

Hira Singh and Another Vs Budh Singh and Others

Court: Allahabad High Court

Date of Decision: Jan. 29, 1985

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 100
Registration Act, 1908 â€” Section 77
Specific Relief Act, 1963 â€” Section 20, 32

Citation: AIR 1985 All 259

Hon'ble Judges: N.N. Sharma, J

Bench: Single Bench

Advocate: G.P. Bhargava, A.N. Bhargava and K.N. Saxena, for the Appellant; Yatindera Singh and V.K.S. Chaudhary, for the Respondent

Final Decision: Partly Allowed

Judgement

N.N. Sharma, J.

This is an appeal by defendants Hira Singh and Suraj Singh, the alleged vendees from defendant 3 Ram Ratan. Plaintiffs

Budh Singh, Gaya Din and Prabhu Dayal were impleaded as respondents.

2. The appeal is directed against judgment and decree dt. 19-2-1974 recorded by Sri B. N. Srivastava, learned 1st Temporary Civil & Sessions

Judge, Jhansi who dismissed Civil Appeal No. 57 of 1973 with costs and affirmed the judgment and decree of Sri Jag Mohan Paliwal, learned

Munsif, Jhansi dt. 8-1-1973 in Original Suit No. 36 of 1967 by which learned Munsif had decreed the suit holding that plaintiff No. 2 Gaya Din

was entitled to get Rs. 667/- from defendant 3 Ram Ratan. Plaintiff 1, viz. Budh Singh shall have a right to obtain registration of impugned sale

deed dt. 16-8-1966 executed by defendant 3 Ram Ratan, on payment of Rs. 1334/- by him to defendant 3 Ram Ratan. It was further held that

Budh Singh shall be entitled to get possession over the disputed plots from appellants : viz., defendants 1 and 2, Hira Singh and Suraj Singh

respectively. It was further held that the sale deed dt. 24-9-1966 executed by Ram Ratan in favour of appellants in this appeal was ineffective, as

against the claim of Budh Singh.

3. It appears that plaintiffs, who were Gaya Din and Prabhu Dayal, own brothers and Budh Singh, filed a suit for relief ordering defendant 3 Ram

Ratan to get the sale deed executed by him in favour of plaintiffs registered in the office of Sub-Registrar, Moth. A relief for injunction was further

sought restraining the defendants from interfering with the crops standing over the plots in dispute covered by the sale deed executed in their favour

on 16-8-1966 by defendant 3 Ram Ratan for a sum of Rs. 2000/-. It was further averred that plaintiffs were placed in possession over the

disputed holding also but the obstruction was occasioned by the executing of the subsequent sale deed in favour of appellants in this appeal by

defendant 3, Ram Ratan.

4. The disputed holding is situated in village Peraichha, paragana Moth, district Jhansi and measured 6 acres 82 decimals.

5. By a subsequent prayer, plaintiff Prabhu Dayal was transposed in the array of defendants vide order dt. 6-4-1972.

6. It was also averred that Ram Ratan, defendant 3, had delivered possession over the disputed land, viz. plots Nos. 76/1 and 181 to plaintiffs on

16-8-1966 but failed to get the sale deed registered and on 24-9-1966 executed the sale deed in favour of appellants in this appeal transferring the

plots in dispute to them. It was on the strength of that sale deed that defendants 1 and 2 dispossessed the plaintiffs from the land. So, the relief for

possession was also subsequently sought by plaintiffs.

7. Defendants-appellants filed separate written statements raising identical pleas. They maintained that defendant 3 Ram Ratan never agreed to sell

the disputed plots in favour of plaintiffs. They denied the execution of unregistered sale deed dated 16-8-1966 in favour of plaintiffs. It was further

pleaded that defendant 3 Ram Ratan entered into an agreement in July, 1966 to sell the disputed plots to them within a period of three months; in

pursuance of that agreement, on 24-9-1966 he executed the sale deed in favour of appellants in this appeal for a sum of Rs. 2200. When they

went to the office of Registrar for registration of the sale deed, then it transpired that plaintiffs based themselves on an unregistered sale deed dt.

16-8-1966. A number of persons intervened to adjudge the dispute and it was decided that Ram Ratan must refund the sum of Rs. 2000/-

together with expenses to Gaya Deen. In pursuance thereof, defendant 3, Ram Ratan, out of the sale consideration of Rs. 2200/- received by him

from the appellants in this appeal, paid Rs. 2000/- to Gaya Din who executed an agreement and undertook to obtain the signatures of Budh Singh

and Prabhu Dayal also. However, plaintiff 2 Gaya Deen failed to obtain the signatures of plaintiff 1 Buddh Singh and plaintiff 3 Prabhu Dayal, on

the agreement. They further pleaded that they were bona fide purchasers for value without any notice of agreement executed by Ram Ratan in

favour of plaintiffs. Other pleas were also raised which are not necessary to be detailed for the disposal of this appeal.

