

Chhatar Singh Vs. Arjun Singh

Chhatar Singh Vs. Arjun Singh

SooperKanoon Citation : sooperkanoon.com/751769

Court : Rajasthan

Decided On : May-03-1994

Reported in : AIR1995Raj73; 1994(2)WLC533; 1994(2)WLN9

Judge : P.K. Palli, J.

Acts : [Specific Relief Act, 1963](#) - Sections 12(3) and 16(C); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96

Appeal No. : Civil Regular First Appeal No. 63 of 1979

Appellant : Chhatar Singh

Respondent : Arjun Singh

Advocate for Def. : S.L. Jain, Adv.

Advocate for Pet/Ap. : R.K. Singhal, Adv.

Judgement :

P.K. Palli, J.

1. The plaintiff-appellant filed a suit for specific performance of the contract against the defendant respondent Arjun Singh saying that the defendant-respondent agreed to sell 25 bighas of land to the plaintiffs for a consideration of Rupees. 15,000/- and an agreement to that effect was executed on 27-12-1962 Ex. 1 on

record. Rs. 7,000/- were paid as earnest money and in part performance of the contract possession of the land was delivered to the plaintiffs and it was agreed that on the grant of the formal Sanad, the defendant would execute the sale-deed and get it registered. Since the Sanad was not granted for quite some time Rs. 2,000/- more were paid by the plaintiffs and again an agreement dated 20-2-1964 was executed and got registered with the stipulation that in case the defendant failed to get the sale-deed registered the plaintiffs would be entitled to get the same executed and registered through the agency of the Court. The defendant having failed to perform his part of the contract, the plaintiffs served a notice asking the defendant to execute and get the sale-deed registered in their favour showing their willingness to perform their part of the contract and it was further stated that they had made several attempts to deposit balance amount of Rs. 4000/- with the Department but the Department was not accepting it by stating that the amount would be accepted only from the defendant. The present suit was, thus, filed seeking the desired reliefs.

2. The defendant resisted the suit and claimed that the land, in fact, had been allotted to them in lieu of their claim regarding the property left by the family in Pakistan and the land does not belong to Arjun Singh alone but to the family which included his brothers and mother. The agreement to sell thus was unauthorised. It was further said that since the plaintiffs failed to deposit the sum of Rs. 4,000/- with the Department, the Sanad could not be obtained and the suit in the situation was liable to be dismissed.

3. The lower Court proceeded to examine the controversy between the parties and in this respect, on Issue No. 1 a finding was returned that as per Ex. A 1 and Ex. A2 i.e. the Sanad and the order it is found that 25 bighas of land was allotted in compensation not to Arjun Singh alone but to the six brothers and their mother. On Issue No. 2 the Court returned the finding that Rs. 7,000/- were received by Arjun Singh and an agreement Ex. 1 was executed by him in favour of the plaintiffs and in further sequence of the same the possession was delivered of the land in question to the plaintiffs. Issue No. 3 was decided in the manner that Arjun Singh on 20-2-1964 accepted to have received Rs.9,000.- and entered into a fresh agreement as the Sanad had not been granted to him till then. This latter

agreement Ex. 2 was got registered and thus, the execution of Ex. 2 was also proved and accepted on the question of deposit of the remaining balance of Rs. 4,000/- which was to be deposited with the Department and was not deposited by the plaintiffs, the Court returned a finding that it has not been proved that the plaintiffs made any efforts to deposit this amount of Rs. 4,000/- with the Settlement Department and the evidence led to this effect that they had made several attempts to deposit the same but the Department was not accepting the payment was disbelieved. In the subsequent agreement Ex. 2 it is clearly recorded that Rs. 4,000/- would be deposited by the plaintiffs in the Settlement Department. The issue was decided against the plaintiffs. On the question of limitation covered under Issue No. 6 a finding was returned that the suit was within time. On Issue No. 7 that earlier Hukam Singh was impleaded as proforma defendant and thereafter impleaded as plaintiff, therefore, the suit in that situation was not within time was also not accepted by the Court. Since the Sanad was issued during the pendency of the case i.e. on 11-9-1974, the Court rightly decided the issue No. 7 against the defendant. Issue No. 8 is recorded in this manner that whether the defendant was the owner of 3 bighas and 2 1/2 biswas of the land in question and what is its effect on the six brothers and the mother on the suit in question. While dealing with this issue the learned Court, after examining the oral as well as the documentary evidence on the record, recorded a finding that as per Ex. A.1 and Ex. A.2, 25 bighas of land was allotted to 8 persons by way of compensation in lieu of the property held by them in Pakistan and Arjun Singh, thus, has only a share to the extent of 3 bighas and 2 1/2 biswas of land out of the total land i.e. 25 bighas and, therefore, he had no right or authority to enter into the agreement to sell in respect of the entire land since he was not the sole owner of the same. It would be in the event of partition that he would be entitled to 3 bighas and 2 1/2 biswas of land out of the total land. The issue was, thus, decided against the plaintiffs and in favour of the defendant and returning the finding of Issue No. 5 the learned Court held that the agreement Ex. 1 and Ex. 2 are not enforceable and no relief can be granted to the plaintiffs. It was further observed that since the plaintiffshad failed to deposit the sum of Rs. 4,000/-with the Settlement Department, they have violated the terms of the agreements and, therefore, are not entitled to get the agreement specifically enforced and consequently, the suit

was dismissed.

