

Bhaskaran Vs. George Joseph

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Court : Kerala

Decided On : Nov-10-1987

Reported in : AIR1988Ker255

Judge : M.N. Pareed Pillay, J.

Acts : [Registration Act, 1908](#) - Sections 17(2) and 49; [Specific Relief Act, 1963](#) - Sections 20

Appeal No. : S.A. No. 627 of 1982

Appellant : Bhaskaran

Respondent : George Joseph

Advocate for Def. : V.P. Yohannan,; Joshi Varghese and; C.D. Jose, Advs.

Advocate for Pet/Ap. : S. Shyam and; M.G. Suseela, Advs.

Disposition : Appeal dismissed

Judgement :

M.N. Pareed Pillay, J.

1. Appellant's suit for specific performance of a contract though decreed by the Munsiff was reversed by the Sub Judge.

2. Plaintiff sold the property to the defendant for a consideration of Rs. 2,300/- as per Ext.B2 dated 24-2-1973. It is the case of the plaintiff that the sale deed was executed on condition that the property should be resold to the plaintiff within a period of one year on payment of Rs. 3,250/- and that along with the execution of the sale deed a separate agreement was also entered into between the parties. The suit was resisted by the defendant contending that when he went to the Sub Registry Office for getting the sale deed executed in his favour the plaintiff demanded some more amount, that he was not agreeable to pay the same, that the plaintiff asked him whether he was prepared to re-sell the property within one year, that he replied that he would consider it later, that as a condition precedent for executing the sale deed the plaintiff insisted that he should execute a document expressing his readiness to re-sell the property within a period of one year and that for the sake of getting the sale deed executed in his favour he had agreed to execute a separate agreement. Defendant asserted that the agreement was not executed with his free will and that the parties never intended to act upon the same.

3. Ext.A2 is the agreement. Execution of Ext.A2 is admitted by the defendant. But his case is that Ext.A2 was executed on account of the pressure exerted by the plaintiff and not with his consent. The burden is heavy upon the defendant to prove that the agreement was executed on account of the pressure tactics adopted by the plaintiff. The Munsiff held that Ext.A2 is a valid contract capable of specific performance and therefore the plaintiff is entitled to have the property sold back to him.

4. The Sub Judge held that specific performance cannot be granted on the strength of an unregistered agreement. Whether agreement for sale of immovable property requires registration or not is the point to be considered. Section 17 of the Registration Act enumerates the list of documents which require registration. Section 17(1)(b) of the Act provides for the registration of non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. As Ext.A2 is an agreement for sale of immovable property it will not

come under Section 17(1)(b) of the Registration Act. Section 17(2)(v) of the Act provides that nothing in clauses (b) and (c) of Sub-section (1) of Section 17 applies to any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. An agreement for sale of immovable property is a non-testamentary instrument which does not create, declare, assign, limit or extinguish, any right, title or interest, whether vested or contingent in immoveable property. Section 17(2)(v) makes the position clear that a document not itself creating a right in immoveable property of the value of Rs. 100/- and upwards, but merely creating a right to obtain another document which will, when executed, create any such right need not be registered. As held in AIR 1927 Mad 636 (FB) (Narasimhaswamy v. Venkatalingam) a document which does not by itself convey property but merely gives a right to call for another document does not require registration. Explanation to Section 17(2) of the Act makes it clear that even an unregistered document affecting immoveable property may be received as an evidence of contract in a suit for specific performance. This explanation was added by Section 2 of the Indian Registration (Amendment) Act, 1927. The explanation states that a document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such a document contains a recital of the payment of any earnest money or of the whole or of any part of the purchase money. In Narayanaswamy v. Muniamma, AIR 1974 Mys 13, it is held as follows :

'An agreement to reconvey executed contemporaneously with a sale deed and which purports to restrict the purchaser's interest in that sale deed does not require registration. The agreement falls within the exemption under Section 17(2)(v) of the Registration Act and not under Section 17(1)(b). Therefore the suit for specific performance can be based on an unregistered agreement to reconvey. Even assuming that the document requires registration the suit for specific performance can be founded on basis of the document in view of the proviso to Section 49 of the Registration Act.'

In view of Section 17(2)(v) and the proviso to Section 49 of the Registration Act, it has to be held that an agreement for sale of immovable property even though not registered can form the basis for specific performance. The Sub Judge was not justified in holding that Ext.A2 agreement cannot be enforced for want of registration.

5. However, the plaintiff cannot succeed in the suit as there is no satisfactory evidence to hold that plaintiff was ready and willing to perform his part of the contract to get the sale deed executed in his favour. In a suit for specific performance the plaintiff has to allege his continuous readiness and willingness to perform the contract. Readiness and willingness of a person seeking performance of an agreement where time is provided for such performance means that the person claiming performance has kept the contract subsisting with preparedness to fulfil his obligations and accept performance when the time for performance arrives. In the plaint there is no sufficient allegation that the plaintiff was willing to perform his part of the agreement. In Ext.A3 notice it is mentioned that, the plaintiff approached the defendant several times to get the property reconveyed to him and that the defendant has all along been dodging it. Plaintiff examined as P. W. 1 has not stated even in his chief examination that he was all along willing to perform his part of the contract and that the defendant adopted procrastinating tactics. The evidence does not show that there was any tender of the consideration mentioned in Ext.A2 before the stipulated period. As that crucial evidence is lacking, the Sub Judge was justified in nonsuiting the plaintiff.

I do not find sufficient reasons to allow the Second Appeal. The Second Appeal is accordingly dismissed. There is no order as to costs.