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Court : Rajasthan

Decided On : Feb-29-2000

Reported in : 2000(4)WLC369; 2000(2)WLN221

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Revision Petition No. 894 of 1997

Appellant : Harjeet

Respondent : Megha and ors.

Advocate for Pet/Ap. : Mr. K.K. Sharma

Disposition : Petition allowed

Judgement :

Arun Madan, J.

1. This revision petition filed under Section 115 CPC arises out of the order dated 15.5.1997 passed by learned Civil Judge (Junior Division) Anta Distt. Baran in Suit No. 30/96 by which the said trial Court directed that the agreement on the basis of which the suit for specific performance had been filed could not be admitted in evidence. The facts which are relevant for deciding the controversy between the parties briefly stated are that the plaintiff-petitioner filed a civil suit for specific performance of agreement of sale dated 9.6.1975 of agricultural land measuring

7/1 Bighas situated in Khasra No. 1163 which he had purchased from the defendant-respondents for sale consideration of Rs. 2000/- and in lieu of its payment, the respondents handed over its possession to the plaintiff. The recitals of the said agreement had provided that plaintiff could get the sale deed executed and registered for which defendant would extend all co-operation and the registration charges were to be borne by the plaintiff. In token of confirmation of the aforesaid agreement the possession of the land in question had also been handed over to the plaintiff. From the recitals of the said agreement, it is apparent that the Vendee had covenanted to agree to accompany the plaintiff for the purpose of effecting registration by execution of the sale deed as and when called upon to do so. The possession of the aforesaid land was handed over to the plaintiff on the date of execution of the agreement itself i.e. on 9.6.1975. The agreement was executed on requisite Stamp Paper of Rs. 3/-. The original photostat copy of the said agreement has also been perused during the course of hearing which was made available by the learned Counsel for the respondent at the time of hearing. The recitals of the agreement had provided that plaintiff could get the sale deed executed and registered as per his convenience.

2. Mr. K.K. Sharma, learned Counsel for the petitioner while assailing the impugned order of the trial Court dated 15.5.1997 has contended that the aforesaid agreement of sale for the agricultural land is binding on the parties and it is not open to either party to deviate from the same. He has further contended that since the agreement itself specifically provided that plaintiff could get the sale deed executed and registered and which the defendant respondents had failed to execute, the last of such request was made on 30.9.1988; upon refusal of the non-petitioners to execute the same, having regard to the fact that the petitioner has been in continuous possession of the property under the said agreement, he was entitled to have the specific performance of the said agreement and also entitled to have the sale deed executed and registered. It was then submitted that the entire sale consideration had already been paid and he was always ready and willing to have the sale deed registered by accompanying the defendant-respondents before the competent authority but the defendants had failed to carry out the corresponding obligation imposes upon them under the said agreement. It was further contended that the trial Court vide its impugned order dated 15.5.1997 had

failed to take the aforesaid aspects of the matter into consideration and that the order is not sustainable for the following reasons:

(a) that the impugned order passed by the trial court is absolutely illegal and contrary to facts on record as well as law and suffers from errors apparent on the face of record as well as errors of jurisdiction. The court below has acted with material irregularity in the exercise of its jurisdiction;

(b) that the trial Court has erred in holding that the document was not properly stamped and therefore, could not be admitted into evidence. The trial court has based its finding on the ground that the document cannot be termed to be an agreement of sale but was a sale deed and should have been stamped on the basis of the valuation of Rs. 2000/-. It is submitted that the aforesaid finding of the trial court is absolutely illegal and contrary to law as well as contrary to facts. The document was not a sale deed at all but was only an agreement by which the defendants had agreed to sell the property to the plaintiff and it was specifically mentioned in the agreement that the plaintiff could, at his convenience, get the sale deed executed and registered. The suit had been based on the aforesaid agreement;

(c) that the trial Court has erred in holding that the document was compulsorily registrable. It is submitted that the document was not a sale deed but was an agreement of sale and it had specifically been mentioned that the sale deed would be executed and registered later. In such an eventuality, the document did not require registration;

(d) that even otherwise, the trial Court has proceeded contrary to the provisions of the Stamp Act and hence, the order deserves to be set-aside;

(e) that the trial court has acted with material irregularity in the exercise of its jurisdiction. If the impugned order is allowed to stand, the plaintiff shall suffer irreparable injury and it will occasion a failure of justice, moreso as the impugned order virtually amounts to dismissal of the suit; and

(f) that even otherwise, the impugned order is illegal and the same deserves to be set aside.

