not to come again as the maturity date of the IVPs was 14.04.2004. As the Senior Superintendent of Post Office also refused to entertain his request, he had no option than to file the instant suit.

5. The appellants-defendants contested the suit. They filed written statement raising preliminary objections that the suit was bad for not impleading Government of India, Ministry of Finance Department as party to the suit and also for want of prior notice as envisaged under Section 80 of the Code of Civil Procedure (for short, "CPC"). The appellants denied that the respondent had purchased any IVPs. They submitted that the IVPs are issued to the person whosoever invests the amount at the counter of the Post Office and for the said purpose, no application is required to be submitted by the purchaser and, therefore, it cannot be said as to who had purchased the IVPs. In fact, the IVPs are like currency notes and the person, who is in possession of the same, is the real owner and can get the same encashed from the Post Office. The appellants denied purchase of IVPs by the respondent but admitted that the IVPs of the numbers as mentioned in the pleadings of the respondent were issued from Sector-14 Post Office, Chandigarh. They also alleged that in case the IVPs are mutilated or defaced, the bearer is entitled for replacement but in the instant case the IVPs had been lost and, therefore, neither duplicate certificate can be issued nor payment can be made to any person who is not in possession of the same as per the Indira Vikas Patras Rules, 1986 (for short, Rules'' 1986). Accordingly, they prayed for dismissal of the suit with costs.

6. On the rival contentions of the parties, following issues were framed:-

(1) Whether the plaintiff is entitled to declaration as prayed for? OPP.

(2) Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP.

(3) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.

(4) Whether no notice u/s 80 CPC was served upon the defendant, if so, its effect? OPD.

(5) Whether the suit is bad for non-joinder of necessary parties? OPD.

(6) Relief.

7. Both the parties adduced evidence in support of their rival contentions.

8. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court decreed the suit of the respondent vide impugned judgment and decree dated 10.06.2008.

9. Appellants preferred an appeal against the judgment and decree dated 10.06.2008. The respondent also filed an appeal seeking interest at th rate of 24% per annum on the due amount from the date of suit till date of realization of the amount. Both the appeals were dismissed by learned Additional District Judge, Chandigarh vide judgment and decree dated 20.05.2010.

10. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

11. The submissions made by Mr. G.C. Babbar, learned counsel representing the appellants and Mr. Sunil Narang, learned counsel representing the respondent have been heard and record perused.

12. To begin with, learned counsel for the appellants referred to Rule 5 of Rules'' 1986 which provides for purchase of a IVP (certificate) from a Post Office on payment by cash, locally executed cheque, pay order, demand draft drawn in favour of the Postmaster or by presenting a duly signed withdrawal form or cheque with the passbook for withdrawal from Post Office Saving Account standing in the credit of the purchaser at the same Post Office. It also postulates that no formal application is necessary for purchase of a certificate. Learned counsel further referred to Rule 7 according to which if a certificate is mutilated or defaced, the bearer is entitled for replacement from the Post Office of issue on payment of fee of rupee one. It also simultaneously provides that a certificate lost, stolen, mutilated, defaced or destroyed beyond recognition, will not be replaced by any Post Office. Further, learned counsel contends that Rule 8 relates to modes of encashment of a certificate and it is specifically provided in all sub clauses of Rule 8 that a certificate may be encashed by presenting it before the Post Office of issue. Likewise, Rule 9 lays down the mode of discharge of certificate and provides that a person presenting a certificate for encashment shall sign in the space provided on the back thereof in token of having received the payment and indicate thereon his name and address. Lastly, Rule 10 lays down that the Post Office shall not be responsible for any loss caused to the holder by any person obtaining possession of a certificate and fraudulently

encashing it.

13. Learned counsel asserted that while as per Rules'' 1986 particulars of a person who applies for encashment are recorded, there is no record of the person who had purchased the IVPs. The IVPs are like currency notes and the person, who is in possession of the same, is entitled to encashment of the IVPs from the Post Office which issued it. The Rules consistently provide that an IVP can be encashed only on its production. If a person does not produce the IVP, no encashment can be allowed and the Rules cannot be changed. To support his argument, learned counsel relied upon Central Government of India & Ors. v. Krishnaji Parvetsh Kulkarni, AIR 2006 Supreme Court 1744 wherein it has been held as under:-

"11. An IVP is akin to an ordinary currency notes. It bears no name of the holder. Just as a lost currency note cannot be replaced, similarly the question of replacing a lost IVP does not arise. Rule 7 (2) makes the position clear that a certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any Post Office. Similar is the position as regards the certificate which is either lost or stolen. Undisputedly, there was no challenge to the legality of the Rule 7 (2). In the absence of a challenge to the provision, any direction should not really have been given. It is fundamental that no direction which is contrary to law can be given."

