

Vikash Kumar Singh and Ors Vs. Manju Modi and Ors

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Court : Jharkhand

Decided On : Jul-28-2015

Appellant : Vikash Kumar Singh and Ors

Respondent : Manju Modi and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No. 6284 of 2013 1. Vikash Kumar Singh 2. Subhash Kumar Singh 3. Prakash Kumar Singh 4. Himanshu Kumar Singh All sons of Late Nand Kishore Singh 5. Rashmi Singh, wife of late Mukesh Singh and daughter in law of Late Nand Kishore Singh All resident of Bagan Para, Dumka, PS Dumka (T) 6. Umesh Chandra Tewary, s/o Late Jagat Narayan Tewary, Dumka, PS Dumka (T) 7. Vijay Kumar Chand, s/o Late Nitai Chand, Mohalla Bhagalpur Road, Dumka Petitioners Versus 1. Manju Modi, widow of Late Arun Kumar Modi 2. Sourabh Kumar Modi, s/o Late Arun Kumar Modi 3. Gourav Modi, s/o Late Arun Kumar Modi All resident of Pubali Apartment, Hanapara, Krishnapur, District 24 Pargana, West Bengal ... Respondents ----- CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioners : Mr. V. Shivnath, Sr. Advocate Mr. Birendra Kumar, Advocate Mr. Niraj Kishore, Advocate For the Respondents : Mr. Rahul Saboo, Advocate 05/Dated : 28th July, 2015 Per SHREE CHANDRASHEKHAR, J.

Aggrieved by order dated 24.08.2013 in Title Suit No. 40 of 2008, the present writ petition has been filed.

2. The petitioners are plaintiffs in Title Suit No. 40 of 2008 which was filed for a direction to the defendants to execute and register a sale deed. The plaintiffs averred that on different dates, they made payment to defendant nos. 1 and 2. Initially, an agreement was executed on 10.04.2003 which was supplemented by agreement dated 09.10.2004. Finally, agreement dated 02.06.2006 was executed between the parties, under which the defendant no. 1 agreed to execute sale deed for 2 6 kathas land in plot no. 947. The defendants filed application under Order VII Rule 11 CPC seeking dismissal of suit on various grounds including, on the question of jurisdiction. Vide order dated 24.09.2008 the said application was dismissed, against which W.P.(C) No. 5944 of 2008 was filed by the defendants. The writ petition was disposed of on 03.10.2012 granting permission to the defendants to raise question of jurisdiction, in accordance with law. After the issues were settled, an application was filed by the defendants seeking decision on the preliminary issue no. 8 which was framed as to the question of jurisdiction of Dumka court to try the suit. The said application has been allowed vide order dated 24.08.2013. Aggrieved, the petitioners have approached this court.

3. Heard the learned counsel for the parties.

4. Mr. V. Shivnath, the learned Senior counsel for the petitioners submits that the agreement dated 02.06.2006 was executed at Kolkata however, consent of the parties cannot confers jurisdiction on the court and therefore, even though, the agreement provides a forum and the place where a suit can be instituted, the suit can be instituted only in the court which has jurisdiction to try the suit. It is further submitted that the question of jurisdiction is a mixed question of law and fact and merely on the ground that the agreement provides that the dispute would be subject to jurisdiction of Hon'ble Kolkata High Court, the plaint should not have been returned to be presented before the competent court at Kolkata.

