

Amar Singh Vs. Baliram Singh

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Court : Patna

Decided On : Apr-12-2006

Judge : S.M.M. Alam, J.

Acts : Specific Relief Act - Sections 20; Indian Registration Act, 1908 - Sections 23, 24, 25, 26, 36, 37, 72, 75, 75(2), 75(3), 76 and 77; Code of Civil Procedure (CPC) - Sections 100

Appeal No. : Appeal from Appellate Decree No. 437 of 1987

Appellant : Amar Singh

Respondent : Baliram Singh

Advocate for Def. : Shiva Nadan Ray, Sr. Adv. and Rama Singh, Adv.

Advocate for Pet/Ap. : Kumar Uday Singh and Bijay Kumar Singh, Adv.

Disposition : Appeal allowed

Judgement :

Syed Md. Mahfooz Alam, J.

1. This Second Appeal has been preferred against the judgment dated 26th September, 1987 and decree dated 9.11.87 passed by the 3rd Additional District Judge, East Champaran at Motihari, in Title Appeal No. 95 of 1977 / 36 of 1987

whereby he has been pleased to set aside the judgment dated 14th May, 1977 and decree dated 30.5.77 passed by Sri S. N. Sinha, 1st Additional Sub-Judge, Motihari, in Title Suit No. 82 of 1974 / 137 of 1976 and decreed the suit of the plaintiff for specific performance of contract.

2. Brief facts of the case of the parties are as follows:

The plaintiff Baliram Singh finalised talk of sale of 5 Kattha 16 dhurs of land of village Gobindpur on payment of consideration money amounting to Rs. 6.000/- with the defendant Atma Singh and, accordingly, on 14.4.73 the plaintiff paid rupees one thousand to defendant Atma Singh by way of earnest money but as the plaintiff and defendant were Gotiyas, as such, no hand note was required to be executed with respect to the payment of earnest money. The defendant promised to take the balance amount of consideration money after registration of sale deed at the time of exchange of the registration receipt. After finalisation of talk, the defendant Atma Singh asked the plaintiff to purchase the stamp for getting the sale deed registered. Accordingly, on 16.4.1973, the plaintiff purchased the stamp and informed the defendant regarding the purchase of stamp. The plaintiff also informed the defendant that he was ready to pay the balance consideration amount, whereupon, the defendant assured the plaintiff that he would register the sale deed on 18.4.73 as on that very date he had to register one more sale deed. Further case is that on 18.4.73 the defendant along with Yadu Nath Singh, the identifier came to Motihari and instructed Hari Shanker Prasad, Katib to write the contents of the sale deed who at the instance of defendant wrote the contents of the sale deed. Thereafter, the said Hari Shanker Prasad read over and explained the contents of the sale deed to defendant Atma Singh, who after finding the contents of the sale deed correct put his L.T.I on the sale deed and Yadu Nandan Singh became witness and identifier on the sale deed. Further case is that on that date the time of registration lapsed and, as such, the documents could not be produced before the registry office for registration then both the parties agreed that on the next date the document would be registered. On the next date the plaintiff approached the defendant but on the pretext that he was suffering from acute dysentery the defendant showed his inability to go to Motihari for getting the sale deed registered. However, he asked the plaintiff to keep the sale deed in his

possession and promised that on recovery he would get the sale deed registered. Thereafter, on several occasions the plaintiff requested the defendant to get the sale deed registered but the defendant put off the matter until the time for registration was over. It is further said that the plaintiff was always ready to pay the remaining consideration money and to meet the registration expenses but the defendant failed to get the sale deed registered and, hence, the necessity of filing the suit for Specific Performance of Contract arises.

