

Jiwan Das Vs. Narain Das

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Court : Delhi

Decided On : May-01-1981

Reported in : AIR1981Delhi291; 1981RLR596

Judge : Sultun Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 41; [Code of Civil Procedure \(CPC\), 1908](#) - Order 39

Appeal No. : Civil R. Appeal No. 464 of 1981

Appellant : Jiwan Das

Respondent : Narain Das

Advocate for Pet/Ap. : Rameshwar Dayal,; A.B. Dayal,; S.L. Bhatia,;

Judgement :

Sultun Singh, J.

(1) Narain Dass and his mother Sm. Jassi Devi have moved an application u/s 20 of the Arbitration Act in the court of Shri Jagdish Chandra. Additional Distt. Judge, Delhi seeking reference to arbitration of the dispute, arising between them and Khushal Chand Chandana, respondent No. 1, under an agreement of sale dated 8.9.1979 pertaining to quarter No. A-32 Outram Lines, Delhi, as also plot No. 301, Dr. Mukherji Nagar, Delhi. It was stated that the price settled was Rs. 45.500.00

out of which Rs. 5,000.00 were paid to Khushal Chand Chandana. The latter was to obtain permission for that sale from the L. & D. O. New Delhi, and Municipal Corporation and within a month thereof to execute the sale-deed. The L. & D. O. required Khushal Chand by its letter dated 5.1.1980 to pay the unearned increase of Rs. 3,125.00 and thereafter the permission could be granted.

(2) However, in the meanwhile, because of rise in the prices of the properties, and with ulterior motive to avoid sale in their favor, it was next alleged in the petition, a sale-deed was actually executed by Khushal Chand in favor of Jiwan Dass Rawal, respondent No. 2, for more than Rs. 60,000.00. this was in spite of their apprising Jiwan Dass Rawal that Khushal Chand had already agreed to sell the property to them. It was next stated that the mutation of the property was still to be effected by the L. & D. O. in favor of Jiwan Dass Rawal, and the possession of the plot was yet to be delivered by the Municipal Corporation.

(3) Impleading Khushal Chand, Jiwan Dass Rawal, L. & D. O. & Municipal Corporation as respondents, the application u/s 20 of the Arbitration Act was moved for reference of disputes under the agreement of sale dated 8.9.1979 to arbitration. This agreement was said to contain an arbitration clause for decision of those disputes.

(4) Khushal Chand in his written statement denied the existence of any agreement of sale between him and the petitioners, or that there was any arbitration agreement. It was next stated that there was no valid and legal agreement between the parties as Smt. Jassi Devi, petitioner, was neither agreeable nor available at the time when the agreement was drafted. The cheque of Rs. 5,000.00 was, therefore, returned by Khushal Chand to Narain Dass, petitioner, which he duly accepted. Without prejudice to these objections, it was stated that respondent No. 2 to 4 were not parties to any transactions, and, therefore, the petition against them was not maintainable. The suit was also stated to be barred by sections 79 and 80 of the Civil Procedure Code, and u/s 478 of the Delhi Municipal Corporation Act, as no notices were served on the L. & D. O. and the Municipal Corporation. It was admitted that he had now sold the property to Jiwan Dass Rawal, though the consideration money was stated to be Rs. 20,000.00 only.

(5) Jiwan Dass in his written statement pleaded that the petition had become infructuous as he had already purchased the property for consideration and without notice of any alleged agreement between the petitioners and respondent No. 1, Khushal Chand and a registered sale deed stood duly executed. The petition was next pleaded to be bad for misguide of parties as this respondent was not a party to any arbitration agreement. The petitioners were further stated to have not come with clean hands, and they were pleaded to be estopped. It was denied that the sale in his favor was after notice of agreement of sale in petitioners' favor.

(6) The L. & D. O. in his written statement that Khushal Chand had applied for permission for second sale of the property on 10.10.1979 in favor of the petitioners, and it was granted on 4.11.79. Thereafter a fresh permission to sell the property to Jiwan Dass Rawal was applied for by Khushal Chand on 21.1.1980, and it was granted on 29.2.1980. On 16.4.1980, an intimation was received that the sale had been effected in favor of Jiwan Dass Rawal. Mutation was, however, not effected.