14. Reliance has also been placed on the order dated 01.08.2001 passed by this Court in Regular Second Appeal No.2876 of 2001 titled ''Jagdish Chander Chawla v. Government of India and others''.

15. On the other hand, learned counsel for the respondent submits that the IVPs, particulars of which have been mentioned in Para No.2 of the plaint, were purchased by the plaintiff and their maturity date was 14.04.2004, but unfortunately he lost the same. The loss was reported to the police on which D.D.R. Ex.PW1/A was recorded by the police which was proved by PW3 Head Constable Joginder Singh. Despite search, the IVPs could not be found. It is not the case of the appellants that the IVPs, particulars of which have been detailed by the respondent, had not been sold from the counter of Post Office Sector-14, Chandigarh from where the respondent pleads that he had purchased. The suggestion given by them to the respondent was that he had sold the IVPs to some other person against consideration. Their suggestion shows that they are unable to deny that the IVPs were purchased by the respondent. PW2 Jaipal Sharma, Postal Assistant admitted that till date no person had approached the Post Office for encashment of the IVPs in question except the respondent. He also admitted that the respondent had reported loss of the IVPs to the Postmaster and an entry of his information was recorded in the issuance register Ex.D2/B. Submitting that the Government has no right to withhold the hard earned money of the respondent especially when there is no other claimant with regard to IVPs in question, learned counsel contended that the respondent is entitled to encashment of his IVPs.

16. Rule 7 which deals with replacement of Indira Vikas Patras (IVPs) reads as under:-

"Replacement of certificate:-

(1) if a certificate is mutilated or defaced, the bearer is entitled for replacement from the Post Office of issue on payment of fee of rupee one.

(2) A certificate lost, stolen, mutilated, defaced or destroyed ''beyond recognition'', will not be replaced by any Post Office.

17. According to the above provision, the Post Office is not responsible for replacement of an IVP (certificate) lost, stolen, mutilated, defaced or destroyed ''beyond recognition''. It means that the IVP, which is beyond recognition, cannot be replaced. However, in the instant case, the respondent had mentioned complete particulars i.e. numbers, value, registration number, date of issuance as well as date of maturity of each IVP which he had purchased from Post Office, Sector-14, Chandigarh, but had lost the same. It can be said that the IVPs, of which the respondent was seeking encashment, were not beyond recognition. Otherwise also, as pointed out by learned for the respondent, PW2 Jaipal Sharma, Postal Assistant admitted without any reservation that the IVPs, details of which had been given by the respondent, were issued from Post Office Sector-14, Chandigarh. It being so, neither sale of the IVPs in question had been denied by the appellants nor it was disputed that the said IVPs were sold by Post Office Sector-14, Chandigarh as alleged by the respondent. There is also no other claimant of the said IVPs.

18. The facts in hand are distinguishable from the facts of Central Government of India v. Krishnaji Parvetesh Kulkarni''s case (supra) and Jagdish Chander Chawla v. Government of India and others'' case (supra) as in the instant case complete particulars of the IVPs claimed to be purchased by the respondent had been mentioned. There may not be record of the purchaser of the IVPs in the Post Office but the particulars given by the respondent and admission of the appellants that till date no other person except the respondent has approached the Post Office for encashment of the said IVPs, do indicate that the respondent was the actual purchaser of the IVPs.

19. In any case, learned trial Court while granting relief had directed the respondent to give bank guarantee so as to rule out any cheating or loss to the department. That condition was not disturbed by learned first appellate Court also. Accordingly, the respondent is directed to comply with the said condition on which only the appellants shall allow encashment of the IVPs.

20. Thus, there being no merit in the appeal, it is hereby dismissed.

21. Since the main appeal itself has been dismissed, all the miscellaneous applications stand disposed of accordingly.