

Narain Singh Vs. Dalip Singh

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SooperKanoon Citation : sooperkanoon.com/751458

Court : Rajasthan

Decided On : Oct-03-1972

Reported in : AIR1973Raj45; 1972()WLN766

Judge : J.P. Jain, J.

Acts : Specific Relief Act, 1877 - Sections 12; [Specific Relief \(Amendment\) Act, 1963](#) - Sections 10

Appeal No. : Second Appeal No. 223 of 1966

Appellant : Narain Singh

Respondent : Dalip Singh

Advocate for Def. : S.K. Mal Lodha, Adv.

Advocate for Pet/Ap. : B.P. Agarwal, Adv.

Disposition : Appeal allowed

Judgement :

J.P. Jain, J.

1. This second appeal is by the defendant Narain Singh and it arises out of a suit for specific performance instituted by respondent Dalip Singh.

2. Briefly put the facts of the case are that Thakur Sangram Singh divided some of his land into plots for sale for making residential houses and named it as 'Sangram Colony'. The proposed scheme consisted of about 70 plots. Out of these plots, his son and general Attorney Kr. Narain Singh agreed to sell plot No. 49 measuring 581 Sq. yards at the rate of Rs. 6/-per Sq. yard to Dalip Singh and received from him a sum of Rs. 872/- as one-fourth price on 25-8-1956. It was agreed that a sale-deed would be executed within two months. As the land was agricultural land, proceedings for its conversion into Abadi were to be taken. The sale was, therefore, subject to the sanction of the State Government and Urban Improvement Board. Time for execution of the sale was extended from time to time. Endorsements were also made to that effect on the back of the receipt Ex. I which was given on behalf of the defendant to the plaintiff acknowledging the payment of one fourth of the sale money. The matter could be finalised only in August, 1959. According to the plaintiff Dalip Singh he asked Kr. Narain Singh to execute the sale-deed of plot No. 49, but the latter instead of executing the sale-deed in his favour, by his letter dated 20-10-1959 (Ex. 3) informed him that instead of the original plot No, 49, new plot No. 54 of the revised plan was allotted to him which measured 806.6 Sq. yards. After having credited the amount of Rs. 872/- received by Kr. Narain Singh, the balance of Rs, 3978/- was claimed. The plaintiff did not accept the offer and wrote back to Kr. Narain Singh on 29-10-1959 that the change of the plot was not acceptable to him and he also claimed loss of interest on the sum of Rs. 872/-and the rent of the building @ Rs. 200/-per month which Dalip Singh would have constructed on the plot if it had been sold out to him. The defendant having failed to execute the sale-deed of the plot No. 49 as originally agreed, the plaintiff Dalip Singh claimed specific performance of contract of sale of plot No. 49 measuring 581 Sq. yards. In the alternative he claimed a decree directing the defendant for executing the sale deed of plot No. 54 for the sum of Rs. 4,400/- only, less Rs. 872/- already paid by him. Damages to the extent of Rs. 1,840/- were also claimed. This suit was instituted by the plaintiff against Thakur Sangram Singh on 5-12-1959 in the Court of Civil Judge Jaipur City, Jaipur.

3. The suit was resisted by the defendant by his written statement dated 20-4-1960. The agreement to sell plot No. 49 and the receipt of one fourth of the money was not disputed. It was, however, contended that the said agreement was only

tentative as it was subject to the modification and restrictions to be imposed by the Government of Rajasthan & Urban Improvement Board, It was also alleged that the original agreement was void as the terms of the agreement were vague and uncertain, The contract for the purchase of plot No, 49 being subject to variations was not a complete contract. According to defendant's submission all the plots had to be revised and the scheme of selling the plots came to be finalised on or about 20-8-1959 and as a result of the revised situation the original contract came to an end. It was admitted by the defendant that in view of the revised position of the plots, plot No. 54 was offered to the plaintiff, but the plaintiff refused to accept it. It was accordingly submitted that the plaintiff was neither entitled to enforce the original contract for the sale of plot No. 49 nor has he any right to compel the defendant to sell plot No. 54 of the revised plan.

4. The learned trial Judge framed the following issues:--

1. Whether the agreement of sale is not void for uncertainty and the plaintiff is entitled to specific performance of contract of sale of plot No. 49 or in the alternative for plot No. 54?
2. Whether the plaintiff is entitled to get damages from the defendant for breach of the contract? If so, to what extent?
3. Whether the agreement to sell plot No. 49 in the Sangram Colony was subject to the alternations and conditions as might be put by the Government the U. I. B. and the Municipal Council and the plaintiff had .agreed to it?
4. Whether the contract of the Parties came to an end on Or about 20th August, 1959?
5. Whether the defendant is entitled to claim extra cost for footpath, etc. from the plaintiff?
6. Relief?

