

(2010) 02 P&H CK 0324

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Maha Singh and Another

APPELLANT

Vs

Smt. Vedo Devi and Others

RESPONDENT

Date of Decision: Feb. 9, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 2 Rule 3, 9
- Registration Act, 1908 - Section 23, 49, 72, 75(2), 75(3)

Citation: AIR 2010 P&H 131 : (2010) 2 CivCC 558 : (2010) 2 RCR(Civil) 338

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Kumar Garg, J.

The appellants who were defendant Nos. 4 and 5 before the trial Court have filed the instant appeal, challenging the judgment and decree of the Courts below, decreeing the suit of the plaintiff-respondent directing defendant Nos. 1 to 3 (now respondents Nos. 2 to 4) to get the sale deed dated 20-4-1998 regarding the suit property registered in favour of the plaintiff-respondent No. 1 with a further decree for declaration to the effect that the orders dated 17-9-1998 and 18-9-2000 passed by the Revenue Authorities were illegal and not binding upon his rights and further declaration to the effect that the sale deed dated 29-11-1999 executed by Smt. Usha Rani on behalf of respondent Nos. 2 to 4 regarding the suit land in favour defendants Nos. 4 and 5 (now appellants) is illegal null and void and is liable to be set aside with a further decree of permanent injunction restraining the defendant Nos. 1 to 5 (appellants and respondent Nos. 2 to 4) from interfering in the peaceful possession of the plaintiff (respondent No. 1) over the suit land.

2. As per averments made in the suit, defendant Nos. 1 to 3 along with Usha Rani, Lalita, Darshana and Vijay Lakshmi were holders of land measuring 88 kanals 0 marla in equal shares as per the jamabandi for the year 1996-97 situated in the revenue estate of village Basahra, Tahsil Samalkha, Distt. Panipat. Out of this land, Usha Rani, Lalita, Darshana Rani and Vijay Lakshmi sold their share to the extent of 50/88 share i.e. 50 kanals to Krishan Kumar and Naresh Kumar (sons of the plaintiff) vide sale deed dated 13-12-1996. The possession was accordingly delivered to them at the time of execution of sale deed itself. On 19-4-1998, defendant Nos. 1 to 3 through their mother and Court guardian Usha Rani entered into an agreement to sell the share of minor defendant Nos. 1 to 3, out of the aforesaid land of 88 kanals 0 marla which comes out to be 754/1760 share measuring i.e. 37 kanals 14 marlas with the plaintiff for a sale consideration of Rs. 7,00,000/-. The sale consideration was paid to Usha Rani on behalf of defendant Nos. 1 to 3 at their residence on 20-4-1998 and on the same day, a sale deed of this property was executed which was scribed by the scribe and after accepting the contents of the same as correct. Usha Rani appended her thumb mark over the same and also in the register of the scribe in the presence of witnesses. It was also mentioned in the said sale deed that the actual physical possession of the land was delivered to the plaintiff.

3. It is the further case of the plaintiff that the sale deed could not be registered and the plaintiff filed an application dated 20-8-1998 before the Sub-Registrar, Samalkha, with a prayer for direction to Usha Rani mother and guardian of defendant Nos. 1 to 3 for getting the sale deed dated 20-4-1998 registered in the name of the plaintiff. On issuance of notice, Smt. Usha Rani did not appear and the Sub-Registrar, Samalkha refused to register the sale deed dated 20-4-1998 vide his order dated 17-9-1998.

4. Feeling aggrieved from the aforesaid order, the plaintiff filed an appeal in the Court of Registrar (Deputy Commissioner, Panipat). During the pendency of the aforesaid appeal, it was agreed between the parties to adjourn the appeal as sine die till the decision of the Civil Court pending between Maha Singh defendant No. 4 and defendant Nos. 1 to 3. After the decision of Civil Suit No. 407 of 1998 filed as Maha Singh v. Usha Rani etc. decided on 7-12-1999, the plaintiff filed an application for restoration of the appeal which was restored. The appellants applied for impleading them on the ground that they had purchased the land in dispute from Usha Rani and the sale deed dated 29-11-1999 has already been registered in this regard. After hearing the parties, the Registrar rejected the appeal of the plaintiff on the ground that the sale deed had already been executed in favour of defendant Nos. 4 and 5 vide his order dated 18-9-2000.

