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Sarla Devi Vs. Budhan

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Court : Delhi

Decided On : Apr-28-2011

Judge : Indermeet Kaur, J.

Acts : Code of Civil Procedure (CPC) - Order 10; Evidence Act - Section 67

Appeal No. : R.S.A.No. 130/2007 & CM No. 9195/2006

Appellant : Sarla Devi

Respondent : Budhan

Advocate for Def. : Mr. J.C. Mohindro, Adv.

Advocate for Pet/Ap. : Mr. Surender Kumar Gupta, Adv.

Judgement :

1. This appeal has impugned the judgment and decree dated 28.03.2006 which had reversed the finding of the trial judge. Vide judgment and decree dated 29.03.2005, the suit filed by the plaintiff, Sh.Budhan seeking specific performance of an agreement dated 22.05.2000 or in the alternate for recovery of Rs.1 lac had been dismissed. The impugned judgment had decreed the suit of the plaintiff; the decree in the sum of Rs. 1 lac had been passed in favour of the plaintiff along with the interest at 6% per annum.

2. Plaintiff had entered into an agreement to sell with the defendant; this was qua 45 sq. yards of property comprising of one room with latrine, bathroom measuring 16 ft. X 25 ft situate in Khasra No. 15 of Village Mandoli; total consideration agreed was Rs. 1,60,000/-; plaintiff had paid the sum of Rs. 50,000/- as an advance/earnest money. In terms of the aforestated agreement, the balance amount of Rs. 1, 10,000/- had to be paid by 25.08.2000, on which date the defendant was required to execute the documents of transfer in favour of the plaintiff before the Sub- Registrar. The plaintiff reached the office of the Sub-Registrar on 25.08.2000 for getting the documents of transfer executed but the defendant did not came there till 1 pm.

3. Defendant appeared to be uninterested in the deal and was backing out from it. Plaintiff was willing and ready to get the deal materialized and perform his part of contract but defendant was avoiding it on one pretext or the other. In spite of legal notice dated 02/09/2000, defendant had not complied with the said terms. Present suit was accordingly filed.

4. In the written statement, it was stated that the suit was malfide; and the documents relied upon by plaintiff were forged. It was contended that the agreement dated 25.05.2000 was written on a plain paper and not on a non-judicial stamp paper; it does not bear either the signature or thumb impression on the front side of it; it is there only on the back page. It was denied that the plaintiff had paid the amount of Rs. 50,000/- to the defendant

5. On the pleadings of the parties, following three issues were framed.

1. Whether the plaintiff has not approached the court with clean hands and has suppressed material facts and has stated false fact? If so, its effect? OPD.

2. Whether the plaintiff is entitled to the relief of specific performance as prayed for? OPP.

3. Relief.

6. Oral and documentary evidence which included two witnesses on behalf of the plaintiff and one on behalf of the defendant were examined. The agreement to sell

dated 22.05.2000 had been proved as Ex. PW 1/1. On the scrutiny of the oral and documentary evidence, the testimony of the witnesses of the plaintiff was disbelieved; the suit of the plaintiff stood dismissed.

7. This was reversed by the impugned judgment. The impugned judgment, after scrutiny of the oral and documentary evidence, was of the view that the plaintiff is entitled; in terms of the agreement to double the amount i.e. Rs. 1 lac which was payable along with the interest.

8. This is a second appeal. It had been admitted and on 1307.2007, the following substantial questions of law had been formulated. They inter alia reads as follows:-

> 1. Whether the finding given by the First Appellate Court that appellant has admitted the execution of the documents as Ex. PW 1/1 by admitting her thumb impression, signatures thereupon is legally correct whereas close scrutiny of her statement dated 24.10.2002 clearly goes to show that she did not make such an admission? If so, its effect?
>
> 2. Whether the appellant is legally bound to pay the decretal amount?

9. On behalf of the appellant, it has been urged that the judgment of the trial court suffers from a perversity as it has failed to note that the document Ex. PW-1/1 had admittedly been written by Dinesh Sharma; Dinesh Sharma had not come into the witness box; in view of section 67 of the Indian Evidence Act this document could not have been proved. For this proposition, reliance has been placed upon a judgment of the Apex Court reported in AIR 1968 Bombay 112 Sir Mohammad Yusuf & Another v. D. & Anotehr. It is pointed out that PW-1 had also made contrary statements; he was not clear as to whether payment was made by him to Sarla Devi or to her husband. The judgment suffers from a perversity. It is liable to be set aside.

10. Arguments have been rebutted. It is pointed out that the impugned judgment had correctly noted that DW-1 in her cross- examination had admitted that the document dated 22.05.2000 was signed and thumbed marked by her on the same date; her contention was that it was on a blank paper and nothing was written on

it; further that at the time when she was coerced to thumb mark on the said document her husband was tied up did not find mention in her written statement. The impugned judgment calls for no interference.

11. Record has been perused.

12. The impugned judgment had after reconsideration of the evidence oral and documentary set aside the finding of the trial Judge. The impugned judgment had correctly noted that the defendant herself had admitted in her cross-examination the execution of Ex. PW-1/1; she had admitted that she had thumbed marked it. Her statement that she had been pressurized to thumb mark this document as at that time her husband was tied up did not find mention in her written statement; even otherwise even in the complaints purported to have been made by her to the police about this coercion did not mention these facts; her written statement also was silent on this aspect. Attention has also been drawn to the examination in chief of DW-1 Sarla Devi wherein in her deposition on oath she had stated that there is no document Ex.DW-1/1 to Ex.DW-1/3 as mentioned in her affidavit Ex.DW-1/A. Ex.DW-1/1 to Ex.DW-1/3 was a reference of the aforenoted complaints purported to have been made by Sarla Devi to the police dated 28.05.2001 and 31.05.2001. By making this deposition on oath DW-1 had de-exhibited these documents meaning thereby that no such complaints were on the record of the case.

13. The impugned judgment on no count suffers from any infirmity. It had noted that the parties had in fact entered into an agreement to sell dated 22.05.2000 (Ex.PW-1/) by virtue of which the plaintiff had paid earnest money of `50,000/-; in case the agreement did not mature, plaintiff was liable to get a refund of double the amount; on 25.08.2000, the plaintiff had gone to the office of Sub-Registrar to get the document of sale executed in his favour; the defendant was deliberately delaying on one count or the other; the agreement to sell could not be enforced but the plaintiff was entitled to the double amount which he had paid i.e. `1 lac. The finding on this score calls for no interference. The judgment in no manner suffers from any perversity.

14. It is also relevant to state that the statement of the defendant had been recorded on 24.10.2002 under Order X of the Code of Civil Procedure. In this statement, she had denied the execution of the agreement to sell Ex. PW-1/1; however in her deposition on oath in Court she had admitted this document. On the preponderance of probabilities and after a detailed examination of evidence both oral and documentary the court had held that Ex.PW-1/1 had been executed by the defendant; the plaintiff was entitled to refund of the earnest money i.e. double the amount of `50,000/- which amount of `1 lac was rightly granted in his favour.

15. The judgment relied upon by learned counsel for the appellant reported in Sir Mohammad Yusuf has no application to the case. In this case there were certain entries in the books of account which the Court held that the same could only be proved by the writer of the document. In this case, Ex. PW-1/1 has been executed between the plaintiff and the defendant of whom the plaintiff has come into the witness box to prove the document; defendant has also admitted her thumb mark on it.

16. Substantial questions of law are accordingly answered in favour of the respondent and against the appellant. There is no merit in this appeal. Appeal as also pending application are dismissed.

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