

Aasu Vs. Say Khan

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Court : Rajasthan

Decided On : Aug-24-2009

Reported in : 2009(2)WLN175

Judge : Jitendra Ray Goyal, J.

Appellant : Aasu

Respondent : Say Khan

Disposition : Application dismissed

Judgement :

Jitendra Ray Goyal, J.

1. This is second appeal by the appellant-plaintiff under Section 100 of the Code of Civil Procedure against the judgment and decree dt. 08.08.2008 passed by Additional District Judge No. 2, Kishangarhbas Camp Tijara, District Alwar in Civil Appeal No. 16/2004 whereby the judgment and decree dt. 02.12.2004 passed by Civil Judge (Junior Division), Tijara in Civil Suit No. 67/1997 was affirmed by which the suit of the plaintiff for specific performance of the contract was dismissed.

2. The case of the plaintiff as alleged by him is that he and the defendant entered into an agreement by which the defendant agreed to sell the disputed land and the plaintiff paid a sum of Rs. 10,000/- to the defendant as advance in the presence of

the witnesses at the time of execution of the sale agreement and the possession of disputed land was also handed over to the plaintiff and the remaining amount was agreed upon to pay at the time of registry of the disputed land but thereafter the defendant due to malafide intentions did not perform his remaining part of the contract, whereas according to the defendant he never executed any agreement to sell the disputed land to the plaintiff, since the disputed land was belonging to his father and at the time of execution of the agreement his father was alive, therefore he was not authorized to execute such an agreement and further according to the defendant he never received any consideration from the plaintiff nor possession of the disputed land was given to the plaintiff.

3. The trial Court on the basis of the pleadings of the parties framed the issues and after recording the evidence and hearing the parties dismissed the suit of the plaintiff holding that plaintiff failed to prove the execution of the so called agreement in favour of the plaintiff and consequent thereto since the execution of the agreement was not found proved, therefore, the issue No. 2 regarding performing the part of the contract by the plaintiff was also decided against the plaintiff.

4. Against the said judgment and decree the plaintiff-appellant filed an appeal in which the first appellate Court affirmed the findings of the trial Court and thereby dismissed the appeal of the appellant-plaintiff. Hence, this second appeal by the appellant-plaintiff.

5. Heard learned Counsel for the appellant on the point of admission and perused the impugned judgments of the Courts below.

6. It was inter alia contended that an agreement to sell was entered into in between the plaintiff and the defendant for sale of the disputed land in the presence of the witnesses and the plaintiff in support of his case produced documentary as well as oral evidence before the Courts below but the trial Court did not consider the same in right perspective and the first appellate Court also failed to appreciate. It was also submitted that after execution of the agreement to sell the plaintiff was always ready and willing to perform his part of the contract but the defendant did not perform his part of the contract but both the learned Courts

below did not consider this aspect in right manner.

7. I have considered the above submissions in the light of the impugned judgments. Both the Courts below after proper consideration and careful scrutiny of the evidence and the material, arrived at concurrent finding of the fact that the plaintiff failed to prove execution of agreement to sell the disputed land in favour of the plaintiff. I do not find any illegality or impropriety in the impugned judgments of the Courts below. No substantial question of law arises in this second appeal. Therefore, this appeal has no merit and the same is liable to be dismissed at the admission stage.

8. Consequently, this second appeal along with stay application is dismissed at the admission stage.

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