3. The defendant appeared and filed written statement stating therein that it was not correct to say that he had agreed to sell his land and execute sale deed for consideration of rupees six thousand out of which rupees one thousand was paid by way of earnest money. He has also denied this fact that he had asked the plaintiff to purchase the stamp nor he had made any promise to get the sale deed registered after receiving the rest consideration amount at the time of exchange of registration receipt. It is not correct to say that the plaintiff had purchased stamp for execution of sale deed on 16.4.73 and had informed the defendant about the purchase of stamp. The defendant has also denied this fact that he had told the plaintiff that he had promised the plaintiff to execute the sale deed and get it registered. It is also untrue that the defendant came to Motihari on 18.4.73 for executing the sale deed nor he asked scribe Hari Shanker Prasad to write the contents of the sale deed nor scribe Hari Shanker Prasad read over and explained the contents of the sale deed to the defendant. The defendant has also denied this fact that he had put L.T.I. over the sale deed which was identified by Yadu Nath Singh. The defendant has made averment that the alleged sale deed dated 18.4.73 is forged, fabricated, anti dated and without any consideration and the same has never been executed by the defendant. The allegation that due to late hour the sale deed could not register is false and concocted. It has been stated that the fact is that the defendant is an illiterate and rustic fellow and one Ram Bilash Singh resident of village Motiyarri is very clever and litigant. On 17.11.73, Ram Bilash Singh called the defendant at his house and forcibly took his L.T.I. on a plain stamp paper and plain paper for which the defendant filed a case before the Gram Panchayat which was dismissed for the lack of jurisdiction. It is further said that the said Ram Bilash Singh has instituted Title Suit No. 80 of 1974 against the defendant on the basis of the L.T.I. of the defendant forcibly taken by him. It is

further stated that there is possibility that the said Ram Bilash Singh had converted those papers on which L.T.I. of the defendants were forcibly taken into sale deed. Further case of the defendant is that the defendant has already executed a deed of gift in favour of Bhagina Amar Singh on 15.2.1974 in respect of the suit property. The gift has been accepted by the said Amar Singh and he is in possession of the said land. After the death of Atma Singh, the name of Amar Singh has been substituted in his place. On the basis of the above pleadings, the original defendant Atama Ram Singh prayed to dismissed the suit.

4. On perusal of the judgment of the trial court it appears that on the basis of the pleadings of both the parties, the trial court framed as many as five issues for consideration which are as follows :-

(1) Is the suit, as framed, maintainable ?

(2) Has the plaintiff got any cause of action for the suit ?

(3) Whether defendant No. 1 has executed sale deed dated 18.4.73 in favour of the plaintiff ?

(4) Was there any contract in between the plaintiff and the defendant and is the plaintiff entitled to a decree for specific performance of contract ?

(5) To what relief, if any, is the plaintiff entitled ?

5. It appears that the trial court considered issue Nos. 3 and 4 as the main issues to be decided in the suit and as such, he took up issue Nos. 3 and 4 together for discussion and after making full discussion on both the issues, the trial court came to the conclusion that the final contract, as alleged by the plaintiff, could not be established. No earnest money was actually paid on 14.4.1973 (vide paragraph 15 of the judgment). The trial court further arrived at the finding that there was no contract between the parties as alleged and the plaintiff is not entitled to get his relief for specific performance of contract. It further transpires that on the basis of the findings on issue Nos. 3 and 4, the trial court held that the plaintiff's suit was not maintainable, he had no cause of action for the suit and he was not entitled for any relief and so, the suit is liable to be dismissed.

6. Against the said finding of the trial court, the plaintiff (Baliram Singh) preferred appeal which was numbered as Title Appeal No. 95 of 1977. The said appeal was heard by Sri Shashi Kumar Choudhary, 3rd Additional District Judge, East Champaran at Motihari, who by his judgment, reversed the finding of the trial court, allowed the appeal and decreed the suit of the plaintiff for specific performance of contract. Against the said judgment of third Additional District Judge, this second appeal has been preferred.

7. From perusal of the record of this second appeal it appears that on 24.3.2006 during the hearing of this appeal, the following substantial questions of law were formulated on recast for determination in this second appeal which are as follows :-

(1) Whether plaintiff is entitled for decree for specific performance of contract when he instituted the suit after long delay in view of the provision of Section 20 of the Specific Relief Act and such delay and inaction amounts to waiver and abandonment of contract ?

(2) Whether the plaintiff is entitled to sue for specific performance of contract when he did not pursue the remedy under the Indian Registration Act ?

(3) Whether the finding of the appellate court reversing the finding of trial court on payment of part of the consideration money suffers from the vice of non-consideration of oral evidence considered by the trial court and as such, the finding of first appellate court is perverse ?

Substantial Questions of Law Nos. 1 and 2

8. Since both the substantial questions of law are inter-related, as such both the questions are being taken up together for discussion. According to the submission of the learned Advocate of the appellants, the plaintiff is not entitled to sue for specific performance of contract as under the Indian Registration Act, several remedies were available to the plaintiff for getting the sale deed compulsorily registered but on failure on the part of the plaintiff to utilise all the remedies under the Registration Act, he is not entitled to sue for specific performance of contract.