3. The learned Counsel for the respondents while controverting the aforesaid contentions advanced by the learned Counsel for the petitioner has contended inter-alia that the trial Court has not committed any illegality in passing the order dated 15.5.1997 since the aforesaid agreement in question does not confer any rights on the plaintiff nor it imposes any corresponding obligation on the respondents. He has further contended that the trial Court had rightly appreciated the defence which he has urged before the trial Court. In the written statement filed in reply to the plaint by the non petitioners they had denied the execution of any such agreement. It was also denied that possession of the land was handed over to the plaintiff or that anything in writing had been executed between them. In the additional pleas, it was submitted that the plaintiff had in collusion with the Assistant Settlement Officer had got an order for recording of the land in his name against which, an appeal before the Settlement Officer Kota was pending. The plaintiff had filed the aforesaid agreement alongwith the plaint itself. The issues have been framed by the trial Court and the case was fixed for evidence of the plaintiff. While the evidence was being recorded, an objection was taken on behalf of the defendant that the agreement was not property stamped and that it was a sale deed which was registered and since the valuation of the land had been mentioned more than Rs. 100/-, it was compulsorily registrable. The defendant submitted that the said document could not be admitted into evidence while the plaintiff contended that since the original document had been filed alongwith the plaint and since it was not a sale deed, only an agreement of sale which did not pass on any title by the Vendor to the Vendee-plaintiff itself and since it was executed on Stamp Paper of Rs. 3/- which infact was the stamp duty and since the relief prayed for in the suit was confined to the sale deed be got executed and registered; hence the suit for specific performance could not be turned down merely for the reason that agreement of sale was not registered being insufficiently stamped.

4. I have heard learned Counsel for the parties at length, examined their rival claims and contentions and also the finding recorded by the trial Court. Prima-

facie, I am of the considered opinion that the trial Court has very erroneously accepted the objection of the defendants-respondents by holding that the agreement in question could not be considered to be an agreement of sale and it was a sale deed and therefore compulsorily registrable. The trial Court had further committed irregularity in having recorded a finding that since the agreement was not duly stamped as the valuation of the property had been mentioned as Rs. 2000/-, the sale deed should have been accordingly stamped. On this premises, the trial Court, refused to accept the said agreement into evidence and had posted the case for recording the evidence of the plaintiff on the last date of hearing i.e. on 17.7.1997. In my view, the trial Court has failed to examine the recitals of the agreement in their true perspective. From the recitals of the agreement it is very clear that the party had covenanted to sell 7/1 Bighas of land in Khasra No. 1163 of which the full sale consideration i.e. Rs. 2000/- having regard to the then prevailing price of the land in question and which infact had been paid by the plaintiff in full and its receipt has also duly been acknowledged by the defendant. The defendant had stated in unequivocal terms that they will have no objection to any use of that land by the plaintiff in any manner as he would like i.e. he may cultivate the land by himself or through somebody else to which the defendant or his legal representative will have no objection. The defendant had further deposed in the agreement that nobody would interfere in the peaceful possession and enjoyment of the property in question by the plaintiff and further that for all the liability the defendant shall be liable and charges for registration shall also be borne by the defendant-Harjeet. The defendant had further undertake to accompany the plaintiffs to get the registration of the land in question done as and when so required.

5. Since, the main prayer in the suit was that the defendant-non petitioners be directed to have sale deed executed and registered, it cannot be held that the aforesaid document was a sale deed and not an agreement of sale. If that was so, there would have been no necessity on the part of the petitioners to have filed a suit for specific performance of the agreement in question. Since the intention of the parties was to execute an agreement and thereafter have the sale deed executed and registered, the trial Court, in my considered opinion, committed a material irregularity and illegality in having arrived at the conclusion that the

document in question being a sale deed was compulsorily registrable and thus erred in exercising its jurisdiction. At this stage, the learned trial Court was not called upon to adjudicate the document on merits. In my view, that occasion would have arisen only at the time of final decision of the case after the parties had been called upon to adduce evidence and thereafter, the order could be passed on merits. A reference may be made in this regard to the relevant provisions of Section 17 of the Registration Act, 1908 as amended by Indian Registration (Amendment) Act (No. III) of 1927; the explanation to which is in the following term:

Explanation-A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase-money.

