

Smt. Shobharani @ Shobha Devi Vs. Chandra Singh and Anr

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Court : Rajasthan Jodhpur

Decided On : Nov-19-2015

Appellant : Smt. Shobharani @ Shobha Devi

Respondent : Chandra Singh and Anr

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B. CIVIL WRIT PETITION NO.4045/2014 Smt. Shobharani @ Shobha Devi
V/s. Chandra Singh & Anr. Date of Order : :

19. 11.2015 PRESENT HON'BLE MR. JUSTICE P.K. LOHRA Mr. Sandeep Saruparia, for the petitioner. Mr. L.K. Purohit, for respondent No.1. Mr. Shreyansh Mrdia for Mr. Sandeep Shah, for respondent No.2. <><><> Petitioner-plaintiff has filed this writ petition to challenge impugned orders dated 24th February, 2014 (Annex.P/5) and 9th April, 2014 (Annex.P/7) passed by learned Additional Civil Judge (Junior Division) No.1, Bhilwara (for short, 'learned Court below') in a suit for specific performance of contract. By order Annex.P/5, the learned Court below has opined in clear and unequivocal terms that the basis of suit, i.e, agreement to sale dated 3rd of October, 1972, is in the nature of conveyance, and being insufficiently stamped, the same is not admissible in evidence. Thereafter, while resorting to Section 37 of the Rajasthan Stamp Act, 1998 (for short, 'Act of 1998') the learned Court below 2 impounded the document and directed petitioner-

plaintiff to produce certified copy of the document with the order before the Collector (Stamps) within 15 days. It is also clarified that no further time shall be granted to the petitioner in this behalf, and posted the matter for evidence of the petitioner-plaintiff. Subsequent to that order, petitioner submitted an application by invoking sub-section (1) of Section 37 of the Act of 1998 showing his readiness and willingness to pay the deficit stamp duty and penalty thereon and for prayed for impounding the document by the Court instead of sending it to the Collector (Stamps). After hearing the rival parties, by order Annex.P/7, the learned Court below declined the prayer of the petitioner. The bare necessary facts for the purpose of this writ petition are that petitioner-plaintiff filed a suit for specific performance of contract for enforcement of agreement to sale dated 3rd of October, 1972 allegedly executed in his favour by the first respondent. For seeking specific performance of contract dated 3rd of October 1972, suit was laid on 27th August, 2002. On behalf of respondent-defendant, an objection was raised about admissibility of the document, precisely, on the ground that the same is insufficiently stamped and unregistered. The objections to this effect were filed vide Annex.P/3. Responding to the objections, petitioner submitted his reply and asserted that by virtue of proviso to Section 49 of the 3 Registration Act, 1908, there is no necessity for registration of agreement dated 3rd of October, 1972. A further plea is raised that agreement to sale is properly stamped, and therefore, same is admissible and has been rightly marked exhibit during examination-in-chief. After hearing learned counsel for the parties, the learned Court below by order Annex.P/5 found the agreement to sale as conveyance within the meaning of clause (xi) of Section 2 of the Act of 1998 and impounded the document with a direction to the petitioner-plaintiff to file it before Collector (Stamps) and submit it after paying requisite stamp duty. Later on, the petitioner made an endeavour to persuade the learned Court below by invoking sub-section (1) of Section 37 of the Act of 1998 to pay the deficit stamp duty with penalty and also tendered Rs.100/- by application (Annex.P/6). The said application did not find favour from the learned Court below and by Annex.P/7, same was rejected. It is in that background the petitioner has invoked supervisory jurisdiction of this Court. Learned counsel for the petitioner, Mr. Sandeep Saruparia, submits that the learned Court below has committed grave and serious jurisdictional error in not

exercising powers under sub-section (1) of Section 37 of the Act of 1998, therefore, both the impugned orders are not sustainable. Learned counsel further submits that the learned Court below has failed to exercise powers under 4 sub-section (1) of Section 37 of the Act of 1998 which it ought to have exercised in the backdrop of facts and circumstances of the instant case. In support of his contentions, learned counsel for the petitioner has placed reliance on a decision of this Court in *Bhawana & Ors. V/s. Chandmal* [2015 AIR CC1237(Raj.)]. The Court, while harmoniously construing Sections 39, 41 and 42 of the Act of 1998, dilated on the powers to be exercised by the Court if it is noticed that document tendered in evidence is insufficiently stamped. The Court held:

18. A conjoint reading of provisions of Section 39, 41 & 42 of the Act makes it abundantly clear that if the respondents/plaintiffs are ready and willing to remit the amount of deficient stamp duty and penalty as provided by proviso (a) to Section 39 of the Act, after payment of such duty and penalty, the document cannot be refused as to be admitted in evidence on account of insufficiency of the stamp duty and only an authenticated copy thereof alongwith a certificate in writing stating the amount of duty and penalty levied and such amount recovered is required to be sent to the Collector (Stamp). However, if the respondents/plaintiffs are not ready to remit the amount of deficient stamp duty and penalty as provided by proviso to Section 39 of the Act then the court has to impound the document not duly stamped and make reference to the Collector for determination of the stamp duty and penalty payable notwithstanding the fact that the respondents/plaintiffs have not expressed their readiness and willingness to pay the deficient stamp duty and penalty. In any case, a document insufficiently stamped is not admissible in evidence even for collateral purposes. Per contra, learned counsel for the respondents submit that, on the face of it, the document was 5 unregistered and improperly stamped and the petitioner has not shown his readiness and willingness to remit the deficit stamp duty and penalty, and thus, the discretion exercised by the learned Court below is not liable to be interfered with. Learned counsel for the respondents would contend that recitals contained in Annex.P/4 are clear and unequivocal wherein petitioner has asserted that document is properly stamped and its registration is not required, and therefore, in that background, while passing the impugned orders, the learned Court below has

