courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Jagdish Singh and Others Vs Ram Lal and Others

Court: Allahabad High Court

Date of Decision: March 23, 1987

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10
Specific Relief Act, 1963 â€" Section 20, 9

Citation: AIR 1988 All 12

Hon'ble Judges: V.P. Mathur, J

Bench: Single Bench

Advocate: S.B. Chaudhary and R. Chaudhary, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

V.P. Mathur, J.
This is the first appeal purporting to be u/s 96 of the Civil P.C. directed against the judgment and decree passed on 24-5-

1976 by Mr. M. C. Jain, the then Civil Judge, Farrukhabad. The learned Judge decreed the suit of the plaintiffs, namely, Ram Lal, Jauhari Lal,

Mithu Lal and Madan Singh for specific performance of a contract to sell, against Smt. Phoolmati and her vendees who are now the appellants

Nos. 1, 2 and 3.

2. Briefly stated the facts of the case were that a deed in the nature of agreement to sell was executed on 11-2-1974 by Smt. Phoolmati in favour

of the plaintiffs and defendants Nos. 5,6 and 7. It was in respect of agricultural plots detailed at the foot of the plaint and the agreement was that

after the conclusion of the partition proceedings and after obtaining the Sirdari rights in respect thereto, the deed of sale shall be executed.

Consideration was agreed to be Rs. 22,000/-. On 11-2-1974, an earnest of Rs. 10,000/- was paid to the defendant No. 1, Smt. Phoolmati by the

plaintiffs and the defendants Nos. 5, 6 and 7. These persons were never willing and ready to perform their part of contract by getting the sale deed

executed after paying the remaining amount of balance consideration of Rs. 11,000/- The defendant No. 1, Smt. Phoolmati was, however,

delaying the execution of the deed and ultimately executed the deed of sale in respect of the same property in favour of defendants Nos. 2 to 4 on

16-4-1974 and now refuses to perform her contract in favour of the plaintiffs and defendants Nos. 5 to 7. The defendants Nos. 3 to 4 had full

knowledge of the agreement. They also knew that a sum of Rs. 10,000/- had already been paid by way of earnest money towards the part

payment of consideration. They are, therefore, not bona fide purchaser and are bound by the agreement aforesaid entered into by the defendant

No. 1. They are, therefore, liable to join the defendant No. 1 in execution of the deed in favour of the plaintiffs and defendants Nos. 5 to 7.

Defendants Nos. 5 to 7 had not joined the suit, as plaintiffs, and, therefore, they have been arrayed as defendants. It is said that if they show their

unwillingness to have the agreement executed in their favour, the plaintiffs are ready and willing to pay the entire sum of sale consideration Rs.

11,000/-and get the sale deed executed in their, favour.

3. The contest was put forth by defendants Nos. 2 to 4 only. Defendants Nos. 5 to 7 did not content the suit. And, therefore, against the

defendants Nos. 5 to 7 the suit has proceeded ex parte. Similarly, the defendant No. 1, Smt. Phoolmati has also not contested the suit and

proceedings remained ex parte against her as well.

4. The contention of the defendants Nos. 2 to 4 was that the plaintiffs alone were not entitled to sue, that the alleged deed of agreement to sell is

fictitious and is unenforceable, that it was not duly executed and the contesting defendants are not bound by it. The facts are that defendant No. 1

had agreed to sell the property in dispute to the contesting defendants through an unregistered deed of agreement dt. 18-1-1974 and the

consideration was Rs. 22,000/-. Out of this, a sum of Rs. 12,100/-was already paid to defendant No. 1, Smt. Phoolmati as earnest money and the

balance was to be paid at the time of registration of the sale deed in their favour. This was done on 16-4-1974. The plaintiffs had full knowledge of

the agreement to sell dt. 18-1-1974 which is prior in date to the agreement set up by them dt. 11-2-1974. The plaintiffs are not entitled to any

decree against the contesting defendants even if it is held that they have no knowledge of their agreement dt. 18-1-1974. The plaintiffs and

defendants Nos. 5 to 7 were never ready and willing to perform their part of the contract. Further, that cultivatory land of the plaintiffs and

defendants Nos. 5 to 7 would exceed 121/2 acres if the suit in question is decreed and, therefore, no decree could be passed in view of Section

154 of U.P. Zamindari Abolition and Land Reforms Act.

