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Ramji and ors. Vs. Chokat and ors.

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Court : Allahabad

Decided On : May-25-2004

Reported in : AIR2004All364; 2004(4)AWC2927

Judge : Tarun Agarwala, J.

Acts : Specific Relief Act, 1963 - Sections 16(1)

Appeal No. : S.A. No. 1340 of 1989

Appellant : Ramji and ors.

Respondent : Chokat and ors.

Advocate for Def. : Shashi Nandan, ;A.C. Misra, ;Puja Agarwal, ;R.P. Srivastava and ;S.N. Nandan, Advs.

Advocate for Pet/Ap. : R.S. Misra and ;Sanjay Misra, Advs.

Disposition : Appeal dismissed

Judgement :

Tarun Agarwala, J.

1. The plaintiff filed a suit for a specific performance of a contract for sale dated 17-12-1976 and for cancellation of the sale deed dated 13-5-1980 executed by the defendant No. 1 in favour of the defendant Nos. 2 to 5. The defendant No. 2 and 3

are the son-in-law of defendant No. 1 and defendant Nos. 4 and 5 are the brothers of the defendant No. 3. It was alleged that the defendant No. 1 is the uncle of the plaintiff and that he had expressed a desire to sell the land for Rs. 15.000/- to the plaintiff. An agreement to sell dated 17-12-1976 was entered between the plaintiff and defendant No. 1 and, in consideration of the aforesaid agreement, a sum of Rs. 10,000.00 was paid by the plaintiff to the defendant No. 1 by way of an advance and the balance amount was to be paid at the time of the execution of the sale deed. In the agreement, it was stated that the sale deed was to be executed within a period of 5 years. The plaintiff alleged that he was always ready and willing to execute the sale deed and also had the requisite money to pay the balance amount, but the defendant No. 1 for one reason or the other was resiling from the contract and eventually, the defendant No. 1 executed a sale deed dated 13-5-1980 in favour of defendant Nos. 2 to 5 for Rs. 31,000.00 in order to defeat the claim of the plaintiff. The plaintiff alleged that the sale deed is a void document and that no consideration was paid by the defendant Nos. 2 to 5 to Defendant No. 1.

2. The defendant No. 1 filed his written statement and denied the plaint allegations and contended that he had never executed any agreement nor had, he received Rs. 10,000.00 by way of an advance. The defendant No. 1 admitted that he had executed a sale deed in favour of the defendant Nos. 2 to 5. The defendant Nos. 2 to 5 also filed their written statement and contended that they are bona fide purchasers for value and had no notice of any agreement entered between the plaintiff and defendant No. 1.

3. The trial Court after framing the issues and on the basis of the evidence led by the parties, decreed the suit of the plaintiff. The trial Court held that the agreement for sale was duly executed by the defendant No. 1 in favour of the plaintiff and that the agreement had been duly proved by one Sri Radha Krishan, PW-4, who was a witness to the said agreement. The trial Court further relied upon the evidence of Ram Jatan, PW-2, who stated that the agreement was executed in front of him and that the contents were read out to the defendant No. 1 and that the defendant had placed the thumb impression after the contents were read out. The said witness also stated that the defendant No, 1 received Rs, 10,000.00 in his

presence. The trial Court further found that the defendant No. 1 himself admitted in his deposition that he had executed an agreement. The trial Court further found that the thumb impression in the agreement to sell was that of the defendant No. 1 and that due consideration was paid to the defendant No. 1. The trial Court further found that the defendant Nos. 2 to 5 are not bona fide purchasers and had notice of the agreement to sell, inasmuch as, the said defendants were present when the agreement was executed between the plaintiff and defendant No. 1. The trial Court also found that the defendant No. 1 was in debt and required money to repay his debts.

4. Aggrieved by the decree of the trial Court, the defendants filed an appeal, which was dismissed and the decree of the trial Court was affirmed. Accordingly, the defendants have filed the present second appeal before this Court.

5. At the time of the admission of the appeal, notices were issued to the plaintiff/ opposite party, who entered appearance and the record of the lower Court had also been summoned. At the request of the learned counsel for the parties, the second appeal is being finally disposed off at the admission stage itself in accordance with the provisions of the Rules of the Court.

6. Heard Sri R. S. Mishra, the learned counsel for the appellant and Ms. Pooja Agarwal holding the brief of Sri Shashi Nandan, the learned senior Advocate for the respondents.

