

Ajit Singh Vs. Vinod Kumar and ors

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Court : Delhi

Decided On : Jan-15-2014

Judge : Badar Durrez Ahmed

Appellant : Ajit Singh

Respondent : Vinod Kumar and ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

15. 01.2014 FAO(OS) 504/2013 & CM176242013 AJIT SINGH Appellant versus VINOD KUMAR & ORS Respondents Advocates who appeared in this case: For the Appellant : Mr Rajesh Yadav, Ms Chandrani Prasad and Mr Nakul Gandhi. For the Respondents : Mr Ankit Sibbal. CORAM: HON'BLE MR. JUSTICE BADAR DURREZ AHMED HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. This appeal is directed against the order dated 01.10.2013 passed by a learned Single Judge of this court in IA No.20617/2012 in CS(OS) No.2661/2012. The said application was filed by the defendant/appellant herein under Order 7 Rule 11 CPC for rejection of the plaint filed by the respondent/plaintiff. The suit is one for specific performance and injunction.

2. By virtue of the impugned order the said application under Order 7 Rule 11 CPC was dismissed. While doing so the learned Single Judge considered the provisions of Section 17(1A) of the Registration Act, 1908 as also Section 49 thereof. This was the first point urged by the learned counsel for the appellant. The second point was with regard to the provisions of Section 33 and 35 of the Indian Stamp Act and article 23A of Schedule-1A as applicable to Delhi and as amended by the Indian Stamp (Delhi Amendment) Act, 2001.

3. Insofar as the plea regarding the provisions of the Registration Act is concerned, it had been contended by the learned counsel for the appellant/defendant that Section 17(1A) thereof clearly stipulated that, if documents containing contracts to transfer immovable property for consideration falling within Section 53A of the Transfer of Property Act, 1882, are not registered (after 2001) then, such documents shall have no effect for the purposes of Section 53A of the Transfer of Property Act, 1882. It was therefore contended by the learned counsel for the appellant that the agreement dated 05.08.2011 which is sought to be specifically enforced by the respondent/plaintiff would have no effect at all and, therefore, the suit itself cannot be maintained. However, the learned Single Judge rejected this plea by holding that Section 17(1A) of the Registration Act, 1908 would not apply to the facts and circumstances of the present case. It was held that, on the other hand, the provisions of Section 17(2)(v) would be applicable, inasmuch as the agreement to sell did not itself create any right, title or interest in the immovable property. The learned Single Judge also relied upon the provisions of Section 49 of the Registration Act, 1908 and, in particular, upon the proviso therein to hold that an unregistered document such as the agreement to sell in question which was required to be registered could be received as an evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument. In other words, the learned Single Judge was of the view that even if it were to be considered that the agreement to sell in question was to be compulsorily registered under Section 17(1A) of the Registration Act, the same could still be received as evidence of a contract in a suit for specific performance.

4. The learned counsel for the appellant conceded that even compulsorily registerable documents could be received in evidence provided they fell within the four corners of the proviso to Section 49 of the Registration Act, 1908 which reads as under:-

49. Effect of non-registration of documents required to be registered.- No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall(a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.

5. However, the learned counsel for the appellant submitted that the learned Single Judge fell in error in concluding that the sale agreement dated 05.08.2011 did not fall under Section 17(1A) but came within the purview of Section 17(2)(v) of the said Act. The learned counsel for the appellant also drew our attention to the finding recorded by the learned Single Judge in paragraph 11 of the impugned order to the effect that the plaintiff had not sought any relief based on part performance under Section 53A of the Transfer of Property Act and, that being so, Section 17(1A) of the Registration Act, 1908 was not attracted and, therefore, the agreement in question did not require registration. While we agree with the conclusion arrived at by the learned Single Judge that because of the proviso to Section 49, even the sale agreement dated 05.08.2011, which was an unregistered document, could be received as evidence of a contract in a suit for specific performance, we do not agree with the conclusion arrived at by the learned Single Judge that the said document did not fall within the purview of Section 17(1A) of the Registration Act since the relief was not based on Section 53A of the Transfer of Property Act. We may point out that Section 53A of the Transfer of Property Act, 1882 is for the benefit of a transferee. In other words, if a

document of the type mentioned in Section 53A of the Transfer of Property Act is not registered, the transferee will not be able to take benefit of the said provision of Section 53A. It, however, does not mean that such a document does not require to be compulsorily registered. We, therefore, set aside the findings of the learned Single Judge on this aspect of the matter and leave it open to be examined in the suit at an appropriate stage.

6. The second point taken by the learned counsel for the appellant was with regard to the provisions of the Indian Stamp Act and Schedule 1A as applicable to Delhi. The learned counsel for the appellant drew our attention to Sections 33 and 35 of the Indian Stamp Act and submitted that any instrument which was chargeable to duty on which the appropriate stamp is not affixed is liable to be impounded on production. The relevant provisions are as under:

33. Examination and impounding of instruments.(1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. (2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed: Provided that (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898); (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf. (3) For the purposes of this section, in cases of doubt,(a) the State Government may determine what offices shall be deemed to be public offices; and (b) the State Government may determine who shall be deemed to be persons in charge of public offices.

35. Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that (a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion; 7. (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it; (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped; (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898). (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

(underlining added) From a plain reading of Section 33 it is evident that if, inter alia, the court before which any instrument chargeable with duty is produced and such instrument, in the opinion of the court, does not appear to be duly stamped, the court shall impound the same. Furthermore, Section 35 stipulates that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having the authority to receive evidence unless the instrument is duly stamped. It was submitted by the learned counsel for the appellant that as per

article 23A of Schedule 1A as applicable in Delhi, the agreement in question required to be stamped with 90% of the duty as payable for a conveyance under article 23. The provisions of articles 23 and 23A as applicable in Delhi are set out as under: Description of Instrument Proper Stamp-duty 23. CONVEYANCE as defined by section 2(10) not being a Transfer charged or exempted under No.62. Exemption. Assignment of copyright under the Copyright Act, 1957, section 18. Three per cent of the consideration amount set forth in the instrument. Further reduced to two per cent in respect of individually/jointly held immovable property by woman/women: Provided that in cases of jointly held immovable property, the reduced rate of stamp duty shall apply only to the share(s) held by woman/women. 23A. CONVEYANCE IN THE NATURE OF PART PERFORMANCE Contracts for the transfer of immovable property in the nature of part performance in any union territory under section 53A of the Transfer of Property Act, 1882 (4 of 1882) 8. A plain reading of article 23A shows that it refers to contracts for the transfer of immovable property in the nature of part performance in any union territory under Section 53A of the Transfer of Property Act, 1882. In the present case the agreement dated 05.08.2011 purports to be on stamp paper of Rs.10/- only. The learned Single Judge while considering this aspect of the matter has dealt with it as under:

11. Now, with regard to the submissions that the agreement was not properly stamped, as per Article 23A of Schedule 1A of ISTA, I may state without hesitation that Article 23A also was not attracted inasmuch as it applies to the contracts for transfer of properties under Section 53A of the Transfer of Property Act. As noted, the plaintiffs suit is not based on the part performance under Section 53A of the T.P. Act and the agreement to sell could not be said to be conveyance in the nature of part performance as envisaged in Article 23A. As per Section 2(10) of ISTA, conveyance includes conveyance of sale and other instruments by which property, whether movable or immovable, is transferred intra-vivous and which is not otherwise specifically provided for by Schedule-I. By any interpretation, such an agreement to sell cannot be termed as conveyance as defined in Section 2(10) of ISTA. That being so, and the agreement to sell in question not creating any right, title or interest over the suit property, except that of the cause of action asking for the execution of the sale deed, Article 23A was not attracted and thus,

the provisions of Sections 33 of ISTA is not attracted. As there is no Article in Schedule-I specifically providing for agreement to sell of immovable property, it would come within the ambit of residuary clause (c) of Article 5 of Schedule 1 of ISTA, which is extended to union territory of Delhi by Delhi Amendment Act of 2001. The stamp duty as per residuary clause (c) of Article 5 thereof is Rs.50/-. The agreement to sell in question being on stamp paper of Rs.10/-, is seen to be deficient of Rs.40/-only and as per Section 35 proviso (a), the same would become admissible in evidence on payment of penalty equivalent to 10 times of the deficient portion of the stamp duty. The deficiency being of Rs.40/- only, the penalty payable comes to Rs.400/- and thus, this penalty and the deficiency of Rs.40/- i.e. Rs.440/would be payable by the plaintiff for seeking admissibility of this agreement. The plaintiff would be required to do the needful in this regard.

(underlining added) 9. It will be evident from the above extract that the learned Single Judge held that the agreement would not fall under article 23A and would fall under residuary provision of article 5(c) of Schedule 1A and would, therefore, require a stamp duty of Rs.50/-. Since, according to the learned Single Judge, the agreement was on a stamp paper of Rs.10/- only, it was held that it was deficient by Rs.40/- and, consequently, by virtue of Section 35 the same could only be admissible in evidence on payment of penalty equal to ten times of the deficient portion of the stamp duty. Consequently, the learned Single Judge held that the penalty payable would be Rs.400/- and the deficient stamp was Rs.40/- and, therefore, the respondent/plaintiff was required to pay a sum of Rs.440/- (Rs.40/- towards deficient stamp duty and Rs.400/- as penalty) before seeking admissibility of the said agreement.

10. Prima facie, we do not agree with the conclusion arrived at by the learned Single Judge with regard to the quantification and the applicability of article 5(c) and the non-applicability of article 23A of Schedule 1A to the facts of the present case. However, we refrain from making any conclusive pronouncement on this aspect of the matter, inasmuch as we feel that the stage at which the document could be impounded and the penalty could be imposed has not been reached. This is because under Section 33 the document in question could be impounded only when it is produced. The original agreement to sell dated 05.08.2011 has not

yet been produced by the respondent/plaintiff before the trial court. It is only upon such production that the document could be impounded and not before. What has been filed was said to be only a copy of the original agreement to sell dated 05.08.2011. Therefore, we set aside the findings of the learned Single Judge on the aspect of the proper amount of stamp duty payable on the said agreement dated 05.08.2011.

11. Insofar as the appellants plea of rejection of the plaint under Order 7 Rule 11 is concerned we are of the view that the ultimate conclusion arrived at by the learned Single Judge does not call for interference. However, we leave the question of proper determination of the stamp duty payable on the said agreement dated 05.08.2011 open and the learned Single Judge shall consider the same at the stage when the document is produced before him. The appeal stands disposed of accordingly. The pending application also stands disposed of. BADAR DURREZ AHMED, J SIDDHARTH MRIDUL, J JANUARY15 2014 mk

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