According to the submission of the learned Advocate of the appellants, it is the specific case of the plaintiff that after finalisation of talk for execution of the sale deed, the plaintiff along with original defendant No. 1 Atma Ram Singh and others went to Motihari on 18.4.73 and on the same day, the sale deed in question was written by Hari Shankar Prasad, Katib at the instance of original defendant Atma Ram Singh and thereafter Atma Ram Singh put his L.T.I. on the sale deed which was identified and witnessed by witness Yadu Nath Singh. He further submitted that there is further case of the plaintiff that as on that date (18.4.1973) time of registration was over, as such the document could not be presented for registration and on the very date the original defendant Atma Ram Singh handed over the document to the plaintiff and promised that on the next date, the document could be registered. However it is the admitted case of the plaintiff that the document could not be registered because of the fact that the defendant Atma Ram Singh on one pretext or the other could not be ready for coming to the registration office. The learned Advocate submitted that the date on which the alleged sale deed was executed is very important and according to the case of the plaintiff, the alleged sale deed was executed on 18.4.1973 and on the same date, the alleged sale deed was handed over to the plaintiff by the original defendant Atma Ram Singh. The learned Advocate submitted that now it is admitted that the plaintiff was in possession of the documents, as such the proper course for the plaintiff was to produce the document within a period of four months from the date of its execution (18.4.1973) as per the provision of Section 23 of the Registration Act but as the plaintiff failed to produce the document before the Registrar for getting it registered within a period of four months from the date of its execution (18.4.73), as such the plaintiff is not legally entitled to get the document registered after expiry of the period of limitation as provided under Section 23 of the Registration Act hence, he is not entitled to sue for specific performance of contract.

9. The learned Advocate of the appellant further submitted that another remedy was available to the plaintiff under Section 77 of the Registration Act to file suit in the Civil court for getting the sale deed registered if registration was refused by the Registrar of the concerned registry but as the plaintiff failed to utilise the opportunities under Section 77 of the Registration Act, the plaintiff is not entitled to

sue for specific performance of contract and as such, the suit is barred under the provision of the Registration Act, 1908.

10. On the other hand, the submission of the learned Advocate of the respondent is that although it is true that when the defendant Atma Ram Singh refused to get the documents registered, the remedy for the plaintiff was to produce the document under Section 23 of the Registration Act for compulsory registration and in case the prayer for registration was refused, the plaintiff could have filed a suit under Section 77 of the said Act. He submitted that it is the admitted fact that the plaintiff did not choose the abovementioned remedies but even then he is entitled to file a suit for specific performance of contract for sale and as such, the suit is maintainable. In this regard, the learned Advocate of the respondent has placed reliance upon the decision reported in 2000 (2) All PLR 7 (Kalavakurti Venkata, appellant v. Bala Gurappagari Guruvi Reddy, respondent). According to the said ruling, the suit for specific performance of contract for registration of sale deed is maintainable notwithstanding that alternative remedy under Section 23 and 77 of the Registration Act for registration of executed document. The decision further lays down that the comprehensive suit for direction to register sale deed and also recovery of possession is not barred. The learned Advocate of the respondent has further placed reliance upon a decision of the Supreme Court reported in AIR 1965 Supreme Court 1405 (Mademsetty Satyanarayana, appellant v. G. Yelloji Rao and Ors. respondents) but it appears that the said decision is given on different facts and under different circumstances which cannot be applied in the facts and circumstances of this case.

11. On going through the decisions referred above, I have come to the conclusion that in a case where the defendant executes a sale deed in favour of the plaintiff but he refused to get it registered, two remedies are available to the plaintiff - one is to apply for compulsory registration of the document under Section 23 of the Registration Act and in case the prayer for registration is refused it is open to him to bring a suit under Section 77 of the Act. Another remedy available to the plaintiff is to take recourse to fuller and more comprehensive remedy for filing suit for specific performance of contract for sale and since both the remedies are available to the plaintiff, as such it cannot be said that the plaintiff was not entitled to sue for

specific performance of contract when he did not pursue the remedy in the Indian Registration Act. Accordingly, the substantial question of law No. 2 is decided first,

12. Now the question is whether the plaintiff is entitled for decree for specific performance of contract when he instituted the suit after long delay in view of the provision of Section 20 of the Specific Relief Act and such delay and inaction amounts to waiver and abandonment of contract. In this regard I would like to refer again some provision of the Registration Act. Sections 23, 25, 36, 37 and 77 of the Registration Act are relevant. Section 23 of the Act reads as follows :-

23. Time for presenting documents - Subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

25. Provision where delay in presentation is unavoidable - (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

36. Procedure where appearance of executant or witness is desired - If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the

State Government directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

37. Officer or Court to issue and cause service of summons - The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required,

77. Suit in case of order of refusal by Registrar - (1) Where the Registrar refuses to order the document to be registered, under Section 72 or a decree Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of Section 75 shall; mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.

