

Darshan Singh Vs. Maya Ram

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Court : Himachal Pradesh

Decided On : Oct-04-2012

Judge : Rajiv Sharma

Appeal No. : R.S.A.No. 398 of 2002

Appellant : Darshan Singh

Respondent : Maya Ram

Judgement :

Rajiv Sharma, J.

This Regular Second Appeal is directed against the judgment and decree, dated 27.05.2002, passed by the learned Additional District Judge, Sirmaur District at Nahan, H.P. in Civil Appeal No. 2-N/13 of 2002.

2. Material facts necessary for adjudication of this appeal are that the appellant-plaintiff (hereinafter referred to as the plaintiff for the sake of convenience) has filed a suit for specific performance and injunction against the respondent defendant (hereinafter referred to as the defendant for the sake of convenience). According to the plaint, the defendant owned land comprised in Khasra No. 743/2/134, measuring 4 biswas, situated in Mauza Devi Nagar, Tehsil Paonta Sahib, District Sirmaur, H.P. alongwith an old dilapidated house. On 15.10.1999, the defendant executed an agreement for sale of the land alongwith the house for a consideration of Rs.1,65,000/-. The document was executed in the presence of

witnesses. The defendant received a sum of Rs.25,000/- as earnest money. The sale deed was agreed to be executed on 15.12.1999 on receipt of balance amount of Rs.1,40,000/-. The plaintiff requested the defendant to get the sale deed registered on receipt of balance consideration, but the defendant delayed the matter. The plaintiff was ready and willing to perform his part of the agreement. Plaintiff remained present in the office of Sub-Registrar on 15.12.1999, but the defendant did not turn up. A legal notice was issued to the defendant on 16.12.1999 requiring him to execute the sale deed and to receive the remaining amount. However, the defendant did not execute any sale deed. The cause of action accrued to the plaintiff on 15.10.1999 and 15.12.1999.

3. The suit was contested by the defendant. According to the defendant, the plaintiff alongwith other members started destroying the crops raised by the defendant. According to the defendant, the suit land adjoins the Gurudwara Kirpalshila, Paonta Sahib and plaintiff was also the member of the Gurdudwara Management Committee alongwith Baldev Singh and Harbhajan Singh. The matter was reported to the police, but the police did not take any action. His signatures were procured and he was not in sound disposing mind.

4. The issues were framed by the learned trial Court on 28.10.2000. The suit was dismissed by the learned Sub Judge 1st Class, Court No. 1, Paonta Sahib, District Sirmaur, H.P. on 13.11.2001. The plaintiff preferred an appeal before the learned Additional District Judge, Sirmaur, District at Nahan, H.P. The same was dismissed on 27.05.2002. Hence, this Regular Second Appeal.

5. This Regular Second Appeal was admitted on the following substantial questions law on 09.01.2003:

Whether the two courts below have erred in coming to the conclusion that the suit filed by the plaintiff/appellant was pre-mature?

6. Mr. Rajnish K. Lall, learned vice counsel for the plaintiff has strenuously argued that the finding recorded by both the Courts below that the suit was pre-mature is contrary to law. He also argued that the entire mortgaged amount has been paid by the defendant to the H.P. Khadi Board Industry.

7. Mr. N.K. Thakur, learned Senior Advocate for the respondent has supported the judgments and decrees passed by both the Court below.

8. I have heard the learned counsel for the parties and gone through the pleadings carefully.

9. Plaintiff has appeared as PW-1. He has deposed that defendant executed an agreement for sale of the land for a sum of Rs.1,65,000/- on 15.10.1999. The defendant received a sum of Rs.25,000/- as earnest money. According to him, the document was executed before Shri A.K. Sareen, Notary. It was witnessed by witnesses Sukh Ram, Oswal and Onkar Singh Chauhan. The agreement is Ex. PW-1/A. According to him, the defendant did not execute the sale deed and thereafter a notice was also served upon the defendant. However, no reply was received from the defendant. He was ready and willing to make the balance payment. He also admitted that he was member of the Management Committee of Gurudwara Kirpalshila. He denied the suggestion that the defendant was forced by the police to sign the document.

10. PW-2, Shiv Singh Oswal has testified that when defendant executed the agreement Ex. PW-1/A, he received a sum of Rs.25,000/-. He has identified his signatures on Ex. PW-1/A. According to him, Sh. Sukh Ram and Onkar Singh were also present. He has admitted that there was a dispute between the defendant, Harbhajan Singh and Baldev Singh.