5. Vide this civil suit, the plaintiff had alleged that the aforesaid order of the Sub-Registrar and the Registrar were illegal as the sale deed of the plaintiff dated 20-4-1998 was prior in time and the sale deed dated 18-9-2000 relied upon by defendants was hit by the provisions of lis pendens. It was further alleged that the

plaintiff had been in physical possession of the suit land since 20-4-1998 at the time of execution of the sale deed by Usha Ranhi on behalf of respondent Nos. 1 to 3. The entire sale consideration had already been paid and the defendants in collusion with each other had executed the sale deed dated 29-11-1999 which was for a lesser amount of Rs. 4,89,250/- and actually, no money was given in the sale deed, it being a fictitious document.

6. Earlier also, plaintiff had filed a Civil Suit Nos. 737 of 1998 titled as Vedo v. Parveen Kumar, Rita Rani, Uma Rani, minor sons and daughters of Atam Parkash, from alienating 754/1760 share, which was later on withdrawn by the plaintiff with permission to file a fresh suit on the same cause of action. The plaintiff requested the defendants to register the sale deed and on their failure as such, the present suit u/s 77 of Indian Registration Act, was filed.

7. Upon notice, defendant Nos. 1 to 3 filed written statement¹ through Usha Rani as natural guardian of the minors raising various preliminary objections. On merits, she admitted that she, Lalita, Darshana and Vijay Lakshmi sold 50/88 share but it was denied that the possession of whole land was given to the vendors. It was denied that defendant Nos. 1 to 3 entered into an oral agreement to sell the shares on 19-4-1998 as alleged. Receipt of Rs. 7,00,000/- was also denied. Execution of the sale deed was also denied. All the averments made with regard to scribing of the sale deed dated 20-4-1998 were denied. It was submitted that the plaintiff had forged false documents. The pendency of civil litigation between the parties was admitted. Orders passed by the Revenue Authorities were stated to be legal and valid and thus, dismissal of the suit was prayed.

8. Separate written statement was filed on behalf of respondent Nos. 4 and 5 raising various preliminary objections. It was further submitted that defendant Nos. 4 and 5 entered into a contract with defendant Nos. 1 to 3 to purchase the suit land for a sale consideration of Rs. 5,15,000/- while Rs. 1,50,000/- was paid as earnest money. Agreement was reduced into writing. When the guardian of the minors tried to resile from the contract, defendant No. 4 had to file a suit for specific performance of the contract dated 17-6-1996 wherein defendant Nos. 1 to 3 compromised the matter. Defendant Nos. 4 had to forgo his claim on 2 kanals and ultimately it was resolved between the parties that the defendant-appellants or their nominee may purchase 38 kanals of land for a consideration of Rs. 6,39,250/- out of which Rs. 1,50,000/- was already paid at the time of execution of agreement and the remaining amount of Rs. 4,89,250/- was to be paid before the Sub-Registrar. Besides that defendant had also to bear the expenses at the time of entering into contract on 17-6-1996. Defendant Nos. 4 on making bona fide enquiries found that the vendor was owner in possession of the land and there was no defect in the title and in these circumstances, defendant Nos. 4, had purchased the property in his name and in the name of his nominee defendant Nos. 5 vide registered sale deed dated 29-11-1999, the agreement in favour of the defendant Nos. 4 and 5 being prior in

time, they had a right to get the sale deed executed and registered in pursuance of the agreement. Defendant Nos. 4 and 5 were bona fide purchasers for a valuable consideration. Execution of the sale deed dated 20-4-1998 by Smt. Usha Rani in favour of the plaintiff was denied. It was further submitted that Usha Rani had no right to enter into an agreement with any person in respect of the land. The alleged sale deed was a result of collusion and not binding upon him. The minors were not bound by the alleged sale deed dated 20-4-1998, even if it was proved on record that it was executed by Usha Rani as she had already entered into an agreement to sell dated 17-6-1996.

9. After appraising the evidence on record and hearing the learned Counsel for the parties,, the suit of the plaintiff-respondent was decreed vide judgment and decree dated 10-5-2008 passed by the Civil Judge (Jr. Division), Panipat whereby defendant Nos. 1 to 3 through their mother were directed to get the sale deed dated 20-4-1998 executed and orders dated 17-9-1998 and 18-9-2000 passed by the Revenue Authorities were held to be illegal and sale deed dated 29-11-1999 executed by Usha Rani on behalf of minor defendant Nos. 1 to 3 in favour of appellants were held to be illegal.

