

Didar Singh Vs. Nasib Kaur

Didar Singh Vs. Nasib Kaur

SooperKanoon Citation : sooperkanoon.com/951146

Court : Punjab and Haryana

Decided On : Sep-19-2011

Judge : K.C. Puri

Appeal No. : C.M.No.6079-C of 2010 and R.S.A.No.1952 of 2010

Appellant : Didar Singh

Respondent : Nasib Kaur

Judgement :

K.C. Puri, J.- 'C.M. No. 6079-C of 2010'

There is delay of three days in re-filing the appeal. The same stands condoned on the grounds mentioned in the application.

'MAIN APPEAL'

Challenge in this appeal is the judgment and decree dated 16.12.2009 passed by Shri Satvinder Singh, learned Additional District Judge, Kapurthala vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 13.2.2009 passed by Mrs. Harveen Bhardwaj, PCS, Civil Judge (Senior Division), Kapurthala granting the decree of specific performance of the contract to the plaintiff was dismissed.

2. The case of the plaintiff as set forth in the plaint is that Didar Singh defendant entered into an agreement to sell dated 28.3.2005 in favour of Ajit Singh in respect of land measuring six marlas, which is 1/7th share of land comprised of khewat/khata No. 300/417 Khasra No. 28//5/2(2-2) according to jamabandi for the year 2002-2003 as fully described in the heading of the plaint. The total consideration was fixed as Rs. 2,04,000/- at the rate of Rs. 34,000/- per marla. Defendants received Rs. 50,000/- as earnest money from the plaintiff. The sale deed was to be executed after the demarcation of the land. It was agreed between the parties that defendant would pay double of the amount of earnest money to the plaintiff in case he failed to get the sale deed executed.

3. A further sum of Rs. 50,000/- was paid to the defendant by the plaintiff and an endorsement dated 14.6.2005 was executed on the back of the agreement. The plaintiff paid the entire balance sale consideration of Rs. 2,04,000/- to the defendant and endorsement dated 1.9.2005 was executed on the back of the agreement. Possession of the land was also delivered to the plaintiff and it was agreed that plaintiff will be at liberty to get the sale deed executed from the defendant at any time. It is further alleged that in the first week of November 2005, the plaintiff went to the house of the defendant and asked him to execute the sale deed as per agreement and the endorsements made thereon however, the defendant promised to get the sale deed executed after ten days. On 12.11.2005, the plaintiff received notice dated 10.11.2005 from the defendant through counsel in which he admitted the execution of the agreement and endorsements made thereon as well as receipt of earnest money of Rs. one lac., but denied the receipt of Rs. 1,04,000/-. The defendant threatened to alienate the suit property, hence the suit.

4. The defendants contested the suit by way of written statement, taking preliminary objection of estoppel, from filing the suit by his act and conduct and that agreement is not enforceable because of material alterations. However, on merits, it is admitted that the defendant executed agreement dated 28.3.2005 and endorsement dated 14.6.2005 and 1.9.2005 and received Rs. 50,000/- on each of the said date but denied the execution of the endorsement for receiving Rs. 1,04,000/- vide endorsement dated 1.9.2005. The factum of issuance of notice was

admitted.

5. The plaintiff filed replication and controverted the case of the defendants and reiterated the stand taken in the plaint.

6. From the pleadings of the parties, following issues were framed :-

1. Whether the defendant executed agreement to sale dated 28.3.2005 in favour of plaintiff for sale of suit land and received a sum of Rs. 50,000/- on account of earnest money ?OPP

2. Whether the plaintiff has been and is ready and willing to perform his part of agreement? OPP

3. Whether the plaintiff is entitled to possession of suit land by way of specific performance of agreement of sale dated 28.3.2005 ?OPP

4. Whether the plaintiff is entitled to recover a sum of Rs. 2,04000/- as damages for breach of contract from the defendant OPP

5. Whether the plaintiff is entitled to future interest, if so at what rate OPP

6. Whether the plaintiff is entitled to decree for permanent injunction as prayed for ?OPP

7. Whether the plaintiff is estopped by his own act and conduct to file the suit OPD

8. Whether the agreement is not enforceable because of material alterations made therein OPD.

9. Relief.

7. The plaintiff in order to prove his case himself appeared as his own witness as PW-1 and also examined Charanjit Singh (PW-2) and Mohinder Singh, the attesting witnesses as (PW-3). Thereafter, Ajit Singh plaintiff died and his legal representatives were brought on record.