5. Lastly, it is contended that the contesting defendants are bona fide purchasers for value without notice of the alleged agreement to sell dt. 11-2-

1974 set up by the plaintiffs and, hence, the suit against them is liable to be dismissed.

6. The learned Civil Judge struck 5 issues for determination in this case. He held that the plaintiffs alone were entitled to file this suit, that the

agreement to sell set up by the defendants dt. 18-1-1974 was a fictitious document and was not in existence on that date, and on the contrary, the

agreement to sell dt. 11-2-1974 relied upon by the plaintiffs was perfectly legal one and enforceable. It was, therefore, held that the defendants

Nos. 2 to 4 were not bona fide purchasers for value without notice. The plaintiffs were found to be entitled to claim the reliefs and the suit was

decreed.

7. The first question that has been agitated in this appeal is about the maintainability of the suit by only 4 out of the 7 persons in whose favour the

alleged agreement to sell was executed by Smt. Phoolmati. It is the plaintiffs'' case that the agreement to sell was in favour of the plaintiffs of the

suit, namely, Ram Lal, Jauhari Lal, Mithu Lal, Madan Singh and also in favour of Raja Ram, Ram Sarup, Kotwal who were arrayed as defendants

5, 6, and 7, and the contention of the learned counsel in the court below as well as in this court is that since all the persons in whose favour the

deed was executed, had not joined the suit as plaintiffs in claiming benefits of law of specific performance, the contract stands frustrated and is not

liable to be enforced. S. 42 of the Contract Act is cited and it is contended that when two or more persons have made a joint promise, then unless

contrary intention appears by the contract, all such persons during their lives and after the death of any of them, his representative jointly with the

survivor/survivors and after the death of the last survivor, representatives of all, jointly, must fulfill the promise; and, in this case, since none of the

promisees is dead, therefore, question of devolution of joint liability upon some of them does not arise. In case of AIR 1939 170 (Privy Council) ,

the provisions of Order 1, Rule 10 of the Civil P.C. were considered and the principle which was laid down was in the following terms :

It has long been recognised that one or more of several persons jointly interested can bring an action in respect of joint property and if their right

to sue is challenged, can amend by joining their co-contractors as plaintiffs if they will consent or as co-defendants if they will not..... Nor indeed

would it matter that a wrong person had originally sued though he had no cause of action....Once all the parties are before the Court, the Court can

make the appropriate order and should give judgment in favour of all the persons interested whether they be joined as plaintiffs or defendants.

8. In the case of Sheomurat Ram Vs. Smt. Savitri and Others, , the Court was dealing with a case under the Specific Relief Act. It also dealt with

S. 15(a)(b) of the Specific Relief Act. Section 15 lays down that except as otherwise provided by this Chapter, the specific performance of

contract may be obtained by-

(i) any party thereto,

(ii) the representative-in-interest or the principal of any party thereto.

The proviso will not apply to the present case. It will, therefore, clearly mean that specific performance of the contract may be obtained not only by

the parties thereto, but also by their representatives-in-interest. It has come on record that in favour of 7 persons, a contract to sell was executed

by Smt. Phoolmati. Four of them have filed the suit and the remaining 3 persons have been joined as defendants. Naturally, the plaintiffs can be

treated to be their representative-in-interest because their interest in the property in suit is the same and if other promisees do not want to get the

agreement executed or have no money to pay, the plaintiffs can represent their interest all right. In Sheo Murat Ram"s case (supra) also the Privy

Council case of Monghibai cited above was considered. The Court held the view that what is material is that all the parties should be before the