4. Aggrieved against this decision, the plaintiff Chhatar Singh has filed the present appeal impleading Hukam Singh the other plaintiff as proforma respondent.

5. It is an admitted position that 25 bighas of land was agreed to be sold vide the agreement Ex. 1 dated 27-10-1962 and another agreement Ex. 2 dated 20-2-1964. It is further agreed that the possession of the land was delivered to the plaintiffs at the time of the agreement of sale. It is further agreed that the amount of Rs. 9,000; - stands paid by the plaintiffs and received by the defendant and only a balance amount of Rs. 4,000;- was left which was to be deposited with the Department and on getting the Sanad from the Department the sale-deed was to be executed and registered.

6. Learned counsel for the appellant has argued that the plaintiffs have always been ready and willing to perform their part of the contract and only a small amount of Rs. 4,000/- remained to be paid. They had already parted with Rs. 11,000/-, so there was hardly any occasion on their part to refuse the payment of the balance amount.

7. My attention has been brought to the notice Ex. P. 3 which was sent by the plaintiffs to the defendant asking him to execute the sale-deed which showed their readiness and willingness to perform their part of the contract. Ex. P. 4 is the postal receipt in this respect. It is further admitted case that the Sanad was given on 11-9-1974. The case can be examined from another angle also that in case the defendant was willing to perform his part of the contract he could have also asked the plaintiffs to pay the balance amount of Rs. 4,000/- and get the sale-deed registered. There is no material to that effect. The suit was filed on 3-9-1974 and the defendant was served on 17-9-1974. The plaintiffs would not know that the Sanad had been granted on 11-9-1974.

The defendant in the suit was served on 17-9-1974 and to show, his bona fides he could have informed the plaintiffs that since the Sanad has been granted he was prepared to perform his part of the contract and that the plaintiffs should perform their part to the contract by paying the balance amount. The defendant. on the

other hand, pleaded rather strangely that he was not competent to enter into the agreement since he alone was not the owner and thus, the agreements executed by him have no legal value.

8. It is unthinkable to accept that the plaintiffs in the given situation would not be willing to perform their part of the contract. They had already parted with a major portion of the sale amount and only a small fraction was lying in balance and nobody would have allowed in the situation to lose a valuable piece of land running into 25 bighas in Ganganagar District of Rajasthan and also lose the money the plaintiffs had paid i.e. Rs. 9,000/-.

9. Learned counsel for the appellant has vehemently argued that since the Court had found that 3 bighas and 2 1/2 biswas of land comes to the share of the defendant out of the land in question the defendant in the situation could not have been permitted to run away from the agreements and the agreements to the extent of his share could be specifically enforced and basing his argument my attention has been invited to the provisions of subsection (3) of Section 12 of the [Specific Relief Act, 1963](#) (hereinafter called as 'the Act'), which is reproduced hereunder : --

'12. Specific performance of part of contract. -

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either - -

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, in default to perform specifically so much of his part of the contract as he can perform, if the other party -

(i) in a case falling under Clause (a) pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under Clause (b) pays or has paid the

consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss of damage sustained by him through the default of the defendant.'

10. On a perusal of this provision I am of the view that the plaintiffs were entitled to be granted to this much of the relief. Examining the case from the equitable point of view also, I think, the defendant in view of his conduct cannot be permitted to escape the liability having run away with Rs. 9,000/- which the plaintiffs had paid. The counsel for the appellant has further conceded that he would be quite satisfied if the land forming the share of the defendant is given to him and he was prepared to pay Rs. 4,000/- which is the balance price. I think it is a fair offer.

11. Although the learned counsel for the appellant has stated that the amount of Rs. 11,000/- out of the total consideration of the land i.e. Rs. 15,000/- stands paid to the defendant, which statement has not been denied by the counsel for the respondent but on a perusal of the record I find that Rs. 7,000/- were paid at the time of the first agreement Ex. 1 and Rs. 2,000/- accepted to have been paid and received vide the second agreement Ex. 2. I have not been able to find as to how and when Rs. 2,000/- more were paid. There is nothing on the record to indicate that a total amount of Rs. 11,000/- had been paid. In this manner, the amount of Rs. 9,000/- only having been paid is borne out from the record. In that situation the plaintiffs are bound to pay Rs. 6,000/- which would be the balance consideration.