8. Defendant 3 Ram Ratan, in his written statement denied the execution of sale deed set up by plaintiffs but conceded about it in his statement

under Order X Rule 2 of Civil P.C. recorded on 23-4-1966. He further supported the defence version put forward by appellants in this appeal.

9. Both the courts below found that the suit was cognizable by civil Court and was not barred by Section 32 of Specific Relief Act. It was further

held that plaintiffs were out of possession and defendant 3 Ram Ratan executed the impugned sale deed dt. 16-8-1966 in favour of plaintiffs for a

sum of Rs. 2000/-. It was further found that by subsequent agreement, plaintiffs relinquished their rights under the sale deed dt. 16-8-1966 but

plaintiff 2 Gaya Deen was not paid the amount of Rs. 2000/- or any part thereof by Ram Ratan for the execution of agreement by him in favour of

Gaya Deen. It was further found that defendants 1 and 2 know full well about the earlier sale deed when they procured the sale deed in their

favour on 24-9-1966. On these findings, the claims were allowed only to the extent as given above.

10. I have heard learned counsel for parties and perused the record.

11. The first contention raised before me on behalf of appellants was that it was not a suit for specific performance of an agreement, no relief for

registration as sought by plaintiffs, was awardable by the civil Court. u/s 72(1) of Registration Act, 1908 in case of refusal by Sub-Registrar

refusing to admit a document to registration, an appeal could have lain to the Registrar. It was not for the civil Court to give redress to plaintiffs in

such cases u/s 77 of the aforesaid Act, it was further argued that had this been a suit for specific performance, proper court fees should have been

paid by plaintiffs and the suit should have been properly valued. This contention was repelled by the finding recorded by learned lower appellate

court under point No. 1.

12. On behalf of respondents, it was pointed out that if there is some deficiency in the payment of court fees it could be made good even now.

13. I simply endorse that finding as I am supported in my view by Mathai Ouseph Panackal Vs. Joseph and Another, . It was observed at p. 266.

In the present case, a suit u/s 77 will not be adequate to meet the needs of the plaintiff because he is seeking not merely the registration of the sale

deed but also recovery of possession and mesne profits, which are outside the purview of an action under S, 77. Therefore, I hold that the suit is

not barred either by the provisions of Section 77 or for the reason that the party has not pursued his remedies under part 12 of the Registration

Act. Moreover, he is entitled, if really there is a contract of sale in his favour..... This is a question of fact yet to be adjudicated upon --to enforce

the implicit agreement to get a proper conveyance executed and registered. A suit for specific performance of the agreement to register the

document is maintainable.....

14. In the instant case also, the reliefs for injunction and possession, as sought in the suit, are outside the purview of an action u/s 77 of Registration

Act, 1908. So this contention is ruled out.

15. It appears that in the instant case, plaintiffs examined Shyam Lal (PW 1), scribe of the sale deed executed by defendant 3 Ram Ratan in favour

of plaintiff as well as the agreement to relinquish their rights executed on 24-9-1966. Shyam Lal testified that no money was refunded to Gaya

Deen prior to the execution of that document but was to be paid only after Gaya Deen procured the signatures of Buddh Singh and Prabhu Dayal

on the aforesaid document.

16. Gaya Deen (PW 2) was examined to explain away his admission in the said agreement-executed by him in favour of appellants in this appeal

17. Balwan (PW 3) testified about the possession of holding which passed to plaintiffs at the time of execution of the sale deed in their favour by

Ram Ratan. However, his statement on that point was not believed by both the courts below :

18. Raghuvar (PW4) testified about the execution of an agreement in favour of plaintiffs for a sum of Rs. 2000/- for the disputed holding which

was to be written subsequently. The holding was cultivated by plaintiffs in pursuance of that agreement.

19. Mahendra Singh (DW 1), Ram Raja (DW 2) and Prabhu Dayal (DW 3) were examined in defence, Prabhu Dayal (DW 3), who was originally

the plaintiff, testified in support of the defence version. He claimed to have received a sum of Rs. 700/- which was the amount refunded by Ram

Ratan in connection with the sale deed. D.Ws. also testified about the possession of defendants over the disputed holding. They further testified

that plaintiffs never entered possession over the disputed holding. Both the courts below recorded a concurrent finding of fact, that plaintiffs were

out of possession and did not get possession over this holding in pursuance of their sale deed. Defendant 3 Ram Ratan executed the impugned sale

deed dt. 16-8-1966 in favour of plaintiffs for sum of Rs. 2000/-. Budh Singh did not receive any portion of the consideration which flowed from

the vendees, appellants in this appeal to the vendor Ram Ratan for execution of sale deed in their favour.