(7) Issues on the pleadings of the parties were framed by the learned trial court and they are still to be finally decided.

(8) The petitioners had moved an application under order 39, rules 1 and 2 read with section 151, Civil Procedure Code for grant of interim injunction to the effect that the L. & D. O. and the Municipal Corporation be restrained from effecting mutation of quarter No. A-32, Outram Lines, in favor of Jiwan Dass Rawal, and from transferring possession of plot No 301, Dr. Mukherji Nagar, Delhi, to him till the disposal of the main petition. This was contested by respondents No. 1 and 2. The learned Additional District Judge by his order dated 15.11.1980 granted the interim injunction after observing that the petitioners had a prima facie case and Jiwan Dass Rawal had still to prove that he was a bona fide purchaser for value and without notice of the prior agreement to sell. The balance of convenience was also noted to be in petitioners' favor, as they were otherwise likely to suffer irreparable loss. It is against this order that Jiwan Dass Rawal feeling aggrieved, has moved the present appeal.

(9) A preliminary objection has been taken to the maintainability of this appeal on the ground that none such could lie as the interim stay order could be made by the trial court u/s 41 of the Arbitration Act, which was not appealable. Confronted with this position, it has been urged from the side of the appellants that this appeal should be treated as a revision, and in support reliance has been placed upon : AIR 1971 SC2083 (Reliable Water Supply Service v. U.O.I.), A.I.R. 1975 J & K. 25 (Mis. Sharma Ice Factory v. M/s Jewel Ice Factory and A.I.R. 1969 Del 188 (Mehta Teja Singh and Co. v. Fertilizer Corporation) It is now a settled law that the label placed on a cause is not conclusive and does not ordinarily affect the jurisdiction of the court to allow the label to be corrected by treating an appeal as a revision or a revision as an appeal, provided of course the cause of justice so demands. In cases where no appeal lies but an appeal has been wrongly preferred, the court has the wide discretion to treat it as a revision where the conditions laid down u/s 115 Civil Procedure Code . are satisfied.

(10) Adverting, therefore, to the merits of the controversy, it may at the outset be taken note that unlike the law in England where an agreement of sale creates an equitable estate in the purchaser, the law in India does not recognise any such estate. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate, No privity in estate can be deduced there from which can bind estate, as is the position in cases of mortgage, charge or lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale. (See in this respect : [1967]1SCR293 , Ram Baran v. Ram mohit,

(11) Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed.

(See in this respect : AIR1956 Cal147 , Govinda Chandra v. Provabati Ghose, and A.I.R. 1957 AP 960 S. Ramalingm v. G.R. Jagadammal.

(12) Now in the present case, a sale-deed already stands executed and registered in favor of Jiwan Dass Rawal. Narain Dass and Smt. Jassi Devi have not been so far allowed a decree for specific performance. In such circumstances, can it be said that till these persons are able to obtain such decree and get a sale-deed executed in their favor, Jiwan Dass Rawal should be prevented from enjoying the fruits of the sale in his favor, or possession of the property. Perhaps Narain Dass and Smt. Jassi Devi have a good cause to feel aggrieved that the commitment made to them under the agreement of sale was not honoured by Khushal Chand. Perhaps Narain Dass and Smt. Jassi Devi may assert that the so-called arbitration agreement is too vague and uncertain, and they being not parties to the agreement are not bound by the same. These controversies, however, are not within the purview, of the present revision as appropriate issues have already been framed, and they will receive adjudication in due course. Suffice, however to say at this stage that till Narain Dass and Smt. Jassi Devi are able to obtain a decree for specific performance and also get the sale-deed executed in their favor, no title or interest in the property can be assumed to have passed to them. They, therefore, cannot prevent Jiwan Dass Rawal from getting the sale mutated in his favor with the L & Do and take possession of the property or plot. This being the legal position of the rights of Narain Dass and Smt. Jassi Devi under the agreement of sale in their favor, the revision is allowed.

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