

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 191 of 2000.

Judgement reserved on: 28.5.2007.

Decided on: June 29,2007.

Smt. Kamla

.....Appellant.

VERSUS

Sukh Lal

.....Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?¹

For the Appellant:

Ms. Seema Guleria, Adv.

For the Respondent:

**Mr. G.D.Verma, Sr. Advocate with
Mr. Romesh Verma, Advocate.**

Kuldip Singh, Judge.

The defendant Smt. Kamla, is in appeal against judgement, decree dated 1.3.2000, passed by the District Judge, Shimla in Civil Appeal No. 14-S/13 of 1998, decreeing the suit of the plaintiff and directing the defendant to get the sale deed Ex. PW 1/B registered. The parties are referred in the same manner as they were in the trial court.

2. The brief facts of the case are that Sukh Lal plaintiff, filed a suit, which he termed as suit for specific performance of sale deed dated 10.4.1991, against defendant Surat Ram, who has since died,

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

pleading, inter-alia, that on 14.10.1988, defendant entered into an agreement with plaintiff for sale of 5 Biswas area out of land measuring 1-14 Bighas, comprised in khasra No. 221, situated in Mauza Rajhana, Paragna Jajhot, Tehsil and District Shimla for a sale consideration of Rs. 35,000/-. There stood a house on the land agreed to be sold by the defendant to the plaintiff. The plaintiff paid a sum of Rs. 6000/- to defendant at the time of execution of the agreement.

3. On 10.4.1991, the defendant executed sale deed in respect of land agreed to be sold to plaintiff after receiving balance amount of Rs. 29000/-. The defendant after receiving the money and executing the document gave a slip to the plaintiff and did not make himself available in the office of Sub Registrar for registration of the document.

4. The plaintiff in August, 1991, served a notice to the defendant calling upon him to get the sale deed registered, but to no avail. The plaintiff filed the suit for issuance of a direction to the defendant to get the sale deed registered. In the heading of the plaint, the suit is termed as one for specific performance but in prayer clause besides other prayers, a direction has been sought against defendant directing him to get the sale deed registered.

5. The original defendant Surat Ram died before filing the written statement, his legal-representative Smt. Kamla was brought on record, who filed the written statement. She raised several preliminary objections, besides contesting the claim on merits. She has taken

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objections of maintainability, locus-standi of the plaintiff to file the suit, estoppel on account of acts, deeds and conduct of plaintiff. On merits, she denied that defendant entered into an agreement with plaintiff for sale of 5 Biswas of area out of khasra No. 221 together with house for a sale consideration of Rs. 35000/- and received Rs. 6000/- as advance on 14.10.1988. She has also denied that on 10.4.1991, the defendant received another sum of Rs. 29000/- from plaintiff on account of balance sale consideration and executed the sale deed. She has denied that after execution of the sale deed and receiving the money defendant disappeared from the court complex and did not make himself available for registration of the document already executed.

6. The trial court held that agreement dated 14.10.1988 was executed by defendant in favour of plaintiff for selling the suit property for a consideration of Rs. 35000/- and defendant had also received a sum of Rs. 6000/- as advance from plaintiff at the time of agreement dated 14.10.1988, but it has been held that defendant did not receive Rs.29,000/- at the time of execution of sale deed on 10.4.1991 and consequently the suit was dismissed on 12.12.1997. The plaintiff filed appeal, which has been allowed by the learned District Judge, therefore, the defendant is in appeal.

7. The appeal was admitted on following substantial questions of law:-

1. Whether after execution of a sale deed in favour of a party by a seller, the said party has a right to enforce the agreement specifically?
2. Whether in view of the provisions contained in Registration Act the suit of plaintiff- respondent is competent for specific performance of agreement?