In rebuttal Didar Singh defendant appeared as DW-1 and also examined Harbhajan Singh as DW-2.

8. Learned trial Court after appraisal of the evidence decreed the suit of the plaintiff for specific performance of the contract and the defendant was restrained from alienating or dispossessing of the property vide judgment and decree dated 13.2.2009. The said judgment and decree was challenged in the First Appeal. The learned First Appellate Court vide judgment and decree dated 16.12.2009 dismissed the appeal preferred by the defendant/appellant.

9. Still feeling dissatisfied with the judgment and decree dated 13.2.2009 passed by the trial Court and judgment and decree dated 16.12.2009 passed by the First Appellate Court, the defendant/appellant has preferred the present regular second appeal.

While issuing notice of motion, this Court observed as under :-

"Learned counsel for the appellant, after seeking telephonic instructions, states that the appellant undertakes to execute the sale deed of suit land in favour of respondents, as per impugned agreement, and to deliver possession of the suit land to the respondents, if the respondents pay the balance sale price of Rs. 1,04,000/- which the defendant-appellant claims to be unpaid, although respondents alleged to have paid the same. Notice of motion, in view of the aforesaid undertaking, be issued for 13.10.2010.

Records of the courts below be also requisitioned. Parties may appear in person on the next date of hearing so that efforts for amicable settlement may be made."

However, amicable settlement could not be arrived at. As plaintiff has taken a stand that amount of Rs. 10,40,000/- has already been paid.

10. The appellant in paragraph No. 10 of the grounds of appeal has stated that following substantial questions of law have arisen in the present appeal :-

i) Whether the findings of both the courts below are perverse and also misreading of the evidence existing on record ?

ii) Whether the circumstance arising out of the legal notice dated 10.11.2005 which was served by the appellant-defendant wherein the payment the balance sale

consideration of Rs. 104000/- stands disputed and the appellant further undertook to execute the sale deed on payment of the said amount within 15 days of the receipt of the said notice and in the light of the fact that the said legal notice despite having been received by the respondent- plaintiff and yet was not replied amounts to admission by the respondent- plaintiff pertaining to the facts mentioned in the legal notice and hence the suit was liable to be dismissed by adverse inference against the respondent- plaintiff ?

iii) Whether the suit of the respondent-plaintiff could have been decreed, whereas the respondent-plaintiff is quality of interpolation of the agreement to sell regarding endorsement dated 1.9.2005 in view of the photocopy duly proved on record wherein no signatures of the marginal witnesses are there ?

iv) Whether the appeal deserves to be allowed with costs ?

11. The learned counsel for the appellant has submitted that the defendants admitted the execution of the agreement but the balance amount out of sale consideration Rs. 1,04,000/- has not been paid by the plaintiff. Legal notice was sent depicting the said fact. The photostat copy thereof shows that there were no signatures of the marginal witnesses regarding payment of Rs. 1,04,000/-.

12. The other limb of argument by the counsel for the appellant is that this suit for specific performance on the basis of unregistered agreement is not maintainable in view of authority '**Gurbachan Singh v. Raghubir Singh, 2010(5) R.C.R. (Civil) 737 : 2010(3) Civil Court Cases 731 (PandH).**'

In reply to the above noted submissions, learned counsel for the respondent-appellant has submitted that there is concurrent finding of fact recorded by both the Courts below that amount of Rs. 1,04,000/- has been paid by the plaintiff to the defendant. That being a finding of fact cannot be interfered. The execution of the agreement as well as the receipt of Rs. 50,000/- as consideration and the further receipt of Rs. 50,000/- by the defendants from the plaintiff on 14.6.2005 has been duly admitted. The endorsement dated 1.9.2005 is duly proved by the witnesses.

13. So far as the argument advanced by the counsel for the appellant that unregistered document cannot be taken into consideration is without any substance in view of authority '**Mool Chand Mundhra v. Smt. Indu Bala 2011(3) Civil Court Cases 660 (PandH).**' The authority Gurbachan Singh's case (supra) has been taken into account. So, the prayer has been made for dismissal of the appeal.

