

Bishan Singh Vs. Ram Singh

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Court : Rajasthan

Decided On : Nov-18-1969

Reported in : 1969WLN476

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 1 of 1963

Appellant : Bishan Singh

Respondent : Ram Singh

Disposition : Appeal dismissed

Judgement :

C.M. Lodha, J.

1. This is a second appeal by the plaintiff Bishan Singh whose suit for specific performance of contract sale of 12 Bighas of agricultural land situated in village Bada Naya Gaon, District Bundi, was decreed by the trial court, but was dismissed by the learned Senior Civil Judge, Bundi, on appeal by the defendant - respondent.

2. The appellant Bishan Singh is the father-in-law of the respondent Ram Singh and both the parties owned 50 Bighas each in Khasra No.6. The appellant's land was on the southern side and the respondent's on the northern. In 1953 A.D. the

defendant filed a suit in the Court of Sub-divisional Officer, Nenwa alleging that the plaintiff-appellant had encroached upon 12 Bighas of the defendant's land and this claim was decreed on 22.10.1954. The appellant Bishan Singh filed a suit in the Court of Munsiff, Bundi for declaration that the decree passed by the Sub-divisional Officer on 22.10.1954 against him was ineffective and liable to be set aside. It is not known under what provision of law the suit was filed. While this suit was pending both the parties made a joint application before Guru Singh Sabha, Bundi on 5.6.1957 for deciding the dispute between them pertaining to 12 Bighas of land which was the subject matter of the suit. A copy of this application has been placed on the record and marked Ex. 1. The Sabha gave its decision on the same day according to which it was directed that Bishan Singh shall pay Rs. 240/- to Ramsingh in lieu of the price for the 12 Bighas of land in dispute and Ramsingh would execute a sale deed in favour of Bishan Singh for the same. The mode of this payment of Rs. 240/- was also prescribed Rs. 100/- were to be paid on 10. 6. 1957 and Rs. 140/- on the date of hearing in the suit. According to this award by the Sabha Ramsingh was also to make a statement before the Munsiff, Bundi, that he had compromised on payment of Rs. 240/- as price for the land in question. Both Bishan Singh and Ramsingh made an endorsement below the award to the effect that the award was welcome. A copy of this award has also been placed on the record and marked Ex. 2. It is alleged by the plaintiff that Bishan Singh paid Rs. 100/- on 10.6.1957 (vide receipt Ex. 5) and could not pay the rest of the amount to Ramsingh as Ramsingh failed to appear before the Court of the Munsiff, Bundi in the pending suit. Bishan Singh, however, did not take any steps to file the award before the Court and allowed the suit to be dismissed in default. The plaintiff Bishan Singh's case is that he was always prepared to pay Rs. 140/- to the defendant but the defendant was not willing to carry out the terms of the award, and consequently the amount of Rs. 140/- was deposited with the Sabha. The plaintiff filed the present suit in the Court of Munsiff, Bundi on 22. 8. 1956 praying that a decree for specific performance for sale of the land in question be granted in his favour and the defendant be directed to accept the balance of the price Rs. 140/- and execute and get registered a sale deed for the same according to law.

3. The defendant-respondent Ram Singh opposed the plaintiff's suit. He denied the award as well as any agreement between the parties to abide by the same. In the alternative he pleaded that in case the Court comes to the conclusion that there was an agreement between the parties for sale of the land in question, he was not bound to carry out the same as the plaintiff has committed breach of that agreement by not paying the full price of it in time.

4. After recording the evidence produced by the parties the learned Munsiff decreed the plaintiff's suit. On appeal by the defendant, however the learned Senior Civil Judge, Bundi set aside the judgment and decree of the trial court and dismissed the plaintiff's suit. He held that no relief can be granted on the basis of the award as it had not been made a rule of the Court according to law, nor could it be used under Section 47 of the Arbitration Act, 1940 as a compromise or adjustment of a suit. He also held that there was no subsequent agreement between the parties for sale of the land in question in favour of the plaintiff. The plaintiff has therefore come in second appeal to this Court.

5. Learned Counsel for the appellant has submitted that the plaintiff-appellant has not based his suit on the award Ex. 2, nor he wants to use it as an evidence of compromise or adjustment of the suit filed by Bishan Singh, and dismissed in default. His submission is that the suit is to enforce an agreement entered into between the parties subsequent to the award & seeks to use the award Ex. 2 only for the purpose of ascertaining the terms of that agreement. In other words the appellant's case is that there was a contract between the parties subsequent to the award for the sale of the land in question by the defendant Ramsingh to the plaintiff Bishan Singh for Rs. 240/- in pursuance of which the respondent Ramsingh accepted part payment of the price Rs. 100/- vide receipt Ex. 5. In support of his contention the learned Counsel has placed strong reliance on *Durai Swami v. Kishtappa* AIR 1958 Mad. 420.