I must at the outset observe that the issues framed by the trial Court are not happy and they do not precisely disclose the controversies arising between the parties.

However, it appears that the Parties knew each other's case well and led evidence. No grievance was made at the bar in the first appellate Court nor has that been made before me in the second appeal. I will, therefore, examine the case on the material existing on the record.

5. The learned trial Judge held that the terms of the contract can easily be spelt out from the receipt Ex. 1 and the evidence on record and that the contract is not void on the ground of vagueness or uncertainty. He also held that there was a complete contract for sale of plot No. 49 for a sum of Rs. 3,486/- and it took place on 25-8-1956 and out of the sale money Rs. 872/- had been Paid by the plaintiff to the defendant in pursuance to that agreement. The learned Judge also came to the conclusion that specific performance of plot No. 49 cannot be allowed and as the plot No. 54 corresponds to a great extent to the original plot No. 49. the defendant can be compelled to sell that plot in place of plot No. 49. Accordingly a decree was passed directing the defendant to execute a sale-deed of plot No, 54 in favour of the plaintiff for a sum of Rs. 3,528/-. It may also be mentioned here that the learned Judge found the plaintiff not entitled to the damages claimed by him.

6. During the pendency of the suit Thakur Sangram Singh died, NarainSingh who was his adopted son and a General Power of Attorney holder was brought on record as the legal representative of the deceased defendant.

7. Being dissatisfied with this decree Narain Singh preferred an appeal and the learned District Judge Jaipur City Jaipur while agreeing with the conclusions arrived at by the learned trial Judge, dismissed the appeal vide his judgment dated 26-2-1966. It is this decree that has been assailed before me in second appeal

8. On behalf of the appellant Mr. Agrawal has argued that the Courts below have erred in decreeing the plaintiff's suit for specific performance of plot No. 54. His submission is that according to plaintiff's own showing there was a contract for the sale of plot No. 49 between the parties in the year 1956. Even in the plaint there is no allegation of any agreement to sell plot No. 54. That apart it has been argued that the plot No. 54 was offered to the plaintiff by the defendant on 20-10-1959 vide his letter Ex. 3 and the plaintiff had refused to have that plot on the ground

that it was not the one, he had agreed to purchase. And if the plaintiff was not ready and willing to purchase the plot No. 54, his suit for the sale of plot No. 54 is not maintainable and for that matter the decree passed cannot be sustained. He invited my attention to the document Ex. 3 and its reply dated 29-10-1959 by the plaintiff. This document is not exhibited but it is admitted. He also took me through the pleadings of the plaintiff. In the plaint as well, it has been pointed out that it was not even averred by the plaintiff that he was at any time ready and willing to purchase plot No. 54 which, was offered to him by the defendant. On the other hand Shri Lodha endeavoured to show that the revised plot No. 54 was the same as plot No. 49 agreed to originally. He also called my attention to the contents of para No. 12 of the written statement in which it has been stated,

'And now when after getting all (these hurdles removed, the plot which was almost at that very place where the original plot was tentatively existing the plaintiff refused to accept the same'.

He also referred to the statement of Narain Singh in support of this contention that the revised plot No. 54 was substantially the same plot which was numbered as plot No. 49 in the year 1956.

9. I have considered the rival contentions. The parties have failed to produce the original plan with a view to show or to enable the Court to ascertain the actual situation of the plot No. 49 in the colony. The scheme prepared by Thakur Sangram Singh of dividing his land into several plots was finalised by the Urban Improvement Board and the Government of Rajasthan. As a result of that finalisation of the scheme a revised plan was prepared. A copy of the revised plan is Ex. 6 and is on record. From this plan it appears that the entire colony consisted of 63 plots. All the plots have been shown in the plan. In this plan plot No. 54 appears to exist in the eastern southern corner. Plot No. 49 of the revised plan is at a distance of about 2 or 3 plots from plot No. 54. Narain Singh in his statement deposed that the dimensions of the plots were varied and the original plot No. 49 is approximately at a distance of 50 yards from plot No. 54. In the absence of the original plan showing the exact situation of original plot No. 49 the only material is the oral evidence of the parties and the averments in the pleadings. After having

