

Roop Kunwar Vs. Roopnarayan

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Court : Chhattisgarh

Decided On : Jun-28-2007

Reported in : 2007(3)MPHT101(CG)

Judge : D.R. Deshmukh, J.

Appellant : Roop Kunwar

Respondent : Roopnarayan

Advocate for Def. : Shri. Neelkanth Malviya

Advocate for Pet/Ap. : Shri. Baijnath Pandey

Disposition : Appeal allowed

Judgement :

D.R. Deshmukh, J.

1. Being aggrieved by the judgment and decree dated 15-9-1997 passed in Civil Suit No. 13-A/1990 by Shri T.K. Chakravarty, Additional District Judge, Janjgir, the appellant/defendant has preferred this appeal.
2. Admittedly, the parties are residents of Village Seoni, Tehsil and District Janjgir.
3. Respondent/plaintiff instituted Civil Suit No. 13-A/1990 for specific performance of contract for sale of agricultural land. It was pleaded that the appellant/defendant

had agreed to sell the suit land in area 1.48 acres to the respondent/plaintiff for a consideration of Rs. 24,000/- (The date of agreement was not pleaded). In the year 1986, the appellant/defendant received Rs. 15,000/- as part consideration and executed a document in favour of the respondent/plaintiff. (The date of execution of such document was also not pleaded). On 18-7-1987, the appellant/defendant received a further sum of Rs. 6,000/- and executed a Mahadanama, Exh. P-1 in favour of the respondent/ plaintiff and promised to execute a registered sale-deed of the suit land in favour of the respondent/plaintiff after receiving the remaining consideration of Rs. 3,000/- in Baisakh Punni of the year 1988. In this manner, the appellant/ defendant had received Rs. 21,000/- from the respondent/plaintiff towards part consideration of the suit land.

4. It was further pleaded that on 9-8-1989, upon receiving information from the appellant/defendant, the respondent/plaintiff went prepared with the remaining consideration of Rs. 3,000/- to the house of the appellant/defendant. A quarrel ensued in which Kanhaiya and Ramayan, the sons of the respondent/plaintiff and Bahadur, the husband of the appellant/defendant tore the Mahadanama executed in the year 1986 and threatened the appellant/defendant. Upon a report being lodged, criminal prosecution was launched against Kanhaiyalal, Ramayan and Bahadur (Criminal Case No. 145/1989) who were acquitted.

5. It was further pleaded that the appellant/defendant had delivered possession of the suit land to the respondent/plaintiff on 18-7-1987. A notice dated 14-8-1989 was sent by the respondent/plaintiff, but the appellant/defendant refused to accept the same. On these premises, the respondent/plaintiff prayed for specific performance of the contract.

6. The appellant/defendant refuted the pleadings aforesaid in toto while pleading that she had never agreed to sell the suit land or executed any document in favour of the respondent/plaintiff. The respondent/plaintiff was a money lender and taking advantage of illiteracy of the appellant/defendant had filed a false and bogus suit.

7. Bhuru and Sunderlal, attesting witnesses of the Mahadanama, alleged to have been executed in the year 1986 and to have been torn during the quarrel, were not examined since dead. The respondent/plaintiff Roopnarayan examined himself

and Bharatlal Rathore, P.W. 2 and Sadhram, P.W. 3, the attesting witnesses of the Mahadanama, dated 18-7-1987. On the other hand, the appellant/defendant Roop Kunwar examined herself and her son Kanhaiya, D.W. 2. The learned Trial Judge assumed the role of a finger print expert and using a magnifying glass compared the thumb impressions of the appellant/defendant Roop Kunwar on Mahadanama, Exh. P-1 with her thumb impressions on Vakalatnama and written statement and recorded a finding that the Mahadanama, dated 18-7-1987 was executed by the appellant/defendant. Though the two sons of the respondent/plaintiff and the husband of the appellant/defendant were acquitted in Criminal Case No. 145/1989, yet the Trial Judge found an element to truth in the contention that a sum of Rs. 15,000/- had been received by the appellant/defendant. It also recorded a finding that the appellant/defendant had committed breach of Mahadanama dated 18-7-1987 and granted a decree in favour of the respondent/plaintiff for specific performance of the contract.

8. Shri Baijnath Pandey, learned Counsel for the appellant/defendant assailed the impugned judgment and decree on the ground that for want of specific averment by the respondent/plaintiff in the plaint that he was ready and willing to perform his part of the contract, a decree for specific performance could not be passed in favour of the respondent/plaintiff in view of Section 16 of the Specific Relief Act (henceforth 'the Act'). It was also contended that the respondent/plaintiff did not plead the date of execution of the so called agreement in the year 1986 and the Mahadanama, Exh. P-1, dated 18-7-1987 was in contradiction of the pleading of the receipt of Rs. 15,000/- by the respondent/plaintiff in the year 1986 because Exh. P-1 revealed that the appellant/defendant had received a sum of Rs. 21,000/- on 18-7-1987 itself. It was argued that the learned Trial Court ought not to have assumed the role of a finger print expert and to record a finding of execution of Mahadanama, Exh. P-1 by the appellant/defendant. Serious discrepancies in the evidence led by the respondent/plaintiff were pointed out while contending that the learned Trial Court failed to appreciate the evidence properly. On the other hand, Shri Neelkanth Malviya, learned Counsel for the respondent argued in support of the impugned judgment.

