

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

**CSA No. 22/2009
CMA No. 27/2009**

Date of Order: 17.05.2012

Sardar Chand Anthal Vs. **Ajit Singh & anr.**

CORAM:

MR. JUSTICE J. P. SINGH.

Appearing Counsel:

For Appellant(s) : Mr. Virender Bhat, Advocate.

For Respondent(s) : Mr. R.K.Jain, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Order

Ajit Singh-respondent No.1's Suit for declaration that Sale Deed dated 17.03.1999 executed by Rakesh Kumar-respondent No.2 in favour of Sardar Chand Anthal, the appellant, was null and void and he be declared owner of the Plot of land measuring 8 Marlas comprised in Khasra No.95 min situated at Karan Nagar, Jammu, besides for Permanent Prohibitory Injunction restraining the appellant and respondent No.2 from interferring in respondent No. 1's peaceful possession over the Plot, was dismissed by the trial

Court of Ist Additional Munsiff (Forest Magistrate), Jammu on 04.12.2004 holding that respondent No.1 had failed to prove his title and right in the land.

His Appeal against the Decree and Judgment of the trial Court was allowed by the learned Additional District Judge, Jammu holding that he had proved him to be the owner of the Plot, rights wherein were conveyed to him by Sale Deed dated 27.02.1999 and appellant's Sale Deed dated 17.03.1999 that pertained to the Plot different from the respondent's land, would not vest any right in him in respect of the Plot in question.

The appellant has filed this Civil Second Appeal questioning the Decree and Judgment of the Ist Appellate Court.

Learned counsel appearing for the appellant submitted that the Ist Appellate Court had committed an error of law in passing a declaratory Decree in favour of the respondent who, had not prayed therefor. The error committed by the Ist Appellate Court in passing a Decree not asked for by respondent No.1, according to the learned counsel, would give rise to a substantial question of law that needs consideration on merits to correct an error committed by the Ist Appellate Court.

His next contention is that the Ist Appellate Court has erred in holding the respondent to have proved his case relying on the weaknesses of the appellant's case regardless of the fact that there was no substantial evidence on records in proof of his case, which course, according to the learned

counsel, being impermissible, needs to be corrected by entertaining the Civil Second Appeal.

Per contra, respondent No.1's learned counsel questions the maintainability of the Civil Second Appeal urging, *inter alia*, that neither any substantial question of law arises in the case and nor has the Ist Appellate Court committed any such error that may give rise to any substantial question of law requiring correction thereof in the Second Appeal. It was additionally submitted by the learned counsel that the appellant's defence was vexatious, in that, despite having known during the trial of the Suit that he had no right, title or interest in the Suit land, he kept on contesting the Suit even after having received the cheques that his vendor had given to him paying back the amount which he had received before selling the Plot of land that the appellant claims to be the Suit land and such a litigant who raises vexatious defence to a *lis* was not entitled to hearing by the Appellate Court.

I have considered the submissions of the learned counsel for the parties and gone through the records.

The title of respondent No.1's Plaintiff specifically mentions it to be a Suit for declaration that the plaintiff was the legal owner of the Suit property, however, the Relief Clause in the plaint omits to pray for such decree. It is indicated in the Relief Clause that a Decree for Permanent Prohibitory Injunction restraining the appellant and respondent No.2 from interfering into the peaceful possession of respondent No. 1 and raising any construction on the Suit land, besides declaring that appellant's Sale Deed dated 17.03.1999 as illegal, fake, unauthorized and inoperative

insofar as the title and rights of ownership of the appellant were concerned, be passed in favour of respondent No. 1 and against the appellant and respondent No. 2.

The first question that, therefore, falls for consideration is as to whether there was any omission by the respondent in claiming declaration of his ownership rights over the Suit property when he filed the Suit, and, if so, what is its effect on the Decree passed by the 1st Appellate Court in favour of respondent No. 1?

To construe the true complexion of a Plaintiff, it needs to be read as a whole and not in parts, for, lop-sided consideration thereof may disable the Court from gathering the plaintiff's intention with which he had approached the Court for relief. Although the respondent has omitted to seek specifically declaration of his ownership rights over the Suit plot in the Relief Clause of the Plaintiff; but the detailed title thereof indicates the purpose for which he had filed the Suit, which leaves no manner of doubt that the respondent had sought the relief of declaration of his title over the Suit Plot. He has specifically claimed him to be the owner of the Suit Plot relying on the Sale Deed executed in his favour, in the body of the Plaintiff. It cannot, therefore, be said that his omission to pray for the relief of such declaration in the Relief Clause of the Plaintiff, when such relief stood specifically prayed for in the detailed title of the Plaintiff, would amount to his omission to seek the relief of declaration of his ownership over the Suit Plot.

