

HIGH COURT OF UTTARAKHAND AT NAINITAL

A.O. No. 06 of 2010

Smt. Shama Kapur.Appellant

Versus

Raj Kumar and others.Respondents

Shri Shri Sarvesh Agarwal with Mohit Maulekhi, Advocates for the appellant,
Shri Yogesh Pandey, Advocate for respondents.

Dated: May 31, 2010

Hon'ble V.K. Bist, J.

This appeal under Order 43 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) is directed against the order dated 26.10.2009 passed by Civil Judge (Sr. Div.), Nainital in Civil Suit No. 28 of 2009 'Smt. Shama Kapur vs. Raj Kumar and others'.

2. Brief facts, giving rise to the appeal, are that the plaintiff/appellant instituted a suit before the Civil Judge (Sr. Div.), Nainital against the respondents for a decree of mandatory injunction directing the defendants to execute a fresh agreement to sell in accordance with the agreement of sale dated 13.08.2008 and get the same registered and deliver the same to the plaintiff in respect of 12.5 acres of land situated at village Haripur Dhamola, Tehsil Kaladhungi, District Nainital bearing Khata no. 00002, Khet no. 2 measuring 0.1900 hectares, Khet no. 7/1 measuring 7.1020 hectares, Khet no. 7/2 measuring 1.2650 hectares and Khet no. 9 measuring 6.1550 and further a decree for permanent prohibitory injunction restraining the defendants from alienating, transferring or creating third party interest in the land in dispute. The case was registered as Civil Suit No. 28 of 2009 'Smt. Shama Kapur vs. Raj Kumar and others'. It was stated in

the suit that the defendant nos. 1 to 21 are the owners of the property situated at village Haripur Dhamola, Tehsil Kaladhungi, District Nainital bearing Khata no. 00002, Gata no. 2 measuring 0.1900 hectares, Gata no. 7/1 measuring 7.1020 hectares, Gata no. 7/2 measuring 1.2650 hectares and Gata no. 9 measuring 6.1550 hectares, admeasuring a total area of 14.7120 hectares. It is asserted in the suit that the defendants entered into a sale agreement of the aforesaid land with the plaintiff whereby the defendant executed a unregistered sale deed agreement on 13.08.2008 in respect of 12.5 acres of land @ Rs. 20,85,000/- per acre and on the same day received a sum of Rs. 20,00,000/- as an advance. It was further agreed that the balance amount was to be paid at the time of getting the sale deed registered within three months i.e. till 12.11.2008. The agreement to sell was duly verified before the Notary Public on 14.08.2008. Under the terms and conditions of the aforesaid agreement, the sale deed was to be executed after payment of entire balance sale consideration and the defendants agreed to get the land free from all encumbrances of the bank till 12.11.2008. According to the appellant, she approached the respondents on several occasions personally as well as over the telephone for payment of balance sale consideration and getting the sale deed registered. The appellant had always been ready and willing to perform her part to pay the balance sale consideration and to get the sale deed registered in her favour but the defendants failed to perform their part of the agreement and have deliberately avoided the same. In this regard, a notice was sent to the defendants through her Advocate Mr. Siddhartha Sah, asking them to receive the balance sale consideration and to execute the sale deed in respect of

