

Ramesh Chand Vs. Kishan Chand and anr.

Ramesh Chand Vs. Kishan Chand and anr.

SooperKanoon Citation : sooperkanoon.com/508258

Court : Madhya Pradesh

Decided On : Aug-22-2005

Reported in : 2006(1)MPHT191; 2006(1)MPLJ169

Judge : Abhay M. Naik, J.

Acts : [Specific Relief Act, 1963](#) - Sections 16

Appeal No. : First Appeal No. 100/1991

Appellant : Ramesh Chand

Respondent : Kishan Chand and anr.

Advocate for Def. : A.S. Usmani, Adv.

Advocate for Pet/Ap. : K.N. Agrawal, Adv.

Disposition : Appeal dismissed

Judgement :

Abhay M. Naik, J.

1. This appeal is preferred by the plaintiff/appellant against the dismissal of suit for specific performance. Ramesh Chand, the predecessor of the appellants instituted a suit on 17-8-1987 against the defendants/respondents with averment that the defendant has agreed to sell the disputed land to the plaintiff on 24-12-1985 for a

consideration of Rs. 34,000/-. Defendant received Rs. 3,000/- as a part of consideration and the balance amount of Rs. 31,000/- was payable at the time of execution of registration of sale deed upto 30th June, 1986. The agreement was reduced into writing. It is further averred that on 12-6-1986 the defendant received an additional sum of Rs. 7,000/- and extended the period for execution of the registered sale deed upto 30th June, 1987. He handed over possession to the plaintiff on 12-6-1986. It is further pleaded that the plaintiff has been ready and willing to pay the balance amount of Rs. 24,000/-. Since the defendant did not execute the sale deed, the plaintiff instituted the suit giving rise to the present appeal.

2. Defendant/respondent No. 1 submitted his written statement denying the claim of the plaintiff. He stated that he needed the money and obtained a sum of Rs. 3,000/- on 24-12-1985 from the plaintiff as loan. A nominal agreement was prepared in security of the loan transaction. He denied that a sum of Rs. 7,000/- was received by him on 12-6-1986. The defendant further contended that the plaintiff has obtained the signature of the defendant at the time of the execution of the initial document itself at two more places which has been fraudulently used by the plaintiff to establish the enhancement of time. Defendant asserted his own possession and stated that the same was not delivered to the plaintiff. It was also stated in the written statement that the land was more than worth Rs. 50,000/- and the sale agreement could not have been executed for a sum of Rs. 34,000/- only.

3. Learned Trial Judge after recording the evidence held that the nature of transaction between the plaintiff and defendant was merely of loan. The defendant had received Rs. 3,000/- at the first instance and Rs. 7,000/- at the second instance towards loan only. Learned Trial Judge further held that it is not proved that the plaintiff was ready and willing to perform his part under the alleged sale agreement. Accordingly, the learned Trial Judge dismissed the suit for specific performance. However, a decree for refund of Rs. 10,000/- with interest was awarded in favour of the plaintiff.

4. Aggrieved by the aforesaid, plaintiff preferred the present appeal. During the pendency of this appeal, plaintiff died and the appellants have been brought on

record as his legal representatives. Shri K.N. Agrawal, learned Counsel for the appellants submitted that the learned Trial Judge has acted illegally in holding the subject transaction to be of loan. He submitted that Ex. P-1 is an agreement of sale and can not be legally construed as a loan transaction. He submitted that since the signatures on Ex. P-1 was admitted by the defendant, it was obligatory on his part to prove that the nature of transaction was of loan and document contained in Ex. P-1 was got executed in security of loan. It is further contended by him that the defendant has not examined any independent witnesses and has failed to discharge his burden. Learned Counsel has further submitted that plaintiff has proved the readiness and willingness on his part under the sale agreement marked as Ex. P-1.

5. Shri A.S. Usmani, learned Counsel for the respondents supported the impugned judgment.

6. Perused the impugned judgment in the light of the record of the Trial Court. It is a trite law that the nature of transaction can very well be proved and intention of the parties behind the transaction can be established by evidence. Learned Trial Judge after appreciating the evidence on record has found that the suit land did not belong to the defendant alone, but was a property jointly owned by the defendant and his brothers as a joint family property and this fact was known to the plaintiff. Since the suit property was not of exclusive ownership of the defendant, the learned Trial Judge has held that the agreement of sale seems to be a nominal document which was got executed in security of loan. Learned Trial Judge has adverted himself to the notice contained in Ex. P-2 (a) wherein the possession is stated to have been delivered on 24-12-1985 and not on 12-6-1986 as pleaded in the plaint. Learned Trial Judge has further observed that a case of family partition between the defendant and his brothers was pending in a Court of law which was within the knowledge of the plaintiff as revealed in the notice Ex. P-2. Taking the aforesaid into consideration, it does not sound logical that the plaintiff with the knowledge of pendency of partition proceedings between the defendant and his brothers about the suit land will enter into an agreement of sale with the defendant alone in respect of the disputed land. It may further be seen that the plaintiff is maternal uncle of the defendant who has categorically stated

that the loan was advanced to him by the plaintiff and the alleged document was executed in security of loan. Learned Trial Judge has believed the versions of the defendant and his witnesses and after correctly appreciating the statements has rightly held that the intention of the parties at the time of Ex. P-1 was of loan and was not of agreement of sale of agricultural land.

7. Learned Counsel for the appellant has submitted that the learned Trial Judge has failed to take into consideration the entire evidence. He pointed out Paragraph 4 of P.W. 2 in this regard. In this paragraph, P.W. 2 has stated that he was ready to pay the balance amount and get the sale deed executed. However, in support of this version he has further stated that he had purchased land in the name of his wife from one Shyam Bihari vide Ex. P-5. Obviously, the said land was in the name of the wife of the plaintiff who was not examined to prove that the amount of balance consideration could have been raised from the said land. Learned Counsel further submitted that the plaintiff/appellant had pleaded readiness and willingness on his part in Paragraph 4 of the plaint which has not been specifically denied. Be it whatsoever, Section 16(c) of the Specific Relief Act puts an obligation on a Court before granting a decree for Specific Performance to ensure that the plaintiff has averred the readiness and willingness to perform his part of contract. Thus, even in the absence of specific denial, learned Trial Judge has not committed a mistake in giving a contrary finding about readiness and willingness against the plaintiff. Learned Trial Judge while deciding issue No. 4 has held that the plaintiff has failed to establish the readiness on his part. In view of this finding, the contention of the learned Counsel is not liable to be accepted. It is true that the plaintiff in a suit for specific performance is not required to prove the availability of liquid money. However, he is definitely required to prove his potential to raise the requisite sum of consideration. Plaintiff having failed to discharge this burden, has been rightly non-suited as regards the relief claimed by him for specific performance. Learned Trial Judge has protected the interest of the plaintiff by awarding a decree for refund of money with interest. In view of the totality of the facts and circumstances, the learned Trial Judge has not committed any error. In the result the appeal is dismissed. However, without costs.