20. In this connection, I may point out that although in this appeal I am reluctant to interfere with the concurrent findings of fact recorded by both

the courts below but it is not possible for this Court to ignore the misreading of evidence while appraising the testimony if the result of such findings

resulted in injustice. Both the courts below overlooked the material fact that Ext. A1 contained admission of Gaya Deen about the receipt of Rs.

2000/- in cash for relinquishment of their rights under the sale deed dt. 16-8-1966. The appellants in this appeal had also entered possession over

the disputed holding in pursuance of the said agreement and the sale deed executed in their favour. Shyam Lal, scribe of Ext. A1 made an

inconsistent statement when he testified that although he had to go by the dictation of the executant while preparing that document yet he wrongly

mentioned in this document about the payment of Rs. 2000/- by Ram Ratan to Gaya Deen etc. out of the sale consideration paid by appellants in

this appeal to Ram Ratan. Gaya Deen is an educated person and he could not have appended his signature on Ext. A1 with his eyes closed. His

statement is falsified by the statement of Prabhu Dayal, his own brother, who deposed to have received a sum of Rs. 700/- of his share from Gaya

Deen. He could not explain the fraud practised on him as set up by him. He could not have paid a sum of Rs. 700/- for relinquishment of rights of

vendees over the disputed land from his own pocket had the aforesaid sum of Rs. 2000/- not been received by him prior to the execution of this

document. Prabhu Dayal had no reason to perjure against his own brother and support the defendants-appellants even when his signatures did not

appear on Ex. A1. The testimony of such persons as Shyam Lal and Gaya Deen was wholly incredible on this point. On the other hand, the evidence

of D.Ws. on this point was consistent, cogent and corroborated by the recital in Ext. A1. It is difficult to believe that Prabhu Dayal being own

brother of Gaya Deen, could have perjured against his own brother. Even this suit was filed on 17-1-1967 although the plaintiffs have been ousted

from their possession atleast from 24-9-1966. According to the findings of courts below, the plaintiffs never entered possession in pursuance of

their sale deed. Under such circumstances, the finding recorded by courts below that although Prabhu Dayal had received a sum of Rs. 700/- for

his share yet Gaya Deen who executed this document, did not receive a single pie and simply executed it without knowing the extent of his liability

or as to what he was about, is wholly repugnant to common sense.

21. Although, Budh Singh did not enter the witness box as a P.W. to rebut the defence version yet having regard to the fact that his signature did

not occur on Ext. A1 and Ram Ratan did not enter the witness box, findings of courts below that he did not receive his share of the refunded

amount, is acceptable.

22. A look at Ext. A1 shows that it was an intelligent act of an adult person Gaya Deen. This document was duly signed by Prabhu Dayal.

Sarpanch and Ram Ram Raja who have been deliberately withheld by the plaintiffs who wanted to wriggle out of the effect of Ext. A1 executed by

Gaya Deen on behalf of plaintiffs in derogation of the rights of plaintiffs. So even in second appeal, this Court is not bound by such finding of fact

unsustainable on evidence on record, circumstances of the case and recitals in Ext. A1 which was not procured under undue influence or fraud.

23. On behalf of appellants, it was argued that it was not a suit for specific performance. There was no agreement to sell. It was not open to the

courts below to vary the terms of agreement and substitute new terms in place of the original sale deed which remained inchoate in view of Section

54 of Transfer of Property Act for want of registration.

24. Reliance was placed upon Abdul Haq v. Mohammad Yehia Khan, reported in AIR 1924 Pat 81. It appears that in that case, defendant 2 as

de facto guardian of defendants 3 and 4, entered into an agreement to sell the share of minor defendants 3 and 4 and shares of defendants' land. It

was held that in such case, no specific performance could be granted even about the shares of adults. It was observed :--

Specific performance will not be granted where de facto guardian has entered into a contract with a third party for the sale of the minor's

property. To direct the contract to be carried into effect as against the minors is to sanction a plain breach of trust on the part of de facto guardian.

25. The Division Bench further observed at page 83 : --

.....In regard to the other question, namely, whether the contract is one and entire or divisible, it is sufficient to say that the plaintiff's own case in

the plaint and in the evidence is to the effect that the contract was one contract and not separate contracts. I have already referred to para 2 of the

plaint which is to the effect that there was one contract, one salami, and one consideration.....

26. The principles enunciated in the said case, were explained at page 84 by citing the authorities of Judicial Committee in Mir Sarwanjan v.