13. From perusal of the abovementioned provision, it appears that there is specific provision under the Registration Act that if the executant of a document / sale deed refuses to register the document and if the document is in possession of the donee then under Section 23 of the said Act he shall produce the said document / sale deed for registration within a period of four months from the date of its execution. From perusal of Section 25 of the Act, it appears that the Registrar may condone the delay if the delay is satisfactorily explained. Sections 36 and 37 of the Act provides for issuing summons or direction to the executant requiring him to appear at the registration office for registration. Section 76 provides that a Registrar is authorised to refuse registration and if the registration is refused then the remedy lies under Section 77 of the Act to institute the suit before a Civil Court for getting a decree for compulsory registration of the document. Thus, the

reference of above sections establishes beyond doubt that there is specific provision in the Registration Act for getting the document compulsorily registered but it is the admitted case of the plaintiff that he did not avail all these opportunities and preferred to institute suit for specific performance of contract for sale. I have already held above that the suit for specific performance of contract for sale is maintainable even if the plaintiff did not choose to take recourse under the provisions of the Registration Act but it is the admitted case of the parties that the suit for specific performance of contract for sale was filed after expiry of period of about one year from the date of execution of the sale deed i.e. 18.4.1973. The question is whether this delay in filing the suit for specific performance of contract for sale and the plaintiff's reluctance in not utilizing any remedy within a period of limitation, as provided under the Registration Act amounts to waiver and abandonment of contract. In this regard the learned Advocate of the appellants has placed reliance upon the decisions reported in AIR 1956 Patna 53 (Babu Rameshwar Prasad Sahi, appellant v. Mst. Anandi Devi and Anr., respondents) : AIR1960 Pat109 (Rameshwar Prasad Sahi, appellant v. Mt. Anandi Devi and Ors., respondents) and : AIR 1971 AP279 (Kommisetti Venkatasubbayya, appellant v. Karamsetti Venkateswarlu and Ors. respondents).

14. In the case of Babu Rameshwar Prasad Sahi v. Mst. Anandi Devi and Anr. : AIR1956 Pat53 , it has been observed as follows :-

Mere delay in bringing the suit for specific performance will not disentitle the plaintiff to a decree for specific performance but if there is complete inaction for a long time without any adequate explanation, that inaction debars the plaintiff to the equitable relief by way of specific performance.

It appears that against the decision of the learned Single Judge, a letters patent appeal bearing L.P.A. No. 11 of 1955 was filed which was heard by a Division Bench. The decision of the Division Bench was reported in AIR 1960 Patna 109. In the said decision at page 110 it has been observed as follows :-

It was open to the plaintiff in the present case to present the document before the Registrar for registration under Section 23 of the Indian Registration Act within a period of four months from the date of its execution. It was also open to him under

Section 25 of the Indian Registration Act to present the document for registration after a further period of four months . There is also provision in Section 75 of the Indian Registration Act for compulsory registration of the document, and Section 77 of the Act provides for the institution of a suit by the person aggrieved in case of refusal of registration by the Registrar of the document in question.

In the present case the plaintiff did not take any steps under the Registration Act either for presenting the document before the Registrar or in getting it registered, and the failure of the plaintiff to take any kind of action for a period of about 12 months is tantamount, in our opinion, to an abandonment of the contract and waiver of his rights to sue for specific performance. Delay of this kind is always fatal to the plaintiff in a suit for specific performance, and it is well settled by numerous authorities that in a case of this description the plaintiff is not entitled to a decree for specific performance of the contract which is a discretionary relief.