9. Having considered the rival contentions, I have perused the record.

10. In a suit for specific performance of contract, the plaintiff is required to specifically aver and prove that he was always ready and willing to perform his part of the contract. In the absence of such a specific pleading, the relief of specific performance of the contract could not be granted in view of Section 16(c) of the Act. A perusal of the plaint shows that the plaintiff did not plead readiness and willingness to perform his part of the contract.

11. The respondent/plaintiff also did not come to the Court with clean hands because no specific averments was made as to the date on which the appellant/defendant had agreed to sell the suit land to the respondent/plaintiff in the year 1986. Bhuru and Sunderlal, the witnesses of such agreement could also not be examined since dead. A perusal of Mahadanama, Exh. P-1, clearly goes to show that the amount of Rs. 21,000/- was received by the appellant/ defendant on 18-7-1987. There is no mention of any agreement executed in the year 1986 or about the part consideration of Rs. 15,000/- having been paid to the appellant/defendant in the year 1986. The respondent/plaintiff has admitted in Paragraphs 7 and 8 of his testimony that the amount of Rs. 21,000/- was not paid to the appellant/defendant on 18-7-1987. It is beyond comprehension that if the respondent/plaintiff had paid a sum of Rs. 15,000/- in the year 1986 and another sum of Rs. 6,000/- on 19-7-1987, why the remaining amount of Rs. 3,000/- was also not paid and the sale-deed got executed on 18-7-1987. The respondent/plaintiff has also admitted in Para 15 that despite the fact that the appellant/defendant did not execute the sale-deed in Baisakh Punni, yet he did not give notice to the appellant/defendant for getting the sale-deed executed.

12. Sadhram, P.W. 3 clearly stated that the original agreement alleged to have been executed in the year 1986 was neither executed in his presence nor did part consideration of Rs. 15,000/- pass in his presence to the appellant/defendant. The testimony of Bharatlal Rathore, P.W. 2 is also highly suspicious. He admitted that he was not a document writer but the clerk of some Advocate and was not authorized to write documents. He also admitted that the respondent/plaintiff belonged to his caste and was known to him since long. His testimony also did not show that consideration of Rs. 21,000/- had passed in his, presence to the appellant/defendant on 18-7-1987. Thus, the evidence led by the

respondent/plaintiff is not worthy of credence.

13. Acquittal of the two sons of the respondent/plaintiff and the husband of the appellant/defendant in the criminal prosecution creates a strong preponderance of probability in favour of the appellant/defendant that the allegations leveled by the respondent/plaintiff were not true. The Trial Court fell in to error in drawing a conclusion on the basis of the judgment of acquittal in the criminal case that there was an element of truth in the allegations levelled by the respondent/plaintiff that the document executed in the year 1986 was torn during a quarrel which had ensued on 9-8-1989. It is also to be noticed that if on 9-8-1989, the respondent/plaintiff was called at the house of the appellant/ defendant for proceeding to Janjgir to get the sale-deed executed, there was no necessity for the respondent/plaintiff to carry with him the document executed in the year 1986, since it was the Mahadanama executed on 18-7-1987 showing that Rs. 21,000/- had been received by the appellant/defendant on 18-7-1987, which would have been carried by the respondent/plaintiff with him. Had the respondent/plaintiff carried the document dated 18-7-1987 with him on 9-8-1989, perhaps this document would also have been torn during the alleged quarrel. This goes to show that the vague averment about execution of the document by the appellant/defendant somewhere in the year 1986 upon receiving a part consideration of Rs. 15,000/- was not proved. The Trial Court also failed in assuming the role of a finger print expert and concluding about execution of the document, Exh. P-1 by the appellant/defendant on 18-7-1987 on the basis of comparison of thumb impressions through a magnifying glass. Comparison of thumb impression is a complete science and should be left to the domain of the finger print expert.

14. It is thus clear that the Trial Court completely did not appreciate the evidence properly. The respondent/plaintiff was not entitled to a decree for specific performance of the contract due to suppression of material fact and due to false averment of execution of a document in the year 1986 by the appellant/ defendant. Since the document, Exh. P-1 was in direct contradiction, in the absence of specific pleading of readiness and willingness to perform his part of the contract; the respondent/plaintiff was disentitled to the relief of specific performance of the

contract under Section 16(c) of the Act.

15. In the result, the appeal is allowed. The judgment and decree dated 15-9-1997 passed in Civil Suit No. 13-A/1990 is set aside. The suit is dismissed. The respondent/plaintiff shall not only bear the entire cost of the suit as also of this appeal. Pleaders fee is allowed to the extent of Rs. 1,000/- (Rupees One thousand), if certified.

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