

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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CIVIL SECOND APPEAL No. 196 of 2002

RAMLAL & ANR  
V/S  
RAMA

Mr. JK BHAIYA, for the appellant / petitioner

Mr. LALIT KAWADIA, for the respondent

Date of Order : 30.3.2005

HON'BLE SHRI N P GUPTA, J.

ORDER  
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Heard learned counsel for the parties, and perused the impugned Judgments.

The plaintiff filed the present suit for redemption alleging that, he has mortgaged the property with Amba Lal on 27.5.66. However, for satisfaction of Amba Lal, the document was got executed to be registered sale-deed, and Amba Lal had agreed to reconvey the property, if the plaintiff pays the mortgage money within twelve years, therefore, plaintiffs wanted to mortgage the property with defendant no.1, for which Amba Lal also agreed. However, since the document in favour of Amba Lal was registered sale-deed, and terms put by defendant no.1 were the same as were put by Amba Lal, therefore, it was decided that Amba Lal will execute the sale-deed in favour of the defendant no.1, and to safe-guard the right of the plaintiff, defendant executed the document in favour of plaintiff on 9.5.77, stipulating that the property which he has purchased, would be conveyed to the plaintiffs for price of Rs.5500/-, if the plaintiff pays this amount within a period of five years. Inter alia with these averments, it was prayed that in fact since the transaction was of mortgage, the property be ordered to be redeemed, and an alternative prayer has been made to the effect, that if the transaction is held to be sale, since the document dt. 9.5.77, is an agreement to sale the property to the plaintiff, decree for specific performance be passed. All other necessary pleadings in this regard were taken.

The defendant contested the suit, mainly on the ground, that property was absolutely sold by plaintiffs to Amba Lal, who in turn sold it to the defendants, he denied the execution of document dt. 9.5.77, and pleaded it to be concoction. Another objection taken was about the suit, being not triable by civil court, rather it is triable by revenue courts only. Another plea taken is that, defendant no.2 is co-purchaser from Amba Lal, while he is not party in the agreement, said to have been executed on 9.5.77.

The learned trial court framed as many as 10 issues, and while deciding issue nos.1,2 & 6 against the plaintiffs, it was found, that the transaction was sale, and the plaintiff has failed to prove the transaction to be transaction of mortgage, so as to entitle him to have the property redeemed. However, while deciding issue no.4 & 5 about the name of defendant no.2 in the sale-deed, being only Benami, and document dt. 9.5.77 having been executed by defendant no.1 as a natural guardian of defendant no.2 also, it was found, that the property was purchased by defendant no.1 Ram Lal only, and even in the present proceedings all acts are being done for defendant no.2 by defendant no.1 only, and thereafter, it was found that transaction of purchase by defendants, and the document in favour of plaintiff, are the transaction in close proximity, and that nothing has come on record to show, that defendant no.2 had at all financially contributed in purchase of the property. Thus issue nos. 4 & 5 were decided against defendant.

Then deciding issue no.3 about proof of document dt. 9.5.77, and issue no.7, about the plaintiff's entitlement to decree for specific performance and possession, so also issue no.8 relating to plaintiff's entitlement to get the possession, even on the principle of promissory estoppel, after considering the evidence in detail, the learned trial court decided all these issues in favour of plaintiff. Then issue no.9 relating to jurisdiction of civil court, was decided against the defendants, by holding that suit of present nature is not cognizable by

revenue court. In view of the above findings the suit of the plaintiff was decreed for specific performance. The appeal, against this decree has been dismissed by the learned lower appellate court.

Assailing the impugned Judgment & decree, first submission made was, that since issue nos. 1,2 & 6 have been decided by the courts below against the plaintiffs, the present suit could not be maintained on the basis of Ex.1. The learned counsel for the appellant was pointedly asked to substantiate the submission, on any legal basis, or any judicial pronouncement, but learned counsel expressed his inability. I otherwise do not find any substance in the submission, as the effect of decision of issue nos. 1,2 and 6 is that the plaintiff is not entitled to the decree for redemption, and that has already not been passed by the learned courts below. Next submission made was, that document Ex.1 is not proved. Suffice it to say, that a look at Judgment of trial court shows, that while deciding issue no.3, the trial court has discussed the evidence in detail, consisting of the plaintiff, in whose favour the document was executed, and that of described Gehri lal& Bhura, and has also considered the evidence of bald denial on the part of defendant, and has also considered, that nothing has been brought on record to show, as to why Gehri Lal and Bhura should not be believed, or that they had any adverse animus against the defendants. This finding of trial court was affirmed by the learned lower Appellate Court, and the learned counsel for the appellant has not shown any ground within the scope of Sec.100 CPC, on the basis of which, it can be said that finding is bad. Therefore, this submission also cannot be accepted.

Next submission made is, that the suit was not maintainable on the basis of Ex.1. The contention was sought to be elaborated in the manner that document Ex.1 does not contain any such stipulation to convey the property to the plaintiff, so as to entitle the plaintiff to file the suit for specific performance. It is a different story, that this contention was not raised before the courts below at any place, still

at my request, the learned counsel for the appellant read to me the document Ex.1, and after reading that, in my view, the document does contain, clear and categoric agreement to convey the property, on the plaintiff paying Rs.5500/- within the stipulated time, as such, this contention too cannot be accepted.

Next submission made was, that the plaintiff has made the prayer for specific performance , only as an alternative prayer, and has not filed the suit for specific performance, therefore, decree cannot be passed for specific performance. Learned counsel for the appellant was asked, to again substantiate the proposition on any authority of law or judicial pronouncement, but the learned counsel has expressed his inability, consequently this submission also cannot be accepted.

The last submission made was, that the suit was not cognizable by civil court, and was only cognizable by revenue court. In this regard also, learned counsel for the appellant was asked, as to how the suit is barred, and reliance was placed on Sec. 207 of the Rajasthan Tenancy Act. However, under Sec.207, cognizance of only such suit by civil court is barred, which are of the nature specified in 3<sup>rd</sup> schedule appended to the Rajasthan Tenancy Act. As such the learned counsel for the appellant was pointedly asked, as to under which entry in 3<sup>rd</sup> schedule, the present suit is maintainable, but he expressed his inability. This contention also therefor cannot be accepted.

The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

( N P GUPTA ),J.

/Srawat/