7. The learned counsel for the appellants submitted that the admission made by the defendant No. 1 in his deposition cannot be regarded as an admission under Section 18 of the Evidence Act, inasmuch as the statement made by the defendant No. 1 was made in a representative character. The learned counsel further submitted that the statement made by the Defendant No. 1 is inadmissible in evidence and could not be considered by the Court below. In support of his submission, the learned counsel has relied upon a decision of the Supreme Court in Ishwar Das Jain v. Sohan Lal, 2000 (1) SCC 434 : (AIR 2000 SC 426) and submitted that the High Court could interfere under Section 100 C.P.C. with the findings of the fact arrived at by the lower appellate Court, if vital evidence had not been considered and, if considered, would have led to a different conclusion or

where inadmissible evidence was relied upon, which if omitted, would have led to a different conclusion. The learned counsel further submitted that the plaintiff had not complied with the mandatory provision of Section 16(c) of the Specific Relief Act, 1963 and had failed to prove that he had always been ready and willing to perform his part of the contract. The learned counsel submitted that merely by making an allegation in the plaint that the plaintiff was ready and willing to perform his part of the contract was not sufficient by itself and submitted that the plaintiff must further prove by evidence that he had always been ready and willing to perform his part of the contract, even during the pendency of the suit. In support of this submission, the learned counsel has placed reliance upon the judgment of the Supreme Court in N.P. Thirugnanam v. Dr. R. Jagmohan Rao, 1995 (5) JT 553 : AIR 1996 SC 116.

8. On the other hand the learned counsel for the plaintiff-opposite party contended that the defendant No. 1 was a contesting party and, that, he was not being sued in a representative character and that the statement made by the defendant No. 1 are admissions, which has rightly been relied upon by the lower appellate Court. Even otherwise, there are other pieces of evidence which has been brought on record which clearly proves that the defendant No. 1 had entered into an agreement to sell the property in favour of the plaintiff and that due consideration was received by the defendant No. 1. The learned counsel further submitted that the defendant Nos. 2 to 5 are not bona fide purchasers and had notice of the agreement to sell which was executed between the plaintiff and defendant No. 1, inasmuch as, the said defendants were present when the agreement was executed. The learned counsel for the plaintiff-opposite party further submitted that a specific issue was framed by the trial Court as to whether the plaintiff was ready and willing to perform his part of the contract. The trial Court as well as the appellate Court have given concurrent findings to the effect that the plaintiff was always ready and willing to perform his part of contract. Both the Courts below have also found that the defendant No. 1 was resiling from the contract. The learned counsel for the plaintiff submitted that in view of the concurrent findings given by the Court below, no interference is called for in this Second Appeal by this Court. In support of her submission the learned counsel has placed reliance in 1999 (3) SCC 722 (AIR 1999 SC 2213) Kondiba Dakadu Kadam v. Savitribai

Sopan Gujar, in which it was held that the High Court could not substitute its own opinion for the opinion of the first appellate Court unless it finds that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law or contrary to the law pronounced by the apex Court or was based upon inadmissible evidence. The learned counsel further placed reliance upon another judgment of the Supreme Court in Pakeerappa Rai v. Seethamma Hengsu, 2001 (9) SCC 521, wherein it was held that even an erroneous finding of fact, howsoever grave in nature, could not be interfered with in a Second Appeal.

9. In my view, the submissions made by the learned counsel for the appellants are devoid of any merit. The defendant No. 1 is a contesting party and the statement made by him clearly amounts to an admission, which has been rightly relied upon by the Courts below. The findings of fact given by the trial Court and affirmed by the first appellate Court could not be disturbed in this appeal. The plaintiff had filed a suit for specific performance against the defendant No. 1 with regard to an agreement to sell dated 17-12-1976, which was decided by the trial Court and affirmed by the lower appellate Court. The Courts below found on facts that the defendant No. 1 had executed an agreement to sell in favour of the plaintiff, which has been proved by PW-2 and PW-4, who were the witnesses and in whose presence the defendant No. 1 had placed his thumb impression and had received the consideration. The Courts below have further found that the sale deed dated 13-5-1980 executed by the defendant No. 1 in favour of the defendant Nos. 2 to 5 was a sham document and that no consideration was paid by the defendant Nos. 2 to 5 in favour of the defendant No. 1. The Courts below further found that the defendant Nos. 2 to 5 had notice of the agreement and that they were not bona fide purchasers. Both the Courts below have also found that the plaintiff was always ready and willing to perform his part of the contract. In my view, the plaintiff has proved that he was always ready and willing to perform his part of contract and that he had the necessary funds to pay the balance amount. On the other hand, it has come on record that the defendant No. 1 was resiling from the agreement.

10. In my view, the findings of the Courts below cannot be said to be either perverse or based on no evidence or inadmissible evidence. The findings given by the Courts below are based on appreciation of evidence, which are binding upon the parties.

11. Thus, I find no reason to interfere with the findings of fact given by the Court below. No substantial questions of law arises for consideration in this appeal. In view of the concurrent findings of fact given by the Courts below there is no merit in this appeal and is accordingly dismissed with costs.

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