

Karan Kumar Vs. Rajinder Kumar Gupta and ors.

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Court : Jammu and Kashmir

Decided On : Feb-24-1998

Reported in : AIR1998J& K97

Judge : Arun Kumar Goel, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 - Order 5, Rules 12 and 16 - Order 9, Rule 1

Appeal No. : Civil First Appeal No. 4/86

Appellant : Karan Kumar

Respondent : Rajinder Kumar Gupta and ors.

Advocate for Def. : Ashok Parihar, Adv.

Advocate for Pet/Ap. : G.A. Tak, Adv.

Disposition : Appeal dismissed

Judgement :

Arun Kumar Goel, J.

1. This appeal is directed against the judgment passed by District Judge. Jammu, on 26-10-1985, whereby suit filed by respondent No. 1 (hereinafter referred to as 'the plaintiff) against the appellant (hereinafter referred to as 'the defendant') has

been decreed ex parte.

2. Brief facts of the case out of which this appeal has arisen, are that plaintiff filed a suit against defendant, wherein three other persons were arrayed as pro forma defendants namely Wazir Sansar Singh, Ex.-Sub-Afsar Singh and Harwant Singh. This was a suit for recovery of Rs. 22,826.40 with costs and interest. As per plaintiff, he was induced to purchase a plot of land measuring 50 x 25 ft. comprised in Khasra No. 23, having a room standing thereon, which was situated in Mohalla Rajpura Mangotrian, Jammu, for a sale consideration of Rs. 21,000/-, out of which the defendant received an amount of Rs. 2000/- as an advance and the balance was agreed to be received by the defendant at the time of execution and registration of the sale deed. This bargain was negotiated by the plaintiff through property dealers, namely Dhani Ram and Sain Dass. Receipt of Rs. 2,000/- was executed and further a sum of Rs. 4,000/- was also received by the defendant from the plaintiff. Sale-deed came to be executed on 8-2-1983 and was registered with the Registering Authority on 9-2-1983. however, when it came to execution of the sale deed, defendant prompted the plaintiff to have got Rs. 15,000/- shown as sale consideration with a view to avoid stamp as well as registration charges, thus the sale-deed was executed for a consideration of Rs. 15,000/-. Further case of the plaintiff was that he collected material for raising additional construction on the spot but when he went there he found that the foundations had been dug out by pro forma defendants 3 & 4, thus the former was constrained to file a suit for injunction in a Court of law. During the course of the trial of this case these pro forma defendants put up a plea that they had purchased the suit property much before the plaintiff purchased it and thus they put up a superior title as defence in that case. In this background a suit for permanent prohibitory injunction filed by the plaintiff came to be dismissed and the plaintiff has filed the present suit. Besides Rs. 21,000/- stated to have been paid by the plaintiff to defendant, he also claimed the amount of registration and stamp charges which came to Rs. 1826.40. Plaintiff claims to have been defrauded as well as cheated by the defendant and when demand was made orally as well as by legal demand notice, on the refusal of the defendant, suit came to be filed.

3. Record of the case show that defendant did not file any written statement during the course of trial of the suit in the Court below, although pro forma defendants 3 & 4 filed a joint written statement wherein they repudiated the claim of the plaintiff and stated that they had acquired title to the suit land much before the plaintiff claims to have purchased it on 9-2-1983. It may also be appropriate to reproduce the prayer made in the plaint:

'It is, therefore, humbly prayed that the Hon'ble Court may be pleased to decree the suit of the plaintiff for the recovery of Rs. 22, 826.40 np in favour of the plaintiff and against the defendant No. 1 with interest at the rate o f 12% from the date the defendant No. 1 took money from the plaintiff and further interest at the rate of 12% may also be awarded to the plaintiff against the defendant No. 1, till the final realisation of the amount with costs.'

Thus it is clear that no relief was claimed by the plaintiff against defendants 2 to 4 and similar is the tenor of the plaint in other paras thereof.

4. Shri Tak, learned counsel appearing for the appellant/defendant, has forcefully urged that the decree in question is obtained by fraud practised by plaintiff in collusion with pro forma defendants 3 and 4, as defendant was never served with summons in the suit. Further, according to learned counsel for the plaintiff, trial Court has erred in decreeing the suit of the plaintiff as none could be passed even on the basis of the evidence produced by the plaintiff. Alternatively, it was submitted that trial Court had fallen into error by passing the impugned decree by ignoring Annexures wherein sale consideration was admitted by the plaintiff to be Rs. 15,000/- without the story of fraud etc.having been put up by the plaintiff in that suit. While further arguing on this aspect of the case. Shri Tak pointed out that there was no occasion for his client to have induced the plaintiff for getting the sale deed registered at an under-value when the registration and stamp charges were to be borne by the plaintiff, on this basis he vehemently urged that the appeal deserves to be allowed by setting aside the impugned judgment and decree.

5. While controverting the submissions of Shri Tak, Shri Parihar, learned counsel appearing for the plaintiff, submitted that the plaintiff had been successful in proving his case to the hilt and according to him, decree passed is in accordance

with law and calls for no interference. In support of his submissions Shri Parihar referred to the day-to-day orders passed by the Court below during the course of trial and pointed out that defendant was duly served, had engaged a lawyer and after having availed numerous opportunities he chose to absent on 5-8-1985, which was the last date given for filing written statement that too subject to payment of Rs. 50/- as costs, thus there was no course left for the trial Court, but for proceeding ex parte against the defendant and after recording and examining the ex parte evidence produced by the plaintiff, to have decreed the suit. In this background, learned counsel for the plaintiff prayed for dismissal of the appeal, with costs.