Court so that it may be in a position to grant necessary reliefs. It is not necessary that all the interested parties should be before the Court as

plaintiffs. Some of them can be arrayed as the defendants also if they refuse to join as plaintiffs. If this were not the correct legal position, it would

be open to one or the other of several legal representatives to defeat the claim of the legal representatives seeking relief against" the promisor. It

was further emphasized that in the reported cases emphasis is that in such a situation of refusal to join as co-plaintiffs, the parties concerned may be

impleaded as co-defendants, but it should not be construed that it is only in case of a positive evidence to substantiate such refusal that the

plaintiffs" suit should be held "to be maintainable otherwise it should be thrown out. It is conceivable that some of the parties may not have refused

to join as co-plaintiffs, still because of their absence from the spot or due to other reasons, they would not be in a position to join as co-plaintiffs

and, therefore, had to be arrayed as co-defendants.

9. There is direct case on the legal position which has arisen for determination in the present appeal. It is the case of Ponnuswami Gounder Vs.

Rama Boyan and Others, . The facts of this case were that the suit properties were originally owned by the plaintiffs and defendants Nos. 2 and 3.

They sold the same for a sum of Rs. 2,500/- under a sale deed dt. 6-5-1969. On the date of sale, defendant No. 1, who came up as an appellant

before the Madras High Court and who had purchased the property, executed an agreement to reconvey the same to the plaintiffs and the

defendants Nos. 2 and 3, within five years from the date of sale on receipt of consideration of Rs. 2,500/-. In order to enforce this agreement of

reconveyance, the plaintiffs filed the suit. They tendered entire consideration amount within the stipulated time and asked for the execution of the

deed of sale by defendant No. 1. The defendants Nos. 2 and 3 did not co-operate with the plaintiffs and, so, the plaintiffs alone filed the suit for

specific performance of the agreement to reconvey after depositing amount of Rs. 2,500/- in the Court. The main contention of defendant No. 1

was that since the agreement to reconvey was in favour of the plaintiffs and defendants Nos. 2 and 3, the plaintiffs alone would not be entitled to

sue and, in any case, since defendants Nos. 2 and 3 did not want any reconveyance of the properties, a decree for specific performance could not

be granted in favour of the plaintiffs alone. It may be mentioned that defendant Nos. 2 and 3 had filed a written statement clearly saying that they

did not want any reconveyance, that they had no money to pay and they were thus giving up their right of the specific performance of the

agreement to reconvey. The question that arise for determination was whether the suit could be maintained by some of the promisees only as

plaintiffs in a case in which relief asked for is for specific performance, especially when some of the co-promisees did not want to enforce the

contract.

10. The Supreme Court case in the case of Jahar Roy (Dead) through L.Rs. and Another Vs. Premji Bhimji Mansata and Another, , with

reference to scope of Section 45 and Order 1, Rule 1, Civil P.C. was considered The Court also considered the Privy Council case of Monghibai

(supra) and decided that some of the co-promisees were entitled to sue as the plaintiffs after joining the remaining co-promisee as the defendants

and they were entitled to the specific performance of the contract.

11. In this view of the legal position, I am in agreement with the learned Court below that the suit by 4 of the co-promisees was in order, especially

when the remaining 3 co-promisees had been added as co-defendants and relief could be granted, as has been done in this case.

12. The second point which was raised in the ground of appeal vide ground No. 2 was that if the suit is decreed, the plaintiffs and defendants Nos.

5 to 7 will be having more than 121/2 acres of land which is prohibited u/s 154 of the U. P. Zamindari Abolition and Land Reforms Act and, hence

the Court cannot pass an order which may result in an illegality and infringement of provision of law. The learned Civil Judge dealt with this aspect

of the matter also. And, during the course of arguments before me in this case, the learned counsel has conceded that this plea has no force, that

the finding of the Court below is justified. This point was, therefore, not pressed.