11. PW-3, A.K. Sareen has deposed that on 15.10.1999, the parties approached him for an agreement and they executed the agreement Ex. PW-1/A in his presence and he attested the same. The defendant received a sum of Rs.25,000 at the time of attestation of the document.

12. PW-4, Onkar Singh has claimed that he was present when document Ex. PW1/A was executed. PW-5, Mohd. Yaseen has deposed that on 15.10.1999, he issued stamps for the agreement and the stamps were purchased by Maya Ram.

13. Defendant, Maya Ram has appeared as DW-1. He claimed that under the garb of settlement, his signatures were obtained. According to him, he never executed

the agreement for sale in favour of the plaintiff. He further claimed that he was not in senses when the document was executed. He has admitted that document was prepared by Sareen and it was attested in the presence of Oswal, Harbhajan, Sukh Ram and Shiv Singh.

14. DW-2, Hari Chand has deposed that Sukh Ram and police lifted Maya Ram and took him to the Chambers of Sareen, Notary and his signatures were procured on a document. According to him, the defendant was not mentally fit. The signatures of Maya Ram were obtained on blank papers.

15. Learned trial Court has come to the right conclusion that the agreement was executed between the plaintiff and defendant vide Ex. PW-1/A on 15.10.1999. The suit property was under mortgage with the H.P. Khadi Board Industry before the execution of the sale deed. It was required to be redeemed. But, it was not redeemed by the defendant when the suit was filed by the plaintiff on 23.03.2000.

16. It would be apt at this stage to reproduce the relevant part of Ex. PW-1/A, which reads as under:

Whereas the first party has today received a sum of Rs.25,000/- as part payment and has agreed that after getting the rest of the consideration, the sale deed of the above land and building shall be executed and registered in favour of the second party or in favour of any other person of the choice of second party on or before 15.12.1999 and if the first party fails to execute and register the sale deed in favour of the second party or his choice on or before the prescribed period then the second party shall be entitled either to get the double of earnest money or to get the sale deed executed and registered through the competent court of law. The above land is recorded to be mortgaged with the Khadi Board Industry and the first party has agreed that he will get the above land redeemed on or before 15.12.1999 and if he fails to get the same redeemed on or before 15.12.1999, then the time of this agreement will be further extended. The legal heirs of both the parties shall be bound by this agreement.

17. It is evident from the recitals in Ex. PW-1/A, as quoted hereinabove, that the land was mortgaged with the Khadi Board Industry and the first party, i.e.,

defendant has agreed that he will get the land redeemed on or before 15.12.1999 and if he failed to get the same redeemed on or before 15.12.1999, then the time of the agreement was to be extended further. According to the jamabandi for the year 1994-95, Ex. P2, the property was encumbered with H.P. Khadi Board Industry, Shimla. The land was to be got redeemed on or before 15.12.1999 by the defendant, but he has failed to do so. The plaintiff has not undertaken to purchase the suit property with encumbrance to mortgage. The property was to be redeemed, only thereafter, the agreement could be enforced, since the encumbrance was subsisting.

18. The plaintiff has also filed an application under Order 41 Rule 27 of the Code of Civil Procedure bearing C.M.P. No. 1033 of 2002 during the pendency of this appeal. According to the plaintiff, the entire mortgaged amount has been paid by the defendant and, thus, the defendant is not bound to execute the sale deed. The plaintiff has also filed an application purportedly to be signed by the defendant along with the application preferred under Order 41 Rule 27 of the Code of Civil Procedure. It is clear that the application has been signed by one Shri Rupinder Singh and not by Maya Ram. The application was to be filed by the defendant and not by Rupinder Singh. This application is not signed. Thus, the plaintiff has not proved that it is the defendant who has got the mortgage redeemed.

19. Mr. Rajnish K. Lall, learned vice counsel for the plaintiff/appellant has also relied upon **Surinder Kumar and others Vs. Gian Chand and others**, A.I.R. 1957 SC 875. According to him, the subsequent developments can be taken into consideration. However, in the present case, it is under the cloud whether the defendant has redeemed the mortgage or somebody else has got the property redeemed, situated on Khasra No. 743/2/134, measuring 4 biswas. Both the Courts below have rightly come to the conclusion that the Civil Suit was premature, since the defendant has not redeemed the mortgage as per the contents of Ex.PW1/A. Consequently, there is no substantial question of law involved in this Regular Second Appeal.

20. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this Regular Second Appeal and the same is dismissed, so

also the pending application(s), if any. No costs.

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