rightly construed that the petitioner was not ready to remit deficit stamp duty. With these submissions, learned counsel for the respondents have urged that the ratio of Bhawana's case (supra) is not applicable in the facts and circumstances of the instant case. Lastly, learned counsel for would contend that as the discretion, has been judiciously exercised by learned Court below in the backdrop of facts and circumstances of the instant case while construing that petitioner is not ready to remit the deficit stamp duty, the said order is not liable to be tinkered with in exercise of supervisory jurisdiction of this Court, which is to be exercised with great care and circumspection. I have heard learned counsel for the parties and perused the impugned orders. There are certain unique features of the case that petitioner has filed the suit of specific performance of 6 contract, which was allegedly executed by respondent on 3rd of October, 1972, in the year 2002. Be that as it may, the fact remains that admissibility of the agreement to sale is questioned by the respondent-defendant by submitting application Annex.P/3. In the application, respondent has pleaded with clarity and precision that document is in the nature of conveyance, and therefore, being insufficiently stamped and unregistered, the same is not admissible in evidence. This application of the respondent is seriously contested by petitioner inasmuch as vide Annex.P/4, the petitioner has asserted that document is not required to be registered and it is properly stamped. The recitals contained in Annex.P/4, in vernacular, read as under: , . (..) . 01, .. 98/05 . . -- # % # # % %) , , # #/# % 3:- (1) 3 , . 1 , # 3 (2) 3 % , . 2 3 , #/# # 3 #: 100/- @ 3 # # 3 7 # C# # # 3 # %-1 @ % # # G # H 3 # 03/10/1972 3 K# @ % L 3 # , % # #/# 3 # L% 3 # L% # / # ## / 3 # #S % % 3 #: 3 % 20-11-08 . /-. It is in that background the learned Court below while exercising its discretion has resorted to Section 37 of the Act of 1998 and has passed the order Annex.P/5. After passing of the order Annex.P/5, petitioner has changed his stand topsyturvy and candidly admitted that the document is insufficiently stamped for which she is ready to pay the requisite stamp duty with penalty. In her application, petitioner has also romped in Section 39 of the Act of 1998 to pay the requisite penalty. Upon consideration of the application, the learned Court below declined to accept the plea of the petitioner, and reiterated by its order Annex.P/7 that in view of detailed order passed earlier on 24th of February, 2014, the application of the petitioner is not entertainable and she is required to make

compliance of the earlier order. The ratio decidendi in Bhawana's case (supra) is based on interpretation of proviso to sub-section (2) of Section 42 of the Act 1998. Sub-section (2) of Section 42 of the Act envisage with clarity and precision that in every other, case which is not covered under sub-section (1) of 8 Section 42 or Section 37 of the Act of 1998, the document is required to be impounded and sent to Collector (Stamps). Proviso is only attracted when any party interested is prepared to pay the cost of preparing copy of instrument. Thereafter the Court is to follow the procedure adopted under Clause (a) to (d) to the proviso. In the instant case, no such consent of the petitioner is discernible that she had shown her interest to pay the cost of preparing a copy of instrument and even to pay the deficit stamp duty inasmuch as she has contested the claim of the respondent-defendant on the issue of document being insufficiently stamped and unregistered. Therefore, in the backdrop of facts and circumstances of the instant case, the ratio decidendi of the judgment in case of Bhawana (supra) cannot be applied and same is clearly distinguishable. There is yet another aspect of the matter that the learned Court below has exercised its discretion under sub-section (2) of Section 42 of the Act of 1998 after impounding the document for sending it to the Collector (stamps), in my considered opinion, the said discretion is neither perverse, nor de hors the law. In totality, it is rather difficult to fathom that the learned Court below has committed any jurisdictional error or an error apparent on the face of record. In Radhey Shyam & Anr. V/s. Chhabi Nath & Ors. [2015 (1) WLC SC (civil) 546]., larger Bench of the Supreme Court over-ruled the earlier judgment in Surya Dev Rai V/s. 9 Ram Chander Rai & Ors. [2003 (6) SCC675 and held that jurisdiction under Articles 226 and 227 of the Constitution are distinct and judicial orders passed by civil courts are not amenable to writ of certiorari. The Court observed:

23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

25. Accordingly, we answer the question referred as follows : "(i) Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the

Constitution; (ii) Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226. Contrary view in Surya Dev Rai is overruled."

While relying on earlier verdicts of the Supreme Court including verdict in Shalini Shyam Shetty V/s. Rajendra Shankar Patil [2010 (8) SCC329, the Court held:

22. The Bench in Surya Dev Rai also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions 10 including Waryam Singh and another vs. Amarnath and another [AIR 1954 SC215:

1954. SCR565, Ouseph Mathai vs. M. Abdul Khadir(2 [2002 (1) SCC319, Shalini Shyam Shetty vs. Rajendra Shankar Patil [2010 (2) WLC (SC) Civil 457 :

2010. (8) SCC329, and Sameer Suresh Gupta vs. Rahul Kumar Agarwal [2013 (9) SCC374. In Shalini Shyam Shetty, this Court observed :

"4. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not

interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

(emphasis added) Therefore, applying parameters in *Radhey Shyam* (supra), I am not persuaded to interfere with the impugned discretionary orders passed by the learned Court below while exercising supervisory jurisdiction under Article 227 of the Constitution. Resultantly, petition fails and same is, hereby, dismissed. (P.K. LOHRA), J.

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