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the defendant has submitted that a bare perusal of plaint would show that plaintiff has filed a suit for specific performance of sale deed allegedly executed by the defendant in favour of the plaintiff on 10.4.1991. She has submitted that there is no question of specific performance of the sale deed once it is the case of the plaintiff himself that sale deed was executed by defendant and what was left was registration of sale deed dated 10.4.1991. She has submitted that the suit is not maintainable in view of Section 77 of Registration Act, 1908 (for short, the Act).

10. The learned counsel for the defendant has supported the impugned judgement, decree and has submitted that plaintiff has sought direction to the defendant by way of suit to get the sale deed registered in favour of the plaintiff on the basis of the sale deed, dated 10.4.1991. The learned District Judge has considered the suit to be a suit for mandatory injunction. The suit of the nature filed by the plaintiff is maintainable and it has been rightly decreed by the learned District Judge.

Substantial questions No. 1 and 2:

11. The substantial questions No. 1 and 2 are interconnected, therefore, these are being disposed of collectively.

12. The learned District Judge has recorded a finding of fact that sale deed Ex. PW 1/B was executed by defendant in favour of plaintiff on 10.4.1991 after receiving entire sale consideration of Rs. 35000/-from plaintiff. The learned counsel for the defendant has submitted that as per finding recorded by the learned District Judge, sale deed Ex. PW 1/B, was executed by defendant after receiving entire sale consideration of the suit property, therefore, the suit for specific performance filed by plaintiff is not maintainable. In presence of Ex. PW 1/B, the plaintiff was ultimately required to proceed under S.77 of the Act, which is as follows:-

“77. Suit in case of order of refusal by Registrar.- (1)

Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-section (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents

presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.”

13. The reliefs prayed by the plaintiff in the suit cannot be granted by Sub-Registrar or Registrar under the Act. The plaintiff has filed a comprehensive suit wherein a direction has been sought against the defendant to get the sale deed dated 10.4.1991 registered in favour of the plaintiff, a decree for permanent prohibitory injunction has also been prayed. There is no averment in the plaint that sale deed dated 10.4.1991 was presented by the plaintiff for registration. The learned counsel for the plaintiff has submitted that in these circumstances, the suit filed by the plaintiff is maintainable and for this purpose he has relied **Kalavakurti Venkata Subbaiah vs. Bala Gurappagari Guruvi Reddy** [AIR 1999 SC 2958]. In para-11 of the judgement, the Hon’ble Supreme Court has held as follows:-

“The analysis of the provisions of S. 77 of the Act made by us above would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated July, 2, 1979 in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule mentioned property. The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is

stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen in the present case at all. We do not think in such a case when the vendor declines to appear before the Sub-Registrar, the situation contemplated under Section 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. The First Appellate Court rightly took the view that under Section 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. The said Court noticed that there was an agreement to transfer the immovable property in the suit by the defendant to the plaintiff on the terms stated in the sale deed. Such an agreement to sell the immovable property in suit could be specifically enforced under the provisions of the Specific Relief Act. Therefore, the First Appellate Court was of the opinion that the plaintiff was alternatively entitled to base his claim of specific performance on the pleaded oral agreement to sell and inasmuch as there are further reliefs sought for, it was a comprehensive suit including a relief for specific performance of a contract contained in the sale deed executed, but not registered and, therefore, held that such relief for specific performance could be granted.

14. The plaintiff in the suit has sought a direction against the defendant to get the sale deed, dated 10.4.1991, registered since he had already received the entire sale consideration. The suit in substance is for a direction to defendant to execute and register the

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sale deed dated 10.4.1991 etc. In view of **Kalavakurti Venkata Subbaiah's** case (supra), such suit is maintainable. The defendant has failed to make out a case for interference. The substantial questions No. 1 and 2 are answered against the defendant and in favour of the plaintiff.

15. No other point was urged.

16. In view of above discussion, the appeal is dismissed with costs. The impugned judgement and decree are upheld.

June 29, 2007.
(Hem)

(**Kuldip Singh**)
Judge