
(2011) 01 DEL CK 0471

Delhi High Court

Case No: Regular First Appeal No. 323 of 1996

Mr. Kanwal Singh

APPELLANT

Vs

Sitaram

RESPONDENT

Date of Decision: Jan. 24, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 96#Evidence Act, 1872 â€” Section 57(1)#Limitation Act, 1963 â€” Article 61#Transfer of Property Act, 1882 â€” Section 58

Citation: (2011) 01 DEL CK 0471

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Ashok Bhasin, Bhagwan Sharma and Sunklan Porwal, for the Appellant; Rahul Gupta and Shekhar, for the Respondent

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

The challenge by means of this first appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment

and decree dated 3.7.1996 whereby the suit of the Respondent/Plaintiff for specific performance of the agreement to sell dated 25.4.1985 was

decreed. The specific performance suit in the subject case is not the usual suit for specific performance because the agreement to sell is in fact for

re-conveyance of the property to the Respondent/Plaintiff and which property was originally conveyed by means of a sale deed by the

Respondent/Plaintiff to the Appellant/Defendant.

2. The admitted and common facts of the case are that the Respondent/Plaintiff executed in favour of the Appellant/Defendant a sale deed on

25.4.1985 transferring an area of 4 bighas and 16 biswas of land in village Sultanpur Dabas, Post Office Pooth Khurd, Delhi, for a sum of Rs.

16,500/-. Two clauses of this sale deed are relevant and which are Clauses 6 and 11 and which clauses read as under.

6. That as and when the Vendor shall ask to the Vendee to resale the said land by the Vendee to the Vendor in future then the Vendee shall

execute and get register proper-re-sale deed of said land in favour of the Vendor on the same costs and expenses and if during that period said

land is acquired then all amount of compensations of same shall be taken by present Vendee and after deducting all his present sale price he shall

refund the same to the present Vendor.

11. That the Vendee though has become sole & absolute owner, occupier & in possession of said land and he shall also and, occupy, enjoy, hold,

said land but shall not be entitled to transfer said property in any way to any other person except the present vendor or any of his legal heir/s,

nominee/s.

This sale deed has been exhibited as Ex.PW2/1.

3. It goes without saying that Clauses 6 and 11 as are found in the subject sale deed Ex. PW2/1 are not the usual clauses in a usual sale deed. The

clauses therefore clearly show the agreement and intention of re-conveyance of the subject land back to the Respondent/Plaintiff on payment of

certain ""costs and expenses"". Also, ordinarily, in a normal sale deed, there is no absolute restriction on the buyer to transfer the property further,

however, in the facts of the present case, there is a complete prohibition for further transfer of the property by the Appellant/Defendant to anybody

else. Therefore, it is quite clear that the transaction as encompassed in Ex.PW2/1 was not only a normal sale deed but further also in fact contained

the ingredients of the agreement to re-transfer the same very property.

4. The case of the Respondent/Plaintiff was further that an agreement to sell (Ex.PW1/1) was also executed between the parties on the same date

i.e. 25.4.1985 and which agreement to sell is however denied by the Appellant/Defendant. By virtue of this agreement to sell of the same date, it

was agreed that on repayment of the loan of Rs. 16,500/-, i.e., the consideration stated in the sale deed along with interest, the subject property

was to be re-conveyed back to the Respondent/Plaintiff and that the period for repayment of loan from the Respondent to the Appellant was to be

three years. The Respondent/Plaintiff sought specific performance of this agreement to sell and which suit has been decreed by the impugned

judgment and decree.

5. The trial court has extensively discussed the various contentions and submissions of the parties as also the evidence on record and has come to

the conclusion that there very much exists the document being the agreement to sell (Ex.PW1/1) and the two witnesses of which document were

also of the two witnesses to the sale deed Ex.PW2/1. The trial court has also discussed the fact that there is nothing unusual about the existence of

the agreement to sell because clauses with regard to re-conveyance of the subject property are very much found in the sale deed Ex.PW2/1. The

detailed discussion of the trial court is in paragraphs 17 to 35 of the impugned judgment and decree where the trial court has dealt with the issues

No. 1 and 3 pertaining to whether there was an agreement to sell in favour of the Respondent/Plaintiff by the Appellant/Defendant and which

conclusions of the Trial Court are correct.