land in dispute in accordance with the agreement to sell dated 13.08.2008, however the defendants despite the service of said letter, did not execute sale deed rather sent a wrong reply to the aforesaid notice. The reply clearly shows that the defendants have turned dishonest and they do not want to honour their promise and are avoiding execution of sale deed as agreed. Since the agreement to sell has not been registered, the defendants are liable to be directed to execute a fresh agreement to sell in favour of the appellant and get the same registered at the cost of the appellant. It has been further stated in the suit that the plaintiff/appellant came to know that the defendants are negotiating for selling the land in dispute with some other persons, to which they have no right until the claim of the appellant is not settled. Alongwith the suit, the plaintiff/appellant moved an application (paper no. 7-c) for temporary injunction supported with an affidavit. Notices were sent to the respondents and they turned up before the Trial Court. The respondents filed their objection and stated that the plaintiff had to pay the balance sale consideration within stipulated time i.e. till 12.11.2008. The respondents came up with the case that being an unregistered document, the alleged agreement is not binding on them. On one hand the plaintiff is declining ownership of the defendants on the land in dispute but on the other hand she is urging for executing of new agreement. The respondents have every right to use their Bhumidhary land and the plaintiff/ appellant is not entitled to get any relief. In order to prove the case, the plaintiff filed the original agreement dated 14.08.2008 (paper no. 10-c/1 to 10-c/3), copy of notice dated 27.10.2008 (paper no. 11-c/1 to 11-c/9), copy of reply of notice dated 14.11.2008 (paper no. 12-c), copy of

reply of notice dated 27.11.2008 (paper no. 13-c, receipt of U.P.C. (paper no. 14-c) and Khatauni (paper no. 15-c/1 to 15-c/3). The respondents, on the other hand, filed 4 documents Power of Attorney (paper no. 23-c/2 to 23-c/30). The learned Trial Court vide order dated 26.10.2009 dismissed the interim injunction application of the plaintiff/ appellant. Being aggrieved with the order dated 26.11.2009, the plaintiff/appellant come up in the present appeal.

3. I have heard Shri Sarvesh Agarwal with Shri Mohit Maulekhi, Advocates for the appellant, Shri Yogesh Pandey, Advocate for respondents and perused the material available on record.

4. Learned counsel for the appellant argued that the Trial Court has utterly failed to appreciate the documentary evidence on record, which prima-facie goes to establish that the defendants have entered into an agreement with the plaintiff with regard to the property in question and have taken a substantial amount as sale consideration. They argued that while protecting the amount of sale consideration, the learned Trial Court ought to have protected the interest of the appellant by granting interim relief restraining the defendants from alienating, transferring or creating any third party interest with regard to the property in question. They further argued that the defendant/ respondents did not disclose about the loan taken by them from the bank, at the time of said agreement. Counsel for the appellant argued that prima-facie case, balance of convenience and irreparable loss are fully pleaded and proved. It is further argued that the agreement to sell can be read for collateral purposes

and can legally be enforced. It is argued that once the defendants have issued receipt and admitted the advance of sale consideration with regard to transaction of land in lieu of agreement executed by them, the Trial Court erroneously passed the order impugned. Contrary to it, Shri Yogesh Pandey, the learned counsel for respondents submitted and argued that being an unregistered document, the alleged agreement is not binding upon the defendant/respondents. He submitted that on one hand the plaintiff is declining ownership of the defendants on the land in dispute but on the other hand the appellant is urging for executing of a new agreement. He also submitted that the respondents have every right to use their Bhumidhary land, therefore the plaintiff/ appellant is not entitled to get any relief. He argued that the Trial Court did not find prima-facie case, balance of convenience or irreparable loss of the plaintiff and has rightly rejected the application seeking interim relief which does not warrant interference by this Court.

5. After hearing learned counsel for the parties and after examining the record, this Court finds that claim of the appellant is based on the agreement dated 13.08.2008 which provides that balance amount of sale consideration was to be paid within three months of the date of agreement and sale deed was also to be registered within the same period. It was further provided in the agreement that in the event of dispute the vendor will return double amount to the purchaser. The suit has been instituted for a direction to the defendants to execute fresh agreement to sell in accordance with the agreement dated 13.08.2008 in respect of property in question. The same has yet to be adjudicated by the Trial Court. The land is in

possession of the defendant/respondents. The learned Trial Court neither found prima-facie case in favour of the appellant nor balance of convenience was found in his favour. I am satisfied with the findings recorded by the Trial Court and I do not find any illegality in his order.

6. Consequently, the appeal fails and is dismissed accordingly.

7. No order as to costs.

8. Interim order dated 15.01.2010 passed by this Court stands vacated.

(V.K. Bist, J.)
31.05.2010

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