

Devinder Singh vs.hari Singh

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Court : Delhi

Decided On : Apr-26-2017

Appellant : Devinder Singh

Respondent : Hari Singh

Advocate for Pet/Ap. : Mr. Ankur Bansal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % DEVINDER SINGH RSA No.125/2017 26th April, 2017 Appellant Through: Mr. Ankur Bansal, Advocate with appellant in person. HARI SINGH versus Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. Appl. No.15491/2017 (for exemption) Exemption allowed, subject to all just exceptions. C.M. stands disposed of. RSA No.125/2017 and C.M. Appl. No.15490/2017 (for stay) 1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the Trial Court dated 5.2.2016 and the First Appellate Court dated 10.2.2017; by which the suit for specific performance filed by the respondent/plaintiff for the suit RSA No.125/2017 Page 1 of 6 property comprising of 42 sq. yards in plot No.3221, Gali No.1, Ranjit Nagar, New Delhi, has been decreed.

2. The subject suit was filed by the respondent/plaintiff seeking specific performance of the receipt-cum-agreement to sell dated 22.1.2002. Total sale consideration as per the receipt-cum-agreement to sell was Rs.1,50,000/-. The appellant/defendant received under the receipt-cum-agreement to sell a sum of Rs.65,000/- in cash and Rs.35,000/- by way of cheque. Balance consideration payable was Rs.50,000/- and which was to be paid at the time of transfer of the title in the suit property by the appellant/defendant in favour of the respondent/plaintiff. As the appellant/defendant failed to execute the title documents, consequently, the subject suit for specific performance came to be filed.

3. The appellant/defendant denied execution of the receipt-cum-agreement to sell dated 22.1.2002. Appellant/defendant claimed that the amount of Rs.35,000/- received by cheque under the receipt-cum-agreement to sell was in fact for return of loan which was given by the appellant/defendant to the respondent/plaintiff. It was, accordingly, prayed that the suit for specific performance be dismissed. RSA No.125/2017 Page 2 of 6 4. The courts below have, in my opinion, arrived at the correct conclusions and findings for decreeing of the subject suit for specific performance, and such valid conclusions drawn are as under:-

"(i) The written statement shows that there is no specific denial by the appellant/defendant of his signatures on the receipt-cum-agreement to sell dated 22.1.2002 and the appellant/defendant only denied having executed the documents. This aspect is to be taken with the fact that the appellant/defendant was given an opportunity to furnish his specimen signatures in his UCO Bank account so that the signatures can be sent to the handwriting expert but the appellant/defendant failed to give the specimen signatures. The appellant/defendant also failed to avail the opportunity of getting a handwriting expert appointed to give a report as regards the validity of the signatures appearing on the receipt-cum-agreement to sell dated 22.1.2002, i.e the signatures were not of the appellant/defendant. (ii) Appellant/defendant claimed that he received the amount of Rs.35,000/- by cheque under the agreement to sell, not as part consideration, but in return of a loan which the appellant/defendant pleaded was granted to the respondent/plaintiff, however, appellant/defendant

could lead absolutely no evidence whatsoever of RSA No.125/2017 Page 3 of 6 his giving allegedly a loan of Rs.35,000/- to the respondent/plaintiff and which was allegedly repaid by a cheque which is referred to as part consideration in the receipt-cum-agreement to sell dated 22.1.2002.

5. Before the first appellate court an issue was raised that the receipt-cum-agreement to sell dated 22.1.2002 is not registered and hence cannot be looked into by virtue of provision of Section 17(1)(a) of the Registration Act, 1908, however, this contention is unsound, inasmuch as, an unregistered agreement to sell cannot be looked into only for seeking benefit of part performance under Section 53A of the Transfer of Property Act, 1882 in view of Amendment of Section 53A by Act 48 of 2001 with effect from 24.9.2001, however, an unregistered agreement to sell can always be a basis for a suit for specific performance in view of Section 49 of the Registration Act.

6. Learned counsel for the appellant/defendant relied upon a judgment of a learned Single Judge of the Punjab and Haryana High Court in the case of Gurbachan Singh Vs. Raghubir Singh, AIR2010P&H77 to argue that an unregistered agreement to sell cannot be a basis for a suit for specific performance, however, with utmost respect and humility to the learned Single Judge, I cannot agree with the ratio of the judgment because the ratio of the judgment is against the direct RSA No.125/2017 Page 4 of 6 and categorical language of Section 49 of the Registration Act which permits an unregistered agreement to sell for being looked into as a basis in a suit seeking specific performance. An unregistered agreement to sell cannot be used only if the same is sought to be used as one for seeking benefit of Section 53A of the Transfer of Property Act containing the doctrine of part performance, however, once, the unregistered agreement to sell is not used for seeking benefit of the doctrine of part performance under Section 53A of the Transfer of Property Act, then by virtue of Section 49 of the Registration Act, surely a suit for specific performance will lie on the basis of unregistered agreement to sell.

7. Though, learned counsel for the appellant/defendant sought to argue that the subject agreement to sell is not a contract in the eyes of law, however, it is noticed

that no such plea was raised in the trial court, no such issue framed and no such decision given by any of the two courts below, and therefore on a plea which is not raised a substantial question of law cannot be said to arise under Section 100 CPC. In any case, there is no dispute as to the identification of the suit property and the fact that receipt-cum-agreement to sell dated 22.1.2002 mentions the parties to a contract as also the entire sale consideration besides the mode and manner of payment with the RSA No.125/2017 Page 5 of 6 balance payment liable to be made at the time of transfer of the title documents, and hence is a contract as required by law.

8. No substantial question of law arises and therefore this Regular Second Appeal is dismissed, leaving the parties to bear their own costs. APRIL26 2017 AK VALMIKI J.

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