13. This brings us to the consideration of the matter on merits. Ext. 1 is registered deed of agreement of sale dt. 11-2-1974 executed by defendant

No. 1 in favour of the plaintiffs and defendants Nos. 5, 6 and 7, through which for a total consideration of Rs. 21,000/- she has entered into an

agreement to sell the plots in dispute. She has also agreed that after the conclusion of partition proceedings and after she obtains Sirdari rights, she

will execute the deed of sale within 6 months. There is an endorsement of the Sub-Registrar on the back of this agreement, according to which, the

executant got a sum of Rs. 10,000/-from the plaintiffs and defendants Nos. 5, 6 and 7 at the time of registration of this deed. This was by way of

earnest. There was left a consideration of Rs. 11,000/- to be paid at the time of execution of the deed of sale. Jauhari Lal, P.W. 1 who is one of

the plaintiffs, entered into the witness-box to prove the execution of this deed. One attesting witness Sita Ram P.W. 3, has also been examined.

Smt. Phoolmati has not entered the witness-box on either side. Jauhari Lal''s contention is that there were oral talks culminating in this agreement

and they were finally held at the Chaupal of Lavkush, father of defendants Nos. 2 and 3, and at that time Smt. Phoolmati her husband, her son

Nawab Singh Jagdish (defendant, No. 2), Ram Prakash and Sri Kishan were all present. He also says that at the time of registration of this

agreement, a sum of Rs. 10,000/- was paid in the presence of the Sub-Registrar, Sri Kishan, P. W. 2, says that he was present at the chaupal of

Lavkush when the oral talks were finalised and Ram Lal, Jauhari, Mithoo, Madan Singh, Raja Ram, Ram Sarup, Kotwal, Phoolmati, Kishore,

Laukush Jagdish were also present. It was Sunday and it was agreed that deed or agreement shall be executed the next day. Sita Ram P.W. 3,

appears as one of the attesting witnesses.

14. The lower Court below has taken notice of the fact that Nawab Singh, D.W. 1 is the son of defendant No. 1 and he is also one of the attesting

witnesses of the agreement in favour of the plaintiffs and defendants Nos. 5,6 and 7. He has admitted execution of this deed, Ext. 1, but he has

tried to twist the facts by saying that he had signed this agreement as an attesting witness but he did not go through it. It should be remembered that

this man, Nawab Singh, is a Lekhpal for the last many years. It is not believable that a person who is working as a Lekhpal for so long would be

so simple as to let his mother be left in the hands of plaintiffs and defendants Nos. 5 to 7 without himself knowing about the transaction she was

entering into. This witness further says that only a sum of Rs. 2,000/- was paid to his mother before the Sub-Registrar, although in the deed it was

mentioned as Rs. 10,000/-. Therefore, nothing can be more false than this statement. The endorsement of the Sub-Registrar belies him. There is no

evidence to say that Rs. 8,000/-was ever taken back after the registration proceedings were over. It was this witness who had identified his mother

before the Sub-Registrar. It cannot be said that the Sub-Registrar had any motive to falsely note the payment of Rs. 10,000/- while only a sum of

Rs. 2,000/- was actually paid. I am, therefore, completely in agreement with the finding of the learned Court below that the deed of agreement to

sell, Ext. 1, was duly executed on 11-2-1974 by defendant No. 1 in favour of the plaintiffs and defendants Nos. 5, 6 and 7 for a consideration of

Rs. 21,000/- and after receiving out of it Rs. 10,000/- by way of earnest money at the time of registration of this deed.

15. Defendants Nos. 2 to 4 have set up an agreement dt. 18-1-1974 said to have been executed by Smt. Phoolmati, defendant No. 1, in favour of

them for sale of disputed plots for a total consideration of Rs. 22,000/-. It is said that out of this amount a sum of Rs. 12,100/- had already been

paid to the defendant No 1 and the balance consideration of Rs. 9,900/- was paid when the sale deed was executed. Nawab Singh, D.W. 1, son

of defendant No. 1, who undoubtedly was an attesting witness of the agreement dt. 11-2-1974 in plaintiffs favour, stated that the transaction

between defendants Nos. 2 to 4 and his mother in respect of purchase of these plots was settled in Malkia He has proved this document, Ext. A-