15. As against the said decision, the learned Advocate of the respondent has placed reliance upon the decision reported in : [1965]2SCR221 (Mademsetty Satyanarayana, appellant v. G. Yelloji Rao and Ors. respondents) (supra) and submitted that only on the ground of delay extending upto period of limitation is not a sufficient ground for refusal to grant relief under the Specific Relief Act. Para 11 of the said decision which is relevant in this case runs as follows :-

The result of the aforesaid discussion of the case law may be briefly stated thus: While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a Court to refuse such a relief. But as in England so in India, proof of abandonment or waiver of a right is not a pre-condition necessary to disentitle the plaintiff to the said relief, for if abandonment or waiver is established, no question of discretion on the part of the Court would arise. We have used the expression 'waiver' in its legally accepted sense, namely, 'waiver' is contractual, and may constitute a cause of action : it is an agreement to release or not to assert a right'; see Dawson's Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha, 62 Ind App 100 at p. 108 : AIR 1935 PC 79 at p. 82. It is not possible or desirable to lay down the

circumstances under which a Court can exercise its discretion against the plaintiff. But they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief.

16. From perusal of the decisions referred above, it appears that it has been held by the Hon'ble Judges of the Supreme Court that merely on the ground of delay, the relief for specific performance of contract cannot be refused but if the conduct of the plaintiff is such which is directly responsible in inducing the defendant to change his position to his prejudice then in that situation the relief for specific performance of contract which is a discretionary relief cannot be granted. So, in my view, the conduct of the plaintiff will be important in this case to decide - whether the relief for specific performance of contract for sale can be granted to him or not. It is the admitted case of the plaintiff that the sale deed in question was executed by original defendant Atma Ram Singh on 18.4.1973 (although the defendant Atma Ram Singh has denied this execution). It is also admitted fact that on that date the sale deed could not be presented before the Registrar for registration and the original defendant Atma Ram Singh handed over the said sale deed to the plaintiff and promised to register the sale deed on the next date but then the plaintiff never became ready for registering the same. Thus, it is clear that on 18.4.1973 itself the possession of the sale deed was transferred to the plaintiff but the plaintiff did not take any attempt to get it compulsorily registered within a period of four months, as provided under Section 23 of the Registration Act and even after expiry of the said period the plaintiff never tried to apply before the registering authorities for condoning the delay under the provisions of Section 25 of the Act. He also did not try to get any summons or notice served upon the original defendant Atma Ram Singh asking him to register the documents. All these circumstances show that the plaintiff did not try to avail the opportunity as provided under the Registration Act for getting the sale deed in question registered. The evidence on record shows that the plaintiff also did not send any pleader's notice to the defendant Atma Ram Singh asking him to register the documents which shows that the plaintiff himself was not ready to get the document registered and, therefore, in my opinion, the conduct of the plaintiff

establishes beyond doubt that he had waived his right to get .. the sale deed in question registered. I further hold that the plaintiff's inaction in not taking any remedy, as provided under the Registration Act and his failure to take any kind of action for a period of about 12 months is tantamount to abandonment of contract and waiver of his right to sue for specific performance of contract for sale. I am, therefore, of the opinion that since the relief for specific performance of contract is always a discretionary relief, the plaintiff-respondent is not entitled to get relief under the circumstances mentioned above. Accordingly, this substantial question of law is decided in favour of the appellants and against the respondent.

Substantial Question of Law No. 3

17. It appears that this substantial question of law can only be decided by reappraisal of the evidence adduced on behalf of the parties but as per the provision of Section 100 of the Civil Procedure Code, this Court is not empowered to reappraise the evidence of the parties unless it is found that the finding of the first appellate court is perverse in this regard. I have gone through the judgment of the first appellate court and I am of the view that the learned first appellate court has made full discussion of the evidence of the parties available on this point and by any stretch of imagination it cannot be said that the finding of the first appellate court regarding the payment of part of the consideration money is perverse or based on non-consideration of oral evidence and, therefore, I hold that the finding of the trial court with respect to payment of part consideration money does not suffer from the vice of non-consideration of oral evidence considered by the trial court and as such, the said finding of the first appellate court is not perverse. Accordingly, this substantial question of law is decided.

18. In the result, I find merit in this appeal and as such, the same is hereby allowed and the judgment of the learned first appellate court whereby the first appellate court had decreed the suit of the plaintiff -respondent for specific performance of contract for sale is hereby set aside and it is ordered that the plaintiff is not entitled to get a decree for specific performance of contract for sale dated 18.4.1973 executed by original defendant Atma Ram Singh. Accordingly, the suit is dismissed.