6. Before this Court, the learned senior counsel for the Appellant raised the following arguments:

(i) In the plaint paragraphs 10 to 12, though, the Respondent had come up with the specific case of going to the Appellant on a specific date i.e.,

28.2.1988 for repayment and also all the witnesses accompanying the Respondent/Plaintiff to the Appellant and also of the sending of the legal

notice dated 9.3.1988, however, it is contended that these aspects have not deposed so by the Respondent/Plaintiff in his examination -in chief

when he appeared as PW1.

(ii) There are various contradictions in the statements of Respondent/Plaintiff, who appeared as PW1, and also in the depositions of the attesting

witnesses of the agreement to sell, who appeared as PW2 and PW3 namely Sh. Bhim Singh and Sh. Jai Singh respectively. Contradictions are

brought forth with respect to PW1/Respondent wrongly stating that the period for repayment of the loan was mentioned as three years in the sale

deed whereas the same is the period mentioned not in the sale deed but in the agreement to sell and also the fact that Respondent did not state

where the agreement to sell was got typed and executed. As regards the statement of the witness, Sh. Bhim Singh who appeared as PW-2,

reference is made to contradictions between his statement and the statement of the PW-3 Sh. Jai Singh that the documents were executed in Tis

Hazari Courts which not was so stated otherwise by the other witness. It is also argued that PW-3 Sh. Jai Singh specifically stated that none of the

parties had signed any documents at Tis Hazari and the fact that there was an enmity between Appellant and Sh. Jai Singh on account of certain

disputes which were also taken to the police and hence Jai Singh's testimony ought to be discarded.

(iii) The suit is barred by time because the suit is filed on 28.7.1988 though the specific performance is sought of an agreement to sell which is

dated 25.4.1985 i.e. having been filed beyond the limitation period of three years.

7. I am unable to agree with the contentions as raised on behalf of the learned senior counsel for the Appellant. Of course, contradictions are

material, and contradictions do water down the case of a party, however, a civil case is decided on balance of probabilities considering the entire

evidence, both oral and documentary and in the evidence led in a case, there are always strengths and weaknesses in the respective cases of

parties. I must note that the trial court has appraised the evidence in this case keeping in mind that the parties are not well educated i.e., the

Appellant, the Respondent and the witnesses were in fact villagers and also that the payment of consideration for the sale deed was made in cash

and not by a cheque/draft. Also, admittedly, the sale deed does not record the simultaneous transfer of consideration to the execution of the sale

deed. Lastly, I may state that the doctrine Falsus in Uno Falsus in omnibus is not applicable to the Indian courts. This doctrine which is applicable

to the courts in U.K is that if a witness lies on one point, he is taken to lie generally. However, so far as the Indian courts are concerned, this

doctrine has been held to be not applicable because there are always certain misstatements bordering on untruths in the case of each party and if,

cases were to be thrown out on contradictions and certain untruths which are stated by a party, possibly just a minor percentage of cases in the

Indian courts would survive for being decreed.

On the aspect that the Respondent has mentioned that the period of three years is mentioned in the sale deed whereas it has only been mentioned

in the agreement to sell, all that it means is that what the witness stated to be found in one document was in fact so stated in another document,

however, this does not mean that on this count alone, the case of the Respondent/Plaintiff must fall. After all the period of three years is mentioned

in the agreement to sell and there is no big deal in a person confusing the contents of a document when that content is otherwise found in a sister

document. Also, the fact that the Respondent/Plaintiff may not have deposed much in examination in chief cannot take away the admitted facts

appearing from the admitted document being the sale deed Ex.PW2/1, which clearly records the requirement of re-conveyance of the subject

property subject to paying the ""costs and expenses"", a euphemism for repayment of the loan with interest. The existence of the agreement to sell

cannot be seriously doubted merely because it contains the period of repayment which is not mentioned in the sale deed Ex.PW2/1. Also, the