perused the written statement relied upon by Mr. Lodha I am unable to accept his contention that the defendant admitted that plot No. 54 was on the same land which constituted plot No. 49. It is no doubt true that plot No. 49 originally agreed or which must have been shown in the original plan measured 581 Sq. yards and the plot No. 54 in the revised plan Ex. 6 measured 806.6 Sq. yards. The variations in size according to the parties came into being on account of the intervention of the Urban Improvement Board and the State Government. Thus it was possible for the original plot No. 49 to have been varied, but it cannot be said with any amount of certainty that Plot No. 54 of the revised plan is the result of the varied form of plot No. 49 or it is exactly on the plot where plot No. 49 was situated or it was substantially the same. The statement referred to above in para No. 12 of the written statement rather corroborates the statement of Narain Singh at the trial where he stated that the original plot No. 49 was in the same vicinity but it was at a distance of 50 yards. Mr. Lodha's contention that the averment in the written statement amounts to admission of the defendant that original plot No. 49 and the revised plot No. 54 were the same or substantially the same, cannot be accepted. It will be useful at this stage to refer to the statement of plaintiff Dalip Singh himself. He deposed at the trial that there was 10 feet wide road on both the sides of plot No. 49, and it was at a distance of 125-150 feet from the western compound wall of the 'Sangram Colony', He also stated that plot No. 54 is situated at the back of servants quarters of Diggi House and in front of it is a blind road and the shape of this plot is also odd. He further stated that it is not correct that the location of original plot No. 49 is the same as that of plot No. 54. Plot No. 54 according to him is at a .great distance.

10. In view of this statement it cannot be successfully argued that plot No. 54 of the revised plan is even substantially the same as the original plot No. 49. In the document Ex. 3 as well it has been mentioned that the plaintiff was allotted a new plot No. 54 instead of old plot No. 49. This fact is further fortified that the plaintiff refused to accept the plot No. 54 on the ground that this was different from plot No. 49 and he insisted that he must get plot No. 49 as was originally agreed to between the parties. Here again I may refer to the observations of the trial Judge in this regard. He observed:--

'In the case in hand it is (an) admitted fact that the plot No. 54 on Ex. 6 to a great extent corresponds to the plot No. 49 on the old plan and the defendant is able to execute a sale deed with respect to this plot No. 54.

In the present case, it is also worth considering that by the breach of contract, the real loss to the plaintiff is the loss of the property, that is to say. its not coming to his possession. In order to compensate him fully and put him in a position, as if he had suffered no loss, whatever one would have to deliver to him another property, of the same value as that which he agreed to purchase from the defendant'.

These observations make it abundantly clear that the learned trial Judge was also of the opinion that plot No. 54 was a plot different from plot No. 49. The learned Judge of the lower appellate Court did not give a finding in this regard to the contrary. He only considered the fact that plot No. 54 was slightly different in the location, and the area. The question in controversy is not this that plot No. 54 is slightly different in size and in the same vicinity. But the question that has to be examined is whether plot No. 54 is the same and is situated on the same place where originally plot No. 49 existed. I am clearly of the opinion that plot No. 54 was different and was situated at a different place though in the same locality and near about the original plot No. 49.

11. Once it is found that plot No. 54 was not the same or substantially the same as plot No. 49, the question that arises will be whether a Civil Court cant in a suit for specific performance compel the defendant to sell plot No. 54 in place of plot No, 49. The suit for specific performance can only be founded on a contract. If there is no contract the party cannot come to enforce that contract. It is not the plaintiffs case that there was a contract between the parties by which the defendant agreed to sell plot No. 54, It is true that vide his letter Ex. 3 defendant offered to sell plot No. 54. This offer was not accepted. This position does not create a contract. The fact that the defendant by a contract agreed to sell plot No. 49 in the year 1956 and accepted one fourth money in pursuance of the contract for the sale of that plot, does not empower the plaintiff to seek the specific performance of contract for another plot of land which was not the subject-matter of contract of sale. The position of law cannot be doubted that a suit for specific performance must allege

a concluded contract. I have no manner of doubt in holding that the offer made by the defendant to sell plot No. 54 was a mere offer and cannot be termed as concluded agreement. It cannot be enforced and it is not open to the Court to make out a new contract for the parties.

12. There is yet another aspect of the matter. A contract to be specifically enforced by the Court must, as a general rule, be mutual. That is, it must be capable of being enforced by either of the parties against other. The Specific Relief Act does not anywhere repudiate the doctrine of mutuality. In the present case it was not possible for the defendant to have compelled the plaintiff to purchase plot No. 54 and if the defendant could not enforce that contract, it is not possible for the plaintiff to seek specific performance against the defendant for the sale of plot No. 54. The learned Courts below have clearly erred in granting a specific performance of the plot No. 54 in directing the defendant to execute a sale deed conveying the title of that plot in exchange of plot No. 49 which was originally the subject-matter of the contract of sale. To grant a decree for a plot other than the one contracted, is contrary to the very notion envisaged by the expression 'Specific Performance of the Contract'. Such a decree cannot be sustained in law.