10. Feeling aggrieved from the aforesaid judgment and decree, defendant Nos. 4 and 5 filed an appeal before the Lower Appellate Court which was also dismissed vide impugned judgment and decree dated 6-6-2009.

11. Still not satisfied, the defendants have filed the present appeal.

12. The only point which has been raised before this Court by the counsel for the appellants is that u/s 77 of the Indian Registration Act, only a mandatory suit for registration of the document could have been filed and no further relief of declaration that sale deed dated 29-11-1999 was void and permanent injunction restraining the appellants from interfering in the peaceful possession of the plaintiff over the suit property could have been claimed. Since the relief claimed in the suit was not confined to the registration of the sale deed and other reliefs were claimed, therefore, the suit was liable to be dismissed.

13. In support of his case, learned Counsel for the appellants has relied upon judgments reported as [Mathai Ouseph Panackal Vs. Joseph and Another,](#) and [Jhaman Mahton Vs. Amrit Mahton and Others,](#) .

14. On the basis of the arguments raised before this Court, learned Counsel for the appellants has submitted that the following substantial question of law arise in this appeal.

1. Whether the suit filed by the respondent for mandatory injunction and permanent injunction and for declaration to set aside the sale deed executed in favour of the appellant is maintainable u/s 77 of the Indian Registration Act?

2. Whether the Courts below have fell in error in decreeing the suit of the respondent for mandatory injunction, declaration and permanent injunction?

15. I have heard learned Counsel for the appellants and have also perused the judgments cited by the learned Counsel for the appellants.

16. However, both the aforesaid judgments in the facts and circumstances of the case do not canvass the proposition as raised by the learned Counsel for the appellant.

17. In the case of [Jhaman Mahton Vs. Amrit Mahton and Others](#), one Budhan Mahto (respondent) executed a sale deed on 4-8-1939 in favour of the plaintiffs in respect of 2.11 acres of land. As Budhan Mahto failed to register the sale deed, the plaintiffs applied for compulsory registration, but Budhan Mahto did not appear before the Registrar and the document was not registered. However, there was nothing on record of the case to show that the Registrar refused to register the document so as to enable the plaintiffs to have recourse to a suit as provided u/s 77 of the Registration Act and in fact the plaintiffs did not file a suit u/s 77 and filed the suit on 27-2-1940 after Budhan Mahto had executed and registered another sale deed in favour of the appellant in respect of 1.66 acres out of the land which was subject-matter of the previous sale deed in favour of the plaintiffs. In the suit the plaintiffs prayed for a decree directing Budhan Mahto to specifically perform his part of the contract" including registration of the sale deed and to do all necessary acts to put the plaintiffs in full possession of the property which was the subject of the sale deed of 4th August, 1939. The suit was decreed by both the Courts below. In the appeal before the High Court, an argument was raised on behalf of the defendants (i.e. in whose behalf subsequent sale deed was executed) that the only remedy of the purchaser was to file a suit as provided u/s 77 of the Registration Act and a suit for specific performance of the contract, such as the execution of a new sale deed and delivery of lands does not lie.

18. The Court after considering the judgment of the Allahabad High Court and the Calcutta High Court opined that two alternative remedies were available to the plaintiff. It was open to him either to bring a suit u/s 77 of the Registration Act or to have recourse to the fuller and more comprehensive remedy provided by a suit for specific performance of the contract of sale. If he brings the suit u/s 77 of the Registration Act, his claim has to be confined only to the registration of the document, because, in a suit u/s 77 *ibid*, the Court is only concerned with the genuineness of the document sought to be registered and not its validity and the question of its validity must be determined in a suit properly framed for that purpose. Since in the aforesaid case, the plaintiffs were not only concerned with obtaining the registration of the document but also wanted the possession of the land which was subject of the unregistered sale deed. The scope of the suit was obviously much wider than that of a suit u/s 77 *ibid* and it was held that suit for specific performance would lie and the appeal was dismissed.

19. It may be noticed that in [Mathai Ouseph Panackal Vs. Joseph and Another](#), the Court held that a person seeking relief other than bare registration can approach the Court by filing a suit and his right to file a suit in Civil Court is not fettered by Section 77 of the Act.

20. In [K. Veeran Ambalam Vs. Vellaiammal and Others](#), it was held that the lesser remedy provided u/s 77 of the Registration Act cannot take away the larger remedy provided and the Act does not touch or affect the equitable jurisdiction possessed by the Civil Courts to pass a decree where circumstances exist entitling the plaintiff to pass a decree.