14. I have carefully considered the said submission made by both the sides and have gone through the records of the case.

15. So far as the question of law raised by the learned counsel for the appellant in paragraph No. 10 of the grounds of appeal are concerned that do not exist. It is admitted case of the parties that defendants executed agreement to sell in respect of suit property in favour of plaintiff Ajit Singh on 28.3.2005 and received Rs. 50,000/- as earnest money. It has not been disputed that further amount of Rs. 50,000/- towards sale consideration was received by the defendant from the plaintiff on 14.6.2005 and endorsement in this regard was executed.

16. The dispute raised by the defendant/appellant is in respect of endorsement dated 1.9.2005 and regarding the receipt of the balance consideration of Rs. 1,04,000/-. There is concurrent finding of fact recorded by both the Courts below that plaintiff has been able to prove the endorsement dated 1.9.2005 and passing of consideration of Rs. 10,4000/-, the remaining amount of sale consideration that being a finding of fact cannot be interferred. There is nothing on the file that judgments and decrees of both the Courts below is the result of misreading and misinterpreting the evidence on the file. The effect of legal notice dated 10.11.2005 has already been considered by the Courts below. So, in view of the concurrent finding of fact regarding execution of endorsement dated 1.9.2005 and passing of consideration of Rs. 10,4000/- through that endorsement, I have no hesitation in holding that no question of law has arisen as mentioned in the paragraph No. 10 of the grounds of appeal exist.

17. However, during the course of argument, the counsel for the appellant has raised another question to the effect whether unregistered documents can be used for the purpose of passing decree for specific performance.

18. In order to properly appreciate the said question, the relevant provisions of Section 17(1A) of the Registration Act, 1908 is reproduced as under:-

"(1A) The document containing contracts to transfer for consideration, any immoveable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, they, they shall have no effect for the purposes of the said section 53A."

The effect of non-registration of a document has been dealt in in Section 49 of The Registration Act, 1908, which reads as under :-

"49. Effect of non-registration of documents required to be registered.- No document required by section 17[or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall -

(a) affect any immoveable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction a acting such property or conferring such power, unless it has been registered :

[Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]

19. From the bare reading of Section 17(1A) of Registration Act, 1908, it is revealed that contract to transfer of any amount is required to be registered for the purpose of Section 53-A of the Transfer of Property Act, 1882 if the same has been executed on or after the commencement of registration and other related law (amendment Act 2001). The proviso of Section 49 make it crystal clear that

unregistered document effecting immoveable property may be received as evidence of a contract for a suit for specific performance under Chapter 11 of Specific Relief Act, 1877. So, far as the reliance of the counsel for the appellant on authority Gurbachan Singh's case (supra) is concerned that authority has been duly distinguishable in the later authority Mool Chand Mundhra's case (supra). Para No. 11 of the said judgment is reproduced as under :-

"11. A bare perusal of the aforesaid provision makes it manifestly clear that such an unregistered agreement vide which the possession has been delivered, shall have no effect for the purpose of Section 53-A of the Transfer of Property Act (in short - the T.P. Act). In other words such an unregistered agreement cannot be used to take benefit of Section 53-A of the T.P. Act. However, Section 17(1-A) of the Act does not make such an unregistered agreement completely null and void. This provision does not prohibit user of such an agreement for any purpose except for the purpose of Section 53A of the T.P.Act. Consequently, suit on the basis of such an unregistered agreement for specific purpose thereof is certainly maintainable, although such an agreement cannot be used as defence in terms of Section 53-A of the T.P.Act. Judgment in the case of Gurbachan Singh (supra) is completely distinguishable on facts."

20. So in view of the above discussion, the above questions of law raised by the learned counsel for the appellant stand answered against the appellant and it is held that there is no bar as per Section 17(1A) to seek the decree of specific performance of contract in respect of an unregistered contract of sale, as discussed above.

21. In view of the above discussion, the appeal is without any merit and the same stands dismissed.

22. A copy of this judgment be sent to the trial Court for strict compliance.

Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com