contradictions in the statements of the witnesses to the sale deed, and agreement to sell as regards certain documents having been executed (as

stated by one witness) and not having been executed in Tis Hazari Courts (as stated by the other witness) is to be read in the context that not only

the witnesses were villagers and not highly educated persons, but also the fact that their depositions have been given after about a period of 7 to 8

years from the date of subject agreement to sell and the subject sale deed and such incidental matters need not be remembered step by step to

perfection. I therefore hold that as per the evidence led the fact that the document being the agreement to sell having been executed is a much more

stronger finding than the non-existence of the agreement to sell Ex.PW1/1, more so, in view of Clauses 6 and 11 of the sale deed Ex.PW2/1.

8. I must take note of the important fact that there is more strength as per the balance of probabilities in the case of Respondent/Plaintiff as against

the case of the Appellant/Defendant because after all the both the witnesses to the admitted sale deed are also the witnesses to the disputed

agreement to sell, and the witnesses have, leave apart their contradictions, in fact appeared as witnesses and deposed in favour of the

Respondent/Plaintiff.

9. The last contention of the learned senior counsel for the Appellant is that the suit is barred by time. Once again to my mind this argument does

not deserve acceptance. At this stage, I must note that both the parties have been ignorant, so to say, of the real nature of the transaction. Both the

parties have treated the agreement to sell Ex.PW1/1 as a basis of suit for specific performance, whereas in reality, the transaction in question is in

fact a mortgage by conditional sale as envisaged in Section 58(c) of the Transfer of Property Act, 1882. No doubt, it is not the stand of the

Respondent/Plaintiff that the transaction in question is a mortgage by conditional sale, however, this Court is entitled to take judicial notice u/s

57(1) of the Indian Evidence Act, 1872 of the applicable law to the effect of a transaction on the basis of the admitted facts which emerge on

record. The provision of Section 58(c) of the Transfer of Property Act, makes the real nature of the transaction between the parties quite clear in

the present case that the same was a loan transaction covered by the security of a mortgage. Such a conclusion is also arrived at once we look at

not only the agreement to sell, but Clauses 6 and 11 of the sale deed, which are admitted clauses in an admitted document as already referred to

above. It is most unusual to mention of re-conveyance of the property in a regular sale deed and also of the same containing a clause that the buyer

is completely restrained from further transferring the property. This latter Clause 11 which absolutely restrained transfer of property was to ensure

bringing about the re-conveyance which would not have taken place in case the property was transferred by the Appellant further under the sale

deed. These facts thus confirm my conclusion that the transaction in question was in fact a mortgage by conditional sale.

With respect to a mortgage, the period of limitation is 12 years for redemption as per Article 61 of the Limitation Act, 1963. In fact, the period of

limitation in the present case would not be 12 years but would be 30 years under Article 61(a) of the Limitation Act, 1963 because possession of

the property was transferred to the Appellant. I, therefore, hold that the suit was not barred by limitation, because, the suit has been filed on

28.7.1988 i.e., well within the period of period of 12 years or 30 years from 25.4.1985 , when the sale deed and the agreement to sell were

executed. The findings on this issue of limitation also takes care of the argument advanced on behalf of the Appellant that the Appellant has failed

to depose and hence failed to prove that in fact a demand for repayment was made to the Appellant, because even if the facts as stated in paras 10

to 12 of the plaint are not deposed to yet the plaint itself can be treated as a demand for redemption of mortgage on payment of the loan with

interest, and which demand/plaint is well within 30 years/12 years of the original transaction.

10. This Court is entitled to interfere with the judgment and decree of the trial court only if the impugned judgment is illegal or perverse or it causes

grave injustice. None of these ingredients exist for allowing of the present appeal. In fact, there would be grave injustice to the Respondent/Plaintiff

if he is not given back his property and which was definitely envisaged in view of Clauses 6 and 11 of the admitted document being the sale deed

Ex.PW2/1. Accordingly, there is no merit in the appeal and the same is dismissed leaving the parties to bear their own costs. Interim orders are

vacated. Trial court record be sent back. Interim Orders stand vacated.