21. In [Anchuru Veerapa Naidu Vs. Gurijala Venkaiah Chowdari](#), also, it was held that right to file a suit in Civil Court is not fettered by Section 77 of the Registration Act. In the aforesaid judgment it was also observed that when there are two alternative remedies available to a party, it is open to him to exercise his right of election as a suit u/s 77 has to be confined to the registration of a document alone, the question of validity and delivery of possession of property cannot but be conclusively adjudicated upon in a suit for specific performance only. A provision which cannot afford him full and complete relief which he can claim in law cannot possibly stand in his way in having resort to an effective remedy open to him.

22. In [Amar Singh Vs. Baliram Singh](#), it was held that in a case where defendant executes a sale deed in favour of plaintiff but he refuses to get it registered, two remedies are available to plaintiff. One is to apply for compulsory registration of document u/s 23 of Registration Act and in case prayer for registration is refused it is open to him to bring a suit u/s 77. Another remedy available to plaintiff is to take recourse to fuller and more comprehensive remedy for filing suit for specific performance of contract for sale and since both remedies are available to plaintiff, it cannot be said that plaintiff was not entitled to sue for specific performance of contract when he did not pursue remedy under the Registration Act.

23. The Hon"ble Supreme Court in [Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddy](#), after noticing the provisions of Section 77 of Registration Act and discussing various judgments of different High Courts holding divergent view held as under:

The analysis of the provisions of Section 77 of the Act made by us would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated July 2, 1969 in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule property. The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he

refuses to co-operate with him in that regard. Therefore, various stages contemplated u/s 77 of the Act have not arisen in the present case at all. We do not think in such a case when the vendor declines to appear before the Sub-Registrar, the situation contemplated u/s 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. The first appellate Court rightly took the view that u/s 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. The said Court noticed that there was an agreement to transfer the immovable property in the suit by the defendant to the plaintiff on the terms stated in the sale deed. Such an agreement to sell the immovable property in suit could be specifically enforced under the provisions of the Specific Relief Act. Therefore, the First Appellate Court was of the opinion that the plaintiff was alternatively entitled to base his claim of specific performance on the pleaded oral agreement to sell and inasmuch as there are further reliefs sought for, it was a comprehensive suit including a relief for specific performance of a contract contained in the sale deed executed but not registered and, therefore, held that such relief for specific performance could be granted.

24. It is useful to refer Section 77 of the Indian Registration Act which reads as follows:

Suit in case of order of refusal by Registrar - (1) Where the Registrar refuses to order the document to be registered, u/s 72 or a decree u/s 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in Sub-sections (2) and (3) of Section 75 shall mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything, contained in this Act, the documents shall be receivable in evidence in such suit.

25. A perusal of the aforesaid provision of law would show that the law does not place a bar on the plaintiff not to seek any other relief for which he has a cause of action to be claimed, along with the suit for mandatory injunction directing the defendant to execute the sale deed.

26. It is further relevant to mention that under Order 2, Rule 2, CPC every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Order 2, Rule 3, CPC further provides that in case a person entitled to grant of more than one relief in respect of the same cause of action, may sue for all or any of such reliefs but if he omits except with the leave of the Court to sue for

all such reliefs, he shall not afterwards sue for any relief so omitted. Thus, Order 2, Rule 2 CPC enjoins a duty upon the plaintiff to include all the claims available to him at the time of filing of suit.

27. A special statutory remedy cannot ordinarily exclude, by implication, the general right of suit u/s 9, CPC nor are there in Part 12 of the Indian Registration Act clear and unmistakable indications of such exclusion of the Civil Court's jurisdiction by necessary and inevitable implication, and the language of Section, 77 is optional, not obligatory. In the Act there is no such specific exclusion of the Civil P.C. When there is no express exclusion it cannot be inferred to hold that the Code is not applicable. It is well settled that the jurisdiction of the Civil Court to which a right to decide a lis between the parties has been conferred can only be taken by statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the Civil Court has the jurisdiction to decide all question of civil nature.

28. Thus, from the aforesaid discussion, it emerges that Section 77 does not preclude the plaintiff-respondent from seeking further relief, if available and the plaintiff cannot be confined to the relief of execution of the registration deed. Section 77 of the Registration Act provides only a remedy available to the aggrieved party and is not a fetter on the Court's power.

29. In view of the aforesaid legal proposition, no substantial question of law arises in this appeal.

30. No merits.

31. Dismissed.