1, and the payment of Rs. 21,000/-. According to him, plaintiff No. 1 had come to his mother at Malkia and prevailed upon his mother to execute

the subsequent agreement Ext 1 after payment of Rs. 2,000/- to her and telling her that she should leave the matter to them to settle the score with

defendants Nos. 2 to 4. According to this witness Nawab Singh, his mother had informed Ram Lal that she had already executed an agreement in

favour of defendants Nos. 2 to 4. He, however, contradicts himself when during cross-examination he admits that he was not present when Ram

Lal entered into talks with his mother at Malkia Defendant No. 2, Jagdish Singh, had entered the witness-box to prove the agreement dt. 18-1-

1974 and the payment of a sum of Rs. 12,100/- on that date and the payment of balance consideration of Rs. 9,900/- at the time of execution of

the sale-deed. He also says that he had no knowledge of any agreement in favour of the plaintiffs and defendants Nos. 5 to 7.

16. The sale-deed is dt. 16-4-1974. Prior to that date the agreement in favour of plaintiffs and defendants Nos. 5 to 7 had undoubtedly been

executed and got registered. Naturally in order to give force to the deed of sale dt. 16-4-1974, it appears that an unregistered agreement was

drawn up purporting to be dt. 18-1-1974 vide Ext A-1 for the purpose of this suit. The agreement dt. 18-1-1974, Ext. A-1, was never got

registered It is true that on that date when this agreement purports to have been executed, registration of this type of documents was not required.

But, then when valuable property was being mentioned in this deed, and a huge amount of Rs. 12,100/-was being paid as part-consideration, it

was only proper to expect that the deed should have been got registered. The learned Civil Judge has taken note of the fact that on the reverse of

the stamp papers two different inks had been used, one for the making of endorsement and the other for writing down the number and date by the

stamp vendor. This stamp-vendor was not examined His register was also not summoned to prove that as to when these stamp papers were realty

sold and why two different ink and pens were used A huge amount of Rs. 12,100/- was allegedly paid to defendant No. 1 and still possession

over the property demised was not obtained D. W. 2, Jagdish Singh, admits that in respect of this document they have not been able to take

possession over the disputed plots, because there is yet no partition of the plots amongst the Khatedars. It means, therefore, these persons parted

with a huge amount of Rs. 12,100/- at the time of execution of this agreement to sell and another amount of Rs. 9,900/- at the time of execution of

the sale-deed without getting anything by way of possession over the plots.

17. If it was a fact that an earlier unregistered deed of agreement to sell had been executed in favour of defendants Nos. 2 to 4 for a sum of Rs.

22,000/-, it is highly improbable that the lady would have entered into a second transaction in respect of the same property for a lesser amount of

Rs. 21,000/-, especially when as on who was a Lekhpal was guiding her.

18. The question remains as to why when talks had already almost matured at Malkia, the lady would have come to the house of Laukush Singh at

Barua Sabalpur to finalise the talks. It is not disputed that a house of defendant No. 1 exists in this village but it is lying in a dilapidated condition

and is not in habitable condition. Jagdish Singh D.W. 2, admits this fact and also admits the fact that defendant No. 1 is his father"s aunt. This lady

had been having litigation with the father of defendants Nos. 3 and 4 over the same plots which are subject of the dispute now. It is in evidence that

this litigation had ended and, therefore, if the parties agreed to sell and purchase the plots to finally bury the hatchet of discord and the plaintiffs and

defendants Nos. 5 to 7 agreed to purchase the plots in dispute, there was nothing unnatural. Coming of the lady to Sabalpur is also not unnatural,

when there is substantial evidence to show that final settlement culminating into the execution of the deed, Ext. 1, was made in Sabalpur where all

the points were discussed and finally settled It follows from the evidence that defendants Nos. 2 to 4 had full knowledge of the agreement in favour

of plaintiffs and defendants Nos. 5 to 7 when they had obtained the sale-deed on 16-4-1974 and the agreement set up by them in their favour

purporting to be of 18-1-1974 is a fake document. The findings arrived at by the learned Civil Judge are, therefore, justified and correct.

19. In the result, the suit was rightly decreed There is no force in this appeal which is hereby dismissed with costs.