6. In order to properly appreciate and understand the submissions of learned counsel of the plaintiff, it is necessary to refer to the trial Court proceedings.

7. Record of the trial Court shows that case on 12-5-1984 was adjourned to 17-7-1984, for which date summons were issued. A copy of the summons is at page 6 of the trial Court file and it was issued on 17-5-1984. On the reverse of this summons, there are signatures of the defendant and date below such signature is 20-5-1984. This summons was marked to Prithvi Raj on 17-5-1984 by Nazir District Court for effecting service and as per report of the process server, he had done the needful on 20-5-1984. Another salient feature of this case is that a copy of the plaint was received on behalf of defendant by one Shri Charanjit on 19-5-1984. This aspect of the case will be dealt with later on. However, on 17-7-1984, when the case was taken up, one Shri Sushil Kumar, Advocate, had put in appearance on behalf of the defendant, though record of the trial Court shows that there is no vakalatnama filed by this Advocate, despite having continued to appear from 17-5-1984 till a date before 5-8-1985, when for want of appearance defendant was ordered to be proceeded ex parte. Much emphasis was laid by Shri Tak on this aspect of the case by saying that defendant had never engaged either Shri Charan Jit to have received a copy of plaint on 19-5-1984, or to have instructed Shri Sushil Kumar, Advocate, for appearing on his behalf in the case. Thus Shri Tak submitted that there was no authorisation to appear on behalf of his client and this entire affair was stage-managed by the plaintiff.

8. In the context of the present case, relevant provisions of the Code of Civil Procedure dealing with issue and service of summons need to be noticed. For the purpose of present suit relevant provisions are Order V Rules 12 and 16 thereof, which are to the following effect:

12. Service to be on defendant in person when practicable or on his agent.-- Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.'

'16. Person served to sign acknowledgment.- Where the serving officer delivers or tenders a copy of summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.'

A reading of these provisions shows that as far as practicable, service is to be made on the defendant in person unless he has an agent empowered to accept the same, in which case service can be effected on such agent, which is good in law. Similarly, where the serving official delivers a copy of summons to the defendant personally then the former is required to obtain the signature of the person to whom copy is delivered to acknowledge the service on the original summons

9. When a reference is made to the record of the trial Court at page 6 thereof, it is clear that this requirement of the Code of Civil Procedure is fully met with. At this stage, in order to test the submission of Shri Tak that fraud has been practised by the plaintiff and pro forma defendants 3 and 4, signatures on the reverse of summons were also seen as well as examined vis-a-vis Exp/2 the sale deed, which is admittedly executed by the defendant as well as with the receipt Exp/1, which preceded the execution of sale deed - Exp/2, when the bargain had been struck and sum of Rs. 2,000/- was received by the defendant. Not only this, but his signatures on Vakalatnama executed in favour of Shri Tak by him tally with those which are there on the reverse of the summons. In these circumstances, the submission urged by Shri Tak that his client was not served personally, has no

force and has been raised simply to be rejected. In this context for the purpose of enabling this Court to come to a correct conclusion, Section 73 of the Evidence Act enables this Court to examine the signatures of the defendant which were there on the file.

10. The next question that needs to be examined is whether Shri Sushil Kumar, Advocate, had been engaged or not by the defendant, who put in appearance on behalf of the defendant from 17-7-1984 till a date before 5-8-1984. In case Shri Sushil Kumar had not been authorised and engaged to put in his appearance on behalf of the defendant, then the matter would have ended on 17-7-1984 itself. After having proceeded ex parte suit could be dealt with in accordance with law. Fact remains that simply because vakalatnama had not been filed what is the effect thereof Even on this ground also, defendant cannot take any advantage from the facts existing on the file of this case. No doubt, there appears to be omission on the part of the Court below to have not insisted upon filing of the vakalatnama by the aforesaid learned counsel who further permitted him to appear without the same, but then no benefit can be derived by the plaintiff from such omission, or otherwise, as already observed, defendant could have been proceeded ex parte on 17-7-1984 itself.

11. Now coming to the question of sale consideration, which according to Shri Tak was fixed at Rs. 15,000/- and had been admitted by the plaintiff in the previous suit filed by him against Afsar Singh and Harwant Singh, without there being anything said about the former having been induced by the defendant to get the document registered and to undervalue the same. Suffice it to say in this behalf that this argument does not hold good. Reason being that receipt of Rs. 2,000/- when Exp/1 came to be executed by his client in favour of the plaintiff, was not controverted. In case the agreed sale consideration for the plot and the room standing thereon was Rs. 15,000/- was agreed by the defendant, then there was no occasion for the plaintiff having paid Rs. 15,000/- at the time of registration of the sale deed, because admittedly Rs. 2,000/- had been received by the defendant from plaintiff. Moreover in receipt Exp/1 it is clearly mentioned that the agreed sale consideration is Rs. 21,000/- and the balance was agreed to be received by the defendant within a period of one month from the date of its execution. Here it may

also be appropriate to point out that both receipt, Exp/1, followed by sale deed, Exp/2, stands duly proved from the statements of marginal witnesses and property dealers Sain Dass and Dhani Ram, besides plaintiff himself.

12. Evidence examinedly the plaintiff clearly proves his case when the receipt, which contains the terms on which sale was agreed to be effected, followed by execution and registration of sale deed vide Exp/2. This evidence has remained un-controverted, thus the plaintiff had been successful in proving his case in the Court below.

13. No other point has been urged by learned counsel for the parties in support of this appeal.

14. As a result of the aforesaid discussion, there is no merit in this appeal, which is accordingly dismissed with costs. All interim orders passed in the course of present appeal, stand vacated.

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