6. Sub-Section (v) of Sub-section (2) of Section 17 provides, thus:

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 immovable 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.

7. I am of the view that the Registration Act as well as Transfer of Property Act strikes only at document and not at transactions. Its provisions impose a strict construction and unless a document is clearly brought within its purview, its non-registration is no bar to its admissibility in evidence. In the instant case, the document in question being an agreement of sale of a strip of land measuring 7/1 Bigha in Khasra No. 1163 which is an agricultural land against which, the plaintiff had paid the sale consideration at the time of execution of the document itself, and the parties had covenanted to get the said document registered at a later date, this, by itself would not confer any legal rights to the plaintiff i.e. the passing of the title which infact would operate consequent upon the registration of the sale deed which admittedly is not alleged to have been done in the instant case. Hence, there was no bar for the trial Court to have taken the said document on record by

way of reception in evidence and thereafter duly exhibiting the same on the record since the relief sought for in the suit was for specific performance of the agreement. Section 54 of the Transfer of Property Act, 1882 for short 'the Act' defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part-paid and part promised' the rights and obligations of the parties are consequent upon the contract before and after execution of the deed as per Section 55 of the said Act which deals with the rights and liabilities of the buyers and sellers. As per sub-Section (3) of Section 55 of the Act where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in seller's possession or power. Sub-section (4) of Section 55 stipulates that the seller is entitled-(a) to the rents and profits of the property till the ownership thereof passes to the buyer; (b) where the ownership of the property has passed to the buyer before payment of the whole purchase-money to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

8. In the matter of Durgadan v. Devidan, 1974 RLW 296, similar question arose for consideration of this Court. The plaintiff had sought specific performance in respect of a document purporting to an agreement to sale which was not registered. It was held by this Court that it did not amount to sale but only to a contract for sale and so the plaintiff could pray for specific performance of the agreement. One of the issues which was framed by the trial Court in the proceedings which culminated in S.B. Civil Second Appeal before this Court was that whether the agreement which was not registered could be said to be inadmissible in evidence? This Court while deciding the second appeal observed in the following manner:

A sale of immovable property of the value of Rs. 100/- and upwards, could be made only by a registered instrument. Therefore, the sale document found to have been executed by the defendant in favour of the plaintiff purported to be a sale alright in every way, but according to its tenor, in law it could not be a sale, without

the sale document being registered legal title in the property would not be transferred to the vendee. Right to get possession by the vendee arises only when the title is conveyed with the registration of the sale document. It is only for the sake of convenience and for avoiding multiplicity of suits that even in a suit for specific performance of a contract for sale with respect to immovable property a prayer for possession is made, but it is far from saying that without such a prayer the suit for specific performance of the contract will not be maintainable. Therefore, the second contention has no force.

9. The learned Judge while deciding the aforesaid appeal had placed reliance upon the Division Bench's judgment of this Court in the matter of Sampat Raj v. Paker, RLW 1995 (VI) p. 232. wherein the reference was made to Section 17(2)(v) of the Registration Act which exempts from registration a document which does not itself create an interest in an immovable property but merely creates a right to obtain another document which will do so.

10. In the matter of : [1972]1SCR714 para 5. M/s. Khedut Sahakart Ginning and Pressing Society Ltd. v. The State of Gujarat, the Apex Court observed, as under.

Whether a particular agreement is an agency agreement or an agreement of sale depends upon the terms of the agreement. For deciding that question, the terms of the agreement have got to be examined. The true nature of a transaction evidenced by a written agreement has to be ascertained from the covenants and not merely from what the parties choose to call it. The terms of the agreement must be carefully scrutinised in the light of the surrounding circumstances—see the decision of this Court in Rohtas Industries Ltd. v. State of Bihar. In that decision, this Court further held that for considering whether a particular transaction is a sale or not, what the Court has to consider is whether as a result of the transaction, the property in the goods passed to the assessee in return for price and whether the assessee sold those goods as its own. Bearing in mind these principles, we shall now proceed to examine the provisions of the Act as well as the relevant bye-laws which take the place of agreement between the parties. It is not the case of the State that the society had in any manner acted in contravention of the bye laws. Therefore all that we have to find out is the true effect of the bye-laws.

11. As a result of above discussion, this revision petition is allowed. Consequently, the impugned order dated 15.5.1997 passed by the learned Civil Judge (Junior Division) Anta. Baran in Suit No. 30/96 is quashed and set-aside. There will be no order as to costs.

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