5. As against the above, the learned counsel for the respondents submits that agreement dated 10.04.2003 and one supplementary agreement were executed by the parties with 3 their free consent. The parties understood the consequence of conferring jurisdiction on a court at Kolkata and therefore, the parties are bound by the express terms of the agreement.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. It is not in dispute that the petitioners instituted Title Suit No. 40 of 2008 for a direction to the defendants to execute and register a sale deed with respect to a property situated at Dumka. The plaintiffs have averred that they made payment to the defendant nos. 1 and 2 on different dates and in consequence of payment to the defendants, supplementary agreement dated 09.10.2004 and agreement dated 02.06.2006 were executed between the parties. The defendants have denied agreement dated 02.06.2006. However, they have admitted execution of agreement dated 10.04.2003 and the supplementary agreement dated 09.10.2004. It is also admitted by the defendants that plaintiffs were engaged as brokers for selling Part I, II and III of Schedule A properties and they received Rs. 5,00,001/- as advance payment. The advance was to be adjusted against the final payment of the total price. It was provided under the agreement that the advance of Rs. 5,00,001/- would not be refunded rather, 5 kathas land in plot no. 936 would be registered in the name of the plaintiffs. At the request of the plaintiffs, agreement dated 10.04.2003 was extended for further six months. The plaintiffs paid Rs. 4,00,000/- in consideration for extension of original agreement dated 10.04.2003 and it was agreed between the parties that the amount of Rs. 4,00,000/- was nonrefundable. The plaintiffs sent a legal notice dated 11.12.2006 to original defendant no. 1 at Kolkata and requested him to execute sale deed for 6 kathas land in plot no. 947. The defendants have denied execution of agreement dated 02.06.2006. The plaintiffs have averred that the defendants in breach of the agreements executed between the parties sold land in plot no. 936 however, defendant no. 1 regretted and agreed to execute sale deed for 6 kathas land in plot no. 947 in favour of the plaintiffs for consideration of Rs. 5,00,001/- which the defendants had received under agreement dated 10.04.2003. It is averred that the parties agreed that registration of the sale deed in favour of the plaintiffs would be effected after taking delivery of possession in Title Execution Case No. 08 of 2005. It is further averred that the defendant no. 1 was delivered possession of land in plot no. 947 and delivery of possession was confirmed by the Court on 21.12.2006. In para 36 of the plaint, the plaintiffs have averred as under :

36. That the cause of action for the suit arose on 10.04.03, 09.10.04 and 02.06.06, the dates of agreement and lastly on 11.12.2006 and rectification notice dated 3.1.07 issued by the lawyer of the plaintiffs Asarfi Pd. Mandal, Advocate, Dumka and the reply given by the Advocate, of the defendant Bhaskar Choudhary of Kolkata High Court dated 22.12.06 and lastly on 2.11.2007 when Hon'ble Judge of the Jharkhand High Court, Ranchi directed the plaintiffs to institute Civil Suit and the said cause of action arose at Dumka Town, P.S. Dumka Town, Subdivision and District Dumka within the jurisdiction of the court. 5 8. The Code of Civil Procedure deals with place of suing in Section 15 to Section 20. The provisions under Section 15 to Section 20 relates to jurisdiction of the Court in which a suit may be instituted. Section 16 provides that suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgaged property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Section 17 provides that if the relief in the suit relates to compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate. In *Harshad Chiman Lal Modi vs. DLF Universal Ltd. and Anr.* (2005) 7 SCC 791, a question as to jurisdiction of the Delhi Court arose. The suit was for specific performance of the agreement for sale of immovable property situated at Gurgaon however, the suit was instituted at a Court at Delhi. The Hon'ble Supreme Court has held as under :

37. In the instant case, the Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the plaintiff for presentation to the proper court. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of the Delhi Court and in the original written statement, they had admitted that the 6 Delhi Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was i.e. the Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor can it confer jurisdiction on the Delhi Court, which it did not possess. Since the suit was for

specific performance of agreement and possession of immovable property situated outside the jurisdiction of the Delhi Court, the trial court was right in holding that it had no jurisdiction.

9. The learned Senior counsel for the petitioners has rightly submitted that jurisdiction upon a court cannot be conferred by consent of the parties. In *Bahrein Petroleum Co. Ltd. vs. P. J.*

Pappu AIR 1966 SC 634, it has been held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court otherwise, incompetent to try the suit. It has been held by the Hon'ble Supreme Court that conferment of jurisdiction on a court by an agreement which otherwise the court would not have under Code of Civil Procedure, would be against public policy and such clause in agreement is liable to be ignored. In view of Section 16 CPC, a suit in which the subject matter is an immovable property can be filed only at the place where the suit property is situated. From the averments in the Title Suit No. 40 of 2008, it is apparent that the property under agreement dated 02.06.2006 is situated at Dumka. The trial judge has noticed that the suit land pertains to plot no. 947 of Rasikpur no. 2 under Jamabandi no. 200 and it stands recorded in the names of Bibhuti Pd. Modi, Bhagirath Pd. Modi, Bhairav Pd. Modi and 7 Ramdayal Modi. The trial judge has further noticed that parties have admitted that the suit land is situated at Dumka 10. Considering the above facts, I find that the impugned order dated 24.08.2013 suffers from serious infirmity in law and accordingly, it is set aside. Title Suit No. 40 of 2008 is restored to its original file. The trial court is directed to proceed with the suit, in accordance with law.

11. Let a copy of the order be transmitted to the concerned court through fax. (Shree Chandrashekhar, J.) Tanuj/ .A.F.R.

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