

Littar Vs. Ixth Additional District and Sessions Judge, Muzaffarnagar and Others

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Court : Allahabad

Decided On : May-04-1998

Reported in : 1998(3)AWC2055

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 7, Rule 11; Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 4(2), 5 and 5(1)

Appeal No. : C.M.W.P. No. 13201 of 1998

Appellant : Littar

Respondent : ixth Additional District and Sessions Judge, Muzaffarnagar and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.K. Singh, Adv.

Judgement :

D.K. Seth, J.

1. Pursuant to certain earlier agreement a sale deed was executed on 19.5.1984. By reason of Section 5 (c) of the U. P. Consolidation of Holdings Act. 1953, the sale deed was declared void, since no permission was obtained before effecting the sale deed at the time when notice under Section 4 (2) of the said Act was already issued. Plaintiff obtained necessary permission from the Settlement Officer. Consolidation on 18.6.1984. Thereafter a suit has been filed for specific performance of contract being Suit No. 353 of 1984. On the basis of written statement an issue was framed as to the maintainability of the suit. The said issue has been decided in favour of the plaintiff by an order dated 20.8.1997. Civil Revision No. 210 of 1997, was preferred by the defendant-petitioner. By order dated 28.3.1998 passed by the IXth Additional District and Sessions Judge. Muzaffarnagar, the said revision was dismissed.

2. Mr. P. K. Singh, learned counsel for the petitioner contends that there was an agreement for sale of certain lands executed on 13.3.1981. Subsequently some more lands were alleged to have been agreed to be sold by the defendants to the plaintiff. Accordingly another agreement dated 12.3.1983 in respect of certain additional lands were executed while some lands included in the agreement dated 13.3.1981 was excluded. On the basis of such agreement, the alleged sale deed was executed on 19.5.1984. Since the sale deed was declared void, it placed the parties at the same position before agreement to sell alleged to have been entered into. After the agreement was so acted upon, no agreement remains for being specifically performed since it had already been performed. By reason of Section 5 (c) of the said Act, the performance thereof having been declared void, there is no scope of any further agreement being enforced. At the same time, the plaint does not disclose as to what agreement was being sought to be specifically performed. In the absence of disclosure of cause of action, the plaint is liable to be dismissed under Order VII. Rule 11, C.P.C. He specifically points out from the order dated 20.8.1997 that the learned trial court had found that no particulars of agreement has been disclosed in the plaint but because of non-mentioning of particulars in the plaint, the same shall be taken to be ascertained through oral evidence. According to Mr. Singh such conclusion is wholly perverse in the facts and circumstances of the case. Inasmuch as no reasonable person can arrive at such a conclusion after having found that no particulars about the agreement sought to

be enforced has been disclosed. He contends that similarly the decision in the revision is perverse. According to him, the revisional court has proceeded on the basis of the very sale deed, which was declared void, and observed that there is no necessity of proving the agreement for sale and therefore sufficient cause of action has been disclosed. According to Mr. Singh such conclusion is also wholly perverse in the facts and circumstances of the case and it cannot be sustained in law. According to him, agreement for sale was to be specifically performed. It is a void agreement which was sought to be specifically performed. Now the sale deed could be treated as an agreement for sale since it has already been declared as void. The declaration of sale deed as void, according to him, amounts to denial/existence of the sale deed itself. According to him the word 'Void' implies that there is no existence of the deed. Therefore, the decision of the revisional court cannot be sustained. In support of his contention, Mr. Singh, relied on the decision in the case of *Governing Council of Kayastha Pathshala v. Ram Chandra Srivastava*, 1991 AWC 1064, particularly para 22 of the said decision and contended that the question under Order VII. Rule 11 has to be decided on the basis of the pleadings available on the plaint and not on basis of any other material beyond the plaint. According to him the pleading does not disclose any cause of action and thereby the plaint attracts the application of Order VII, Rule 11 of the Code. On this ground, according to him, the plaint should be rejected.

3. I have heard Mr. Singh, learned counsel for the petitioner at length.

4. So far as the ratio decided in the case of *Governing Council of Kayastha Pathshala* (supra) there is no doubt about or dispute with regard to the proposition laid down there that for the purpose of deciding an issue under Order VII. Rule 11 of the Code that the pleadings made in the plaint can only be relied upon and nothing beyond the pleading contained in the plaint can be relied upon.

5. In order to sustain the pleadings, when the pleadings do not disclose sufficient cause of action, sufficient cause of action may be disclosed through evidence that might be led at subsequent stage cannot be a ground. The finding with regard to such question cannot be dependent on the basis of expectations that evidence or materials may come in at the time of trial. The question is to be looked into on the

basis of the pleadings as stood when the plaint was filed and on the date when the question was decided.

6. Under Order VII. Rule 11 of the Code the plaint, if does not disclose a cause of action, is liable to be rejected. There is a distinction between the case that there is no cause of action for the suit and that the plaint does not disclose any cause of action. In the former case the suit may be dismissed after trial but the plaint cannot be rejected, which in the latter case the suit cannot be dismissed but the plaint is to be rejected.

7. If the plaint discloses a cause of action, the correctness or otherwise of the allegations constituting the cause of action cannot be gone into for the purpose of resorting to Order VII, Rule 11 of the Code. The only scope open to the Court is to examine the allegations as contained in the plaint without testing the veracity or otherwise thereof as to whether the same disclosed a cause of action.

8. None of the defence or anything outside the plaint can be looked into.

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