

Gajanand Vs. Ramnath and Others

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Court : Madhya Pradesh

Decided On : Oct-13-2000

Reported in : 2001(1)MPHT337

Judge : Mr. A.K. Mishra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100; Madhya Pradesh Land Revenue Code - Sections 250

Appeal No. : Second Appeal No. 366/99

Appellant : Gajanand

Respondent : Ramnath and Others

Advocate for Def. : Shri K.N. Gupta, Adv.

Advocate for Pet/Ap. : Shri H.D. Gupta, Adv.

Disposition : Second appeal partly allowed

Judgement :

ORDER

A.K. Mishra, J.

1. This second appeal has been preferred by the plaintiff being aggrieved by the dismissal of his suit by the Trial Court. The judgment and decree passed by the

Trial Court has been affirmed by the First Appellate Court.

2. Briefly stated the facts are-- the plaintiff filed the suit for specific performance of agreement to sell and also for recovery of possession from defendant No. 2, who allegedly has committed trespass, as per the plaintiff, over the suit property, which comprises of agricultural land in area six bighas situated in village Indrapura, Tehsil and District Sheopurkalan. The agreement to sell the disputed property was entered into by the defendant, Ram-nath, with the plaintiff. During the pendency of the suit the defendant executed the sale-deed in favour of the plaintiff.

3. The defendant No. 1 admitted the plaint allegations in the written statement filed by him.

4. The defendant No. 2 in the written statement filed by him denied the plaint allegations and contended that though the defendant No. 1 had entered into an agreement but yet the possession of the disputed land was not handed over to him. Thereafter the plaintiff refused to purchase the property in dispute. Thereafter the defendant No. 2 repaid the loan amount to the plaintiff hence defendant No. 1 had handed over the possession of the suit land to the defendant No. 2, namely, Bajranglal. It is also contended that at the time of the filing of the suit the plaintiff was not in possession of the suit land, therefore, without pleading for declaration of title the suit for recovery of possession was not maintainable. During the pendency of the suit the sale-deed which has been executed by the plaintiff was illegal and void as the plaintiff has withdrawn the relief of specific performance, therefore, the suit is not maintainable and the plaintiff ought to have proceeded under Section 250 of the Madhya Pradesh Land Revenue Code and ought not to have paid the ad volerem Court-fees on the valuation of the sale-deed.

5. The Trial Court framed issues No. 6 to 11 and dealt them as preliminary issues and without recording the evidence of the parties dismissed the suit of the plaintiff as the defendant No. 1 had executed the sale-deed in favour of the plaintiff. The Trial Court came to the conclusion that no cause of action survived against defendant No. 2. The defendant No. 2 was not a party to the agreement to sell and as the plaintiff has not challenged the specific performance of the agreement the case of action has come to an end, and if required for recovery of possession the

plaintiff was free to proceed under Section 250 of the M.P. Land Revenue Code.

6. The judgment and decree passed by the Trial Court was challenged before the First Appellate Court by the plaintiff. The First Appellate Court dismissed the appeal holding that simply because of the execution of the sale-deed by the defendant No. 1 in favour of the plaintiff it can be said that he had become the owner of the suit property and he ought to have filed the suit showing the cause of action against defendant No. 2. Since declaration of title has not been claimed hence the decree passed by the Trial Court has been affirmed. Hence, the appeal has been preferred before this Court.

7. This second appeal was admitted for hearing on September 2, 1999 by this Court on the following substantial questions of law :--

'(1) Whether the Courts below were justified in dismissing the suit for specific performance on the ground that the suit has rendered infructuous on account of sale of property during pendency of the suit ?

(2) Whether the Courts below were justified in holding that since defendant No. 2 was not party to agreement, the plaintiff has no cause of action ?

(3) Whether the plaintiff has withdrawn the relief of specific performance and the Courts below have rightly held that suit is not maintainable ?

(4) Whether the Courts below were justified in holding that the suit for possession of agricultural lands is not maintainable and only relief can be claimed under Section 250 of the M.P. Land Revenue Code ?'

8. The learned counsel for the appellant submitted that it is a case where no evidence has been recorded and the issues which have been decided could not be decided as preliminary issues. It is submitted that the suit is based on the sale-deed executed by defendant No. 1 in favour of the plaintiff. After amendment there is allegation that the defendant No. 2 has committed trespass and there is also relief for restoration of possession specifically claimed in the suit. Hence, the suit is clearly based on title and the Lower Courts have committed error in dismissing the same without holding a proper trial.

9. Shri K.N. Gupta, learned counsel representing the respondents has supported the impugned judgment and decree passed by the Courts below and submits that no interference is called for in the impugned judgment and decree.

10. After considering the arguments advanced on both sides I am of the opinion that this appeal has to be allowed and the matter deserves to be remanded back to the Trial Court for trial in accordance with law with a direction to record evidence adduced by the parties in support of their case and thereafter after hearing the parties to decide the suit afresh. So far as the substantial question No. 1 is concerned suffice it to say that by merely execution of the sale-deed, the suit which was filed for recovery of possession also does not become infructuous. The plaintiff had been amended to the effect that defendant No. 2 has committed trespass and has taken possession there is relief claimed for restoration of possession in the plaint otherwise also in a suit for specific performance relief for possession is implicit though it has specifically been claimed in the instant suit the Courts below have committed error of law in holding that the suit does not survive. It is also wrong and illegal reason that defendant No. 2 was not party to the agreement, hence the suit cannot proceed against him. If he had committed trespass over the land in question the decree for possession can always be passed against defendant No. 2. Merely by withdrawal of prayer of execution of the sale-deed i.e., specific performance of agreement to sale, the suit cannot be rendered infructuous as the sale-deed has been voluntarily executed by defendant No. 1 in favour of the plaintiff the suit still survives and the substantial question No. 3 is answered accordingly.

11. The suit is clearly based on title i.e., on the sale-deed and defendant No. 2 is shown to be a trespasser as such the suit is clearly maintainable before the Civil Court for recovery of possession and merely by the fact that the sale-deed has been executed by defendant No. 1 the part relief has been mutually agreed, the suit can not become infructuous and not maintainable before the Civil Court. The judgment and decree passed by the Lower Courts are not sustainable and are liable to be set aside.

12. It is trite law that disputed questions of fact i.e., defendant has committed trespass and the defendant is in possession with some rights are the questions which ought to have been adverted to only after recording of evidence. The questions of facts of such a nature which requires consideration of pleadings and evidence cannot be decided as preliminary issues and the Lower Courts have committed error in deciding them as the preliminary issues. The Trial Court is directed to go into fresh trial of the suit on all issues and to decide them in accordance with law unfettered by the observations made in any of the judgments or order including the present one on merits of the case after recording evidence led by the parties in support of their case.

13. The parties are directed to appear before the Trial Court on 27-11-2000.

14. The office is directed to transit the record to the Trial Court so as to reach the same to the Trial Court before the date fixed for the appearance of the parties.

15. The appeal is partly allowed. The parties to bear their own costs in this appeal.

16. Second Appeal partly allowed.