13. Another question that arises for consideration is whether the plaintiff is entitled to the specific performance of the contract of sale of plot No. 49 itself. The original plan has not been brought on record and the exact location of plot No. 49 cannot be ascertained. The learned trial Judge has considered this aspect and held that it was not possible to specifically enforce the contract of sale of plot No. 49. I need not go so deeply into the question in view of the statement of Narain Singh that all the plots except plot No. 54 have been sold out and constructions have been made on them. Learned counsel for the parties admitted that it is not possible to enforce the contract of sale of plot No. 49. but Mr. Lodha urges that in that event the defendant is responsible for breach of contract. According to his submission the original plot No. 49 was after all a part of the land sold out by the defendant under the scheme, even if the plots were renumbered the land which constituted plot No. 49 had its existence and it had been sold out without being offered to the plaintiff. In this view of the matter the defendant is liable for the damages which have been occasioned on account of the breach of the contract. On behalf of the appellant it was in the

first instance argued that the contract of 25-8-1956 for the sale of plot No. 49 was void on account of uncertainty. Both the Courts below have repelled this contention and in my opinion it was rightly done. Receipt Ex. 1 clearly showed the sale of plot No. 49 for Rs. 3,486/- acknowledging the receipt of amount of Rs. 872/-. It was admitted on behalf of the defendant that the sale was @ Rs. 6/- per Sq. yard. The rate and the price at which the land was sold, being known the measurements are very well ascertainable by this document Ex. 1. It is also not disputed that plot No. 49 had its existence in the proposed plan of the Colony, the defendant wanted to establish. Mr. Agarwal on behalf of the appellant has conceded that his client can be held liable for the breach of the contract. He also admitted that the stand of the defendant that he was entitled to forfeit the advance money, cannot be justified. In other words he has accepted the position that the defendant is liable for damages for the breach of contract. After having heard the learned counsel, I am of the opinion that there was a concluded agreement between the parties on 25-8-1956 with regard to the sale of plot No. 49. It was no doubt subject to certain variations on account of the sanction of the scheme by the State Government and the Urban Improvement Board. It has not been the case of the defendant that the scheme was not sanctioned and he was not permitted to sell the plots of land including plot No. 49. Accordingly there was a complete contract for sale and the defendant was under a legal obligation to sell the plot No. 49. The contract was enforceable. But in the present set of circumstances. It is not possible to specifically enforce that contract. The plaintiff, then, is certainly entitled to be compensated. The plaintiff did not make a prayer in the alternative for the award of compensation on account of breach of the contract. His claim for damages for the sum of Rs. 1840/- consisted of two items:--

(I) Loss of Interest on Rs. 872/- from 25-8-1956 to 24-11-1959 at the rate of 1% per month amounting to Rs. 340/-and

(II) Loss of rent for 33 months for the building which would have been constructed by the plaintiff on the plot, if the plot had been sold out to him--at the rate of Rs. 200/- per month total Rupees 6,600/- but claimed Rs. 1,500/- only.

This claim was found to be untenable and this finding was not challenged by the plaintiff either in the first appellate Court or before me in second appeal. But this finding does not preclude the plaintiff from claiming compensation by way of damages on account of the breach of contract other than the items referred to above. The plaintiff has not claimed that relief in the plaint. Mr. Lodha has placed reliance on *Sm. Shakuntla Devi v. Harish Chandra*, AIR 1952 All 602. On the basis of this decision he contends that where the Court finds that a contract has been entered into and there has been a breach of that contract and that it is not possible or desirable to order specific performance of that contract then it is just and proper to award compensation, and the Court can make an order allowing compensation to the aggrieved party even without a specific prayer in the plaint.

14. Mr. Agrawal does not dispute this proposition of law. Having regard to the circumstances of the case I am inclined to consider the plaintiff's case for the award of compensation, in view of my finding that there was clearly a breach of contract on the part of the defendant in not having sold the plot No. 49 or any other plot if renumbered. There is no material on record to enable me to decide the amount of compensation. According to Mr. Lodha the plaintiff is entitled to the difference of the price agreed to and the market price of plot No. 49 on the date of the suit. Since the case has not been investigated in this regard, I have no option but to send the case back to the trial Court for necessary inquiry in this regard. I, therefore, frame the following issue:--

ISSUE: What is the amount of compensation, the plaintiff is entitled to. for the breach of contract of sale of plot No 49?

Without expressing my opinion one way or the other to the contention of Mr. Lodha. I would remand the case for trial of the above issue.

15. The result is that the appeal is allowed. The judgment and decree of the Courts below are set aside with the direction that the case will go back to the Civil Judge, Jaipur City, Jaipur who will try the issue and decide it according to law. Having regard to the circumstances of the case. I direct the parties to bear their own costs throughout upto this stage.

