
(2007) 05 AHC CK 0362

Allahabad High Court

Case No: None

Shyam Narain

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision: May 22, 2007

Acts Referred:

- Specific Relief Act, 1963 - Section 16, 20
- Transfer of Property Act, 1882 - Section 54, 91

Citation: AIR 2007 All 185

Hon'ble Judges: G.P. Srivastava, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.P. Srivastava, J.

This is an appeal against the judgment and decree dated 19-8-1993 passed in O.S. No. 7 of 1992 Ram Singh v. Shyam Narain by Civil Judge, Ralaun at Orai whereby he decreed the suit of the plaintiff- respondent and directed the defendant appellant to execute the sale deed of the disputed land after obtaining the balance amount of sale consideration.

2. The plaintiff - respondent had filed a suit for specific performance of the contract to sale in respect of a land Khata No. 262 Plot No. 138 452 measuring 0.98 decimal and 7 decimal respectively situate at village Deogaon, Pargana Coanch, District Jalaun. The case of the plaintiff- respondent in brief is that the defendant - appellant is a Bhumidhar of the disputed land. He has executed a registered agreement to sale of the disputed land on 2-2-1988 in favour of the plaintiff respondent at a consideration of Rs. 2 lacs. The sale deed was to be executed within two years. The defendant received a sum of Rs. 1,50,000/- as earnest money and the balance amount of sale consideration was to be paid at the time of the execution of the sale

deed. The plaintiff was always ready and willing to perform his part of the contract. The plaintiff served a notice dated 7-2-90 directed him to execute the sale deed on 19-2-1990 but the defendant did not turn up, hence the suit.

3. The defendant - appellant contested the suit on various grounds alleging that he never executed any agreement to sale of the disputed land nor obtained earnest money. It has been alleged by him that he deals in the business of the commission agency of food grains. The plaintiff used to sell his grains on the agency of the defendant. In the year 1988, the plaintiff kept his grains in the godown of the defendant and obtained Rs. 60,000/- from the defendant as a part payment. The defendant at the request of the plaintiff executed a guarantee deed on 2-2-1988 and it was settled when the grains will be sold the plaintiff will receive the entire sale price, will return the guarantee deed to the defendant. The defendant on 9-7-1988 sent a notice to the plaintiff for cancellation of the agreement Dated 2-2-1988 and refused to execute the sale deed. The plaintiff did not file any suit up to three years from the said refusal. Therefore, it is presumed that he abandoned the agreement to sale. The suit is barred by Sections 16 and 20 of the Specific Relief Act. The suit is barred by time. "On the pleading of the party the learned Civil Judge has framed following issues:

1) Whether the defendant agreed to sell the disputed land to plaintiff at a consideration of Rs. 2 lacs and obtained Rs. 80,000/- as earnest money Rs. 70,000/- at the time of registration of the agreement to sale and validly executed the agreement to sale Dated 2-2-1988?

2) Whether the defendant agreed to execute the sale deed in accordance with the terms of agreement to sale within two years?

3) Whether the plaintiff obtained the agreement to sale fraudulently ?

4) Whether the suit is barred by Sections 16 and 20 of the Specific Relief Act?

5) To what relief, if any, is plaintiff entitled?

6) Whether the suit is barred by time?

4. Learned Civil Judge has held that the defendant executed an agreement to sale validly and obtained Rs. 1,50,000/- as earnest money. He has held that the sale deed was to be executed within two years. He has further held that the suit is not barred by Sections 16 & 20 of the Specific Relief Act. He has held that the suit is not barred by time. On the basis of the finding learned Civil Judge has decreed the suit of the plaintiff - respondent. Feeling aggrieved with the judgment and decree passed by the Court below, the defendant has preferred this appeal.

5. I have heard learned Counsel for the parties and gone through the entire evidence on record.

6. Following two points were argued by learned Counsel for the appellant:

1) Whether the suit is barred by time?

2) Whether the agreement to sale being unilateral does not amount to a contract for a sale within the meaning of Section 54 of The Transfer of Property Act, as amended in U.P.

7. I shall deal with the first point first. Learned Counsel for the appellant has argued that in this case no date was fixed for the performances of contract. Therefore, according to the Article 54 of Limitation Act, the three years of limitation shall be applicable from the date when the plaintiff has noticed that the performance is refused. He has argued that no date was fixed for the performance. He has further argued that the defendant has served a notice dated 7-7- 1988, wherein he has refused to execute the sale deed. Therefore, time Will begin to run from the date of the notice i.e. 9-7-1988 if three; years is added it welcome 8-7-1991 and the suit has been filed on 4-1-1992. So accordingly to the learned Counsel for the appellant the suit is barred by time. In this connection he has placed reliance on [Shakuntala \(Smt\) Vs. Narayan Gundoji Chavan and Others,](#) wherein it was held that "If that be the case the limitation necessarily started from 17-6-1977, the date of refusal to perform his part of the contract and the suit was barred by time. The High Court was in error in taking a contrary view and in setting aside the judgment of the lower Courts. The judgment of the High Court is set aside and the judgment of the trial Court as affirmed by the First Appellate Court, is restored.