The mention of such a relief in the title of the Plaintiff, therefore, in the circumstances, needs to be taken as the relief claimed in the Suit.

Be that as it may, even otherwise I do not find any merit in the appellant's learned counsel's submission that the 1st Appellate Court has erred in awarding the Decree of Declaration to the respondent, in that, the provisions of Order VII Rule 7 of the Code of Civil Procedure, specifically empower the Court *to grant, even that relief, to a suitor which he may not have asked for, if the Court otherwise finds it just to award the relief not asked for by him.* In other words, the above provision of the Code of Civil Procedure, empowers the Court to mould the relief to which a suitor may in its opinion be held entitled thereto at the conclusion of the *lis* regardless of suitor's praying for such relief. The provisions of Order VII Rule 7 of the Code of Civil Procedure are reproduced hereunder for reference:-

Order VII Rule 7.

“ Relief to be specifically stated

Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not to be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

The first Appellate Court that exercise the same powers as that of the trial Court in terms of Order XLI Rule 33 of the Code of Civil Procedure, was, therefore, within its jurisdiction to award the Decree of declaration that respondent no. 1 was the owner of the Suit property.

Having found that the respondent No.1 had proved his title to the Suit land, the 1st Appellate Court's Decree declaring respondent No.1 as the owner of the Suit land, cannot, therefore, be faulted.

Coming to the next contention of the appellant's learned counsel, it is found that the 1st Appellate Court has appreciated the evidence led by the parties pointing out the shortcomings in the trial Court's judgment in omitting to refer to respondent No.1-plaintiff's evidence and other material evidence brought on records by the parties. On re-appreciation of evidence, dealing with the evidence led by the appellant and respondent No.1, the 1st Appellate Court has recorded its finding on facts that Sale Deed relied upon by respondent No. 1 pertained to the Suit land, and the Plot purchased by the appellant did not pertain to the Suit land.

The factual findings recorded by the 1st Appellate Court after reappraisal of the evidence led by the parties, dealing with each and every piece of oral and documentary evidence, coupled with the consideration of the Report of the Commissioner appointed by the Court and taking into consideration the fact that the Attorney of the owner of the two Sale Deeds, i.e., one in favour of respondent No. 1 and the other in favour of respondent No. 2 who had sold it to the appellant, had supported respondent No. 1's Claim on the Suit Plot rather than that of the appellant, are well merited.

The Ist Appellate Court has given cogent reasons to set aside the findings of the trial Court appreciating the evidence produced by the parties in accordance with law governing the appreciation of evidence and specifically indicating as to how

had the trial Court acted illegally in coming to the conclusion which was not warranted on the evidence produced in the case.

For all what has been said above, the appellant's plea questioning the re-appreciation of evidence and the findings on facts returned by the 1st Appellate Court cannot, therefore, be entertained in the Civil Second Appeal in view of the provisions of Section 100 of the Code of Civil Procedure, in that, no substantial question of law arises in the Appeal for consideration.

Another factor that dissuades the Court from entertaining the appellant's Appeal is his intentional omission to apprise the trial Court of having entered into Agreement with his vendor during the pendency of the proceedings in the trial Court, pursuant whereto he accepted cheques for the amount that he had paid to his vendor at the time of purchasing the land which on being later dishonoured had resulted in criminal proceedings against the vendor, and which fact was brought on records by respondent No.1 before the 1st Appellate Court after he was permitted so to do.

The appellant was required to bring all these facts to the notice of the Court but he omitted to do so. His omission has resulted not only in protracting the conclusion of proceedings in respondent No.1's Suit but has also resulted in keeping the Court engaged in dealing with his vexatious defence. His significant silence even in the Second Appeal about the circumstances under which he entered into compromise with his vendor and received cheques from him during the trial of the Suit too speaks volumes of his ill-intentions. A litigant

who comes to the Court to prosecute/contest a *lis* with unclean hands is not entitled to any relief. His claim/defence needs to be rejected with costs.

In view of what has been said above, the appellant's Appeal does not merit admission to hearing. It is, accordingly, dismissed with costs of Rs.15,000/- (Rupees Fifteen thousand).

**(J. P. Singh)
Judge**

JAMMU:

17.05.2012

Pawan Chopra