Fakhruddin (ILR 1911 Cal 232). I can do no better than to extract the relevant portion about the rule from the said authority :--

When, therefore, whether from personal incapacity to contract, or the nature of the contract, or any other, cause, the contract is incapable of

being enforced against one party that party is generally, incapable of enforcing it against the other, though its execution in the latter way might in

itself be free from the difficulty attending its execution in the former"" (Fry on Specific Performance, page 219).

27. Further reliance was placed upon an English case in Lumley v. Ravenscroft (1895) 1 QB 683 : 64 LJ QB 441 : 14 R 347 : 72 LT 382 : 43

WR 584 : 59 JP 277. The facts in that case were as below : --

That was a case where the defendants, an infant and his sister agreed by their agent to grant the plaintiff a lease of premises in which they were

jointly interested. The plaintiff brought an action for specific performance of the agreement, and applied for injunction to restrain the defendants till

after the trial of the action leasing the premises to another person. It was held that an injunction ought to be granted only where a case was made

out for specific performance and that one of the defendants being an infant the plaintiff was not entitled to specific performance against both of

them, nor against the sister as to her interest in the absence of any proof of misrepresentation or misconduct on her part. Lindley, L.J. in delivering

the judgment said as follows :

.....If Moore's principals were both of age, there would be a complete contract and no difficulty in the case. But unfortunately one of the

principals is an infant nineteen years of age, and the agreement is unquestionably an agreement for a lease by the two. It is an agreement by the two

with the plaintiff for a lease to him of certain property, of which, as it appears, a lease was being granted to the two. What is the law? Specific

performance is put of the question. You cannot get specific performance against an infant, and upon the evidence before us no case is made out for

specific performance against the other defendant either. This case is not within the exception as to misrepresentation or misconduct stated in Price

v. Griffith (1851) 1 Deg M & G 80 : 21 LJ Ch 78 : 15 Jr 1093 & Thomas v. Dering (1837) 1 Keen 729 : 6 LJ Ch 267 : 1 Jr 427) but comes within

the general rule that where a person is jointly interested in an estate with another person and purports to deal with the entirety specific performance

will not be granted against him as to his share.

28. Learned counsel for the respondents tried to distinguish the said authorities by placing reliance upon AIR 1937 186 (Nagpur) which posited : -

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The word "any" in Section 23, Specific Relief Act indicates one out of a number of persons more than two. Where one or more co-contractors

want to enforce specific performance of the contract against the will of the others, they can do so u/s 23 of the Act. It is not necessary therefore

that all the co-contractors should be arranged on the same side for obtaining specific performance of contract. It is enough if all persons to the

contract are before the Court.

29. It appears that in that case, the earlier view in Safuir Rahman v. Maharamunnessa Bibi reported in ILR(1897) Cal 832 :-

Under a single contract to convey land to several persons it is not open to some of the joint contractees to enforce specific performance of the

contract if the other contractees refuse to have specific performance.

was departed from.

30. I have carefully gone through the said authorities. I respectfully follow the observations laid in Abdul Haq v. Mahammad Yehia Khan AIR

1924 Pat 81 (supra). The Division Bench had cited all those authorities even from English Cases and the reasons for the view have been

elaborately explained.

31. In the instant case, it is obvious that the suit was not based on an agreement to sell. It was simply based on a sale deed which was

unenforceable. There was no mutuality in the contract that defendant 3 Ram Ratan shall be bound to execute the sale deed only in favour of one of

the vendees, viz., Budh Singh and not even for full consideration of Rs. 2000/- recited in that sale deed but for a sum of Rs. 1334/- only which was

to be received by him. In the sale deed dt. 16-8-1966, it was mentioned that the entire amount has already been paid by the vendees to the

vendor. The conduct of Gaya Deen and his brother Prabhu Dayal and the manner in which the said agreement Ext. A1 was executed by them

simply shows that a new case has been carved out by the courts below which was not put forward in the plaint(?) Such novation of a contract is

not possible so as to change very tenor of the sale deed in favour of plaintiffs despite such material variations in the amount of consideration and the

contractees. At least on equitable consideration, as laid in Section 20 Specific Relief Act, the equitable relief should have been refused and a

compensation as contemplated by Section 73 of Contract Act or Section 21(3) of the Specific Relief Act could have met the ends of justice.

32. In the result, the appeal is partly allowed. Plaintiffs' claim is decreed only to the extent that plaintiff Budh Singh can recover Rs. 667/- and

interest on the said amount from 16-8-1966 at the rate of Rs. 6% per annum till payment from defendant No. 3 Ram Ratan along with the costs of

the suit, as compensation. All other reliefs, as sought in the suit fail. Remaining parties, viz. plaintiffs 2 and 3 and defendants-appellants shall bear

their own costs throughout. The impugned judgment and decree are modified accordingly.