12. Learned counsel appearing for the respondent defendant has vehemently argued that since, the agreement in question is void ab initio, no decree for specific performance can be granted to the plaintiffs on the basis of these agreements. Counsel has further forcefully contended that according to the provisions contained in sub-clause (c) of Section 16 of the Act which bars personal relief, the plaintiffs were never willing to perform the essential terms of the contract which were to be performed by them and they have failed to deposit Rs. 4,000/- with the Department, they have waived their right flowing from the agreements. I find no force in the contentions raised by the learned counsel appearing for the respondent. Learned counsel appearing for the respondent has also pressed in

service the decisions reported as Kanchi Kamamma v. Yerramsetti Appanna, AIR 1973 Andh Pra 201, Pakharsingh v. Kishansingh, 1973 Raj LW 611 : (AIR 1974 Raj 112) and Satnam Singh v. Jagar Singh (1974 WLN (UC) 12.

13. I have gone through these decisions carefully. There can be no two opinions that transfer by a person not authorised to dispose of the transferable properties not his own are void ab initio in law. The facts of the present case are slightly different. It is an accepted position that the defendant Arjun Singh has a share in the land in question. The agreements forming the basis of the suit have been proved a major portion of the amount of sale has been received by him. The land forming the share of other brothers and the mother is not being touched. There is nothing in law that can bar the defendant from transferring his share in the land in question and on partition that share would be deemed to have been sold and agreed upon to be sold to be the plaintiffs.

14. Learned counsel appearing for the appellant has also brought to my notice the case law reported as Mrs. Chandnee Widya Vati Madden v. Dr. C, L. Katial, AIR 1964 SC 978; Ajit Prashad Jain v. N. K. Widhani, AIR 1990 Delhi 42; R. Velammal v. R. Daivasigamani AIR 1993 Madras 100 and K. S. Krishan v. Krishnan S/o Kizhakkum-brath Arumugha Tharakar, AIR 1993 Kerala 134.

15. In the judgment of the Kerala High Court, it is observed that as per the provisions of Section 12 of the Specific Relief Act where the agreement to sell the property was by three co-owners, the suit can be specifically enforced against one of the co-owners in respect of his share.

16. In the Madras case, where in a suit for specific performance the property was agreed to be sold to three persons the suit was filed by all and only one appeared in the witness-box the others two would also be entitled to the decree of specific performance under Section 15 of the Specific Relief Act.

17. Since, the learned counsel appearing for the respondent has also raised an argument that the co-plaintiff has not joined in the filing of the appeal, therefore, no decree can be granted in his favour or for that matter the appellant is not entitled to any relief. I am afraid the contention is not tenable. Both the plaintiffs would be

entitled to the reliefs prayed for.

18. Though the relief of specific performance is purely discretionary but the said discretion has to be exercised on sound principles of law and not in any arbitrary manner. The grant of relief of specific performance has been accepted to be a rule and refusal is an exception which is further to be based on valid and cogent grounds being shown. The defendant, in this case, cannot be permitted to take advantage of his own wrong. Though my attention has also been invited to the fact that initially before the Sanad was granted it was the defendant alone who has been shown entitled for the allotment and grant of Sanad and the plaintiffs in the given situation could have been persuaded to accept the position as such. Moreover, the very fact the defendant Arjun Singh had handed over the possession of the entire land in sequence of the agreement and in part performance of the same and his other brothers and mother have not raised their little finger till date, the matter could have been successfully argued from that angle also from the side of the appellant.

19. Be that, as it may, I am taking an equitable view in the matter and confine the relief only to the extent of the share which the defendant has i.e. 3 bighas and 2 1/2 biswas.

20. For the reasons recorded above, the appeal is partly allowed and the judgment and decree passed by the trial Court is reversed to that extent. The suit of the plaintiffs is decreed and the defendant is directed to execute the sale deed in favour of the plaintiffs to the extent of his share in the land i.e. 3 bighas and 2 1/2 biswas on receiving the balance consideration. The appellant shall deposit the balance consideration in the Court below within three months from today and on deposit being made a notice will be given to the defendant respondent to execute the sale-deed in favour of the plaintiffs failing which it will be open to the plaintiffs to move the Court below for getting the sale deed executed by the Court on behalf of the respondent.

21. Since this appeal is partly allowed taking an equitable view of the matter and in order to do substantial justice between the parties, in all fairness the appellant plaintiffs are directed to handover the possession of the remaining land to the

defendant and this would be done simultaneously at the time of the execution of the sale deed and would be recited in the sale deed itself.

22. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com