6. On the other hand the learned Counsel for the respondent has contended that the only provision in the Arbitration Act, 1940 under which an arbitration award, obtained, otherwise than according to the provisions of the Act, can be taken into consideration is Section 47 of that Act, which provides that such an award may be

used for the purpose of proving compromise or adjustment of a suit by any court before which the suit is pending and that too only with the consent of all the parties interested. It is urged that, no other use can be made of an arbitration award obtained otherwise than according to the provisions of the Arbitration Act. In support of his contention he has placed reliance on *Abdul Rahman v. Md. Siddig* AIR 1955 Mad. 781, *Jagdishchand v. Durgaprasad* 1954 RLW 718, *Phool Narain v. Madan Gopal* ILR 5 Raj. 580, and *Bisnath v. Bastimal* AIR 1968 M.P 208.

7. On a bare reading of Section 47, I am firmly of the view that this Section cannot be Pressed into service by the appellant in the present case, in as (sic) as there is nether consent of all the parties interested nor it is sought to be used as an evidence of compromise or adjustment of the pending suit. Learned Counsel for the appellant also frankly conceded that Section 47 has no applicability to the present case. I, therefore, do not think it necessary to make any detailed reference to the authorities relied upon by the learned Counsel for the respondent on this point.

8. The only point for decision, therefore, is whether there was any agreement between the parties subsequent to the award for the sale of land in question by the defendant to the plaintiff. At this connection the learned Counsel has relied upon the endorsement below the award signed by both the parties. It reads as under:

laxr dk QSlyk flj ekFks ij ifjokgu fd;k

meaning thereby that the award was welcome, and acceptable to both the parties. Learned Counsel has also relied on the receipt Ex. 5 for Rs. 100/- executed by the defendant Ramsingh and it shows that, in pursuance of the award dated 5. 6. 1957, the respondent Ramsingh had received Rs 100/- from Bishan Singh. It is on the basis of the aforesaid endorsement on the award and payment of Rs. 100/- by the appellant to Ramsingh in pursuance of it, that the learned Counsel wants the Court to come to the conclusion that there was an agreement between the parties for the sale of the land in question. It is urged that the present suit was only to enforce that agreement, and its terms may be ascertained by reference to the award Ex. 2.

9. For the decision of the point canvassed by the learned Counsel for the appellant it would be necessary to make reference to Section 32 of the Act which read? as follows:

32. Notwithstanding any law for the time being in force no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration, agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

10. Thus there is a clear prohibition enacted in Section 32 under which no suit can lie in respect of a decision upon the existence, effect or validity of an award In *Duraiswami v. Kishtappa* AIR 1958 Mad. 420 relied upon by the learned Counsel for the appellant the plaintiff had specifically pleaded in the plaint that the defendant had entered into an agreement to convey the suit property to the plaintiff by a registered sale deed. The agreement was endorsed on the award itself. It may be noted that the award was not made during the pendency of the suit and the relief sought in the plaint was enforcement of the agreement that had been endorsed on the decision of the arbitrators or the award. The learned Judge held that the suit was not barred under Section 32 of the Arbitration Act as it was to enforce an agreement and not the award, even though the terms of the agreement had to be ascertained by reading the so called award. The learned Judge observed as follows:

The word 'award' in Section 32, has in my opinion, to be read as referring only to an award which may be filed in Court under Section 14 and in accordance with which a decree may be passed under Section 17. Section 32 can be invoked in regard only to a suit in which an award, which may be filed in court under Section 14, forms the basis of the relief claimed.

11. For the purpose of decision of the present case I do not wish to express any opinion on the point decided by the learned Judge of the Madras High Court in the case referred to above. So far as the present case is concerned it is clear that the award was made in a suit and it could be filed in Court under Section 14 It cannot form the basis of the relief claimed in the present suit. No independent contract

subsequent to the award has been pleaded in the plaint and I find myself unable to accept the contention of the learned Counsel for the appellant that an independent agreement can be spelled out from the enforcement made under the award and receipt Ex. 5. The learned lower court has also come to the conclusion that there was no agreement subsequent to the award for sale of the land in question by the defendant to the plaintiff for a sum of Rs. 240/-. It is clearly mentioned in the receipt Ex. 5 that the amount of Rs. 100/- had been paid in pursuance of the award. The enforcement below the award only says that the award was welcome. I do not see any reason to take a different view on this point from the one taken by the lower court and have come to the conclusion that there was no subsequent agreement between the parties for the sale of the land in question and that no relief can be granted on the basis of the award which was given with reference to the subject matter of a pending suit and which should have been filed in court Under Section 14 of the Arbitration Act, and consequently cannot form the basis of the relief claimed.

12. In the result this appeal is dismissed but in the circumstances of the case I leave the parties to bear their own costs.