8. A reliance has also b&en placed on [R.K. Parvatharaj Gupta Vs. K.C. Jayadeva Reddy,](#) wherein it was held that "Thus, even though the time for performance was not fixed in the agreement for sale, on receipt of the notice, the respondent had notice that the performance was being refused, if he failed to fulfil his obligation under the contract within 15 days of receipt of the notice.

9. The suit, therefore, in terms of requirement of Article 54 of the Limitation Act, should have been filed within a period of three years from the date of expiry of fifteen days from the date of receipt of the said notice."

10. I have gone through the rulings care- fully. The law laid down in these cases are applicable when the time is not essence of contract meaning thereby where no such date for the performance is fixed. In the instance case the agreement to sale specifically provides that the sale deed is to be executed within two years from the date of execution of the agreement lo sale. The agreement to sale was executed on 2-2-1988. The date of the performance was up to 1-2- 1990 and if three years limitation is added the suit can be filed by 1-2-1992. Thus the suit is well within the time. The cases relied upon by the learned Counsel for the appellant are of no help to him. It is therefore, held that the suit is within time.

11. Regarding other point the learned Counsel for the appellant has argued that the agreement to sale is unilateral as it does not bear the Signature of other party i.e. plaintiff, in this connection he has preferred Section 54 of the Transfer of Property

Act where the contract for sale has been defined " A contract for sale of immovable property is a contract that a sale of such property shall take place on term settled between the parties. It does not, of itself, create any interest in or charge on such property."

12. Learned Counsel for the appellant has relied upon the case of [Mohd. Tahir Vs. Mst. Sardar Bano and Another](#), wherein it was held "Section 91 at several places uses the word "document" by which, it must be taken the legislature meant something purporting to have been executed by a party and therefore signed by him in token of execution." The said rule provides that a document must be signed by the party who executed it. It does not provide that an agreement to sale must be signed by both the parties moreover if the document is signed by one party the consequences has been provided in the case of Egged Co-operative Society Ltd. v. Levi Geffen AIR 1947 PC 32 wherein it was held" where a document is signed only by one of the parties to it, it does not amount to a written agreement and hence oral evidence is admissible to prove that the real intention of the parties was different from that expressed by the terms of the document."

13. Reliance has been placed on [Kedar Das Mohta and Others Vs. Nand Lal Poddar and Others](#), wherein it was held that "There must be reciprocity as to the binding nature of the agreement between the person who wants to enforce it and the persons against whom it is sought to be enforced.

14. Reliance has also been placed on the case of [Kumar Gohul Chandra Law Vs. Haji Mohammad Din](#), wherein it was held "If there is a proposal in writing and it is also accepted in writing, the proposal and acceptance constitute a contract in writing. But if the proposal is in writing but the acceptance is not in writing, the entire agreement not being in writing it cannot be said that the contract to lease in writing."

15. I have gone through the rulings carefully. None of the ruling referred relate to an agreement to sale. There is nothing in these rulings that if the agreement is not signed by the party the whole agreement will vitiate. It has also not been held in any of the rulings that the said agreement is not enforceable. The effect of an agreement which has not been signed by the parties is that the agreement will not amount to a written agreement and hence oral evidence is admissible to prove the real intention of the parties. In this case the defendant has taken plea that he had no intention to execute the agreement to sale and he only wanted to create a guarantee. The defendant failed to prove that the agreement and the agreement in question was for the purposes of guarantee of the payment alone. On the other hand the plaintiff has successfully proved the execution of the agreement to sale.

16. In other case this document is a promise to sale the disputed land and plaintiff in part performance has paid Rs. 1,50,000/- to the defendant. Even the Section 54 of the Transfer of Property Act does not provide that a contract of sale should be

signed by both the parties. There is evidence that the agreement was voluntarily entered by the defendant. I therefore held that the appellant failed to prove that the agreement to sale is hit by provision of Section 54 of the Transfer of Property Act.

17. In view of the above discussion I find that the appellant has not been able to prove its case. There is no reason to interfere in the judgment and decree passed by the Court below. This appeal fails and is hereby dismissed with costs.