SUPREME COURT OF INDIA

Suresh Kumar through GPA

Vs.

Anil Kakaria

C.A.No.4383 of 2009

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

06.11.2017

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal is filed by the plaintiff against the judgment and order dated 02.05.2006 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 1522 of 2006 whereby the High Court dismissed the second appeal filed by the appellant herein and affirmed the judgment and decree dated 21.10.2005 passed by the Additional District Judge, Panchkula in C.A. No.20 of 2005.

2. The appellant is the plaintiff whereas the respondents are the defendants in the civil suit out of which this appeal arises.

3. The dispute in this appeal relates to plot No.28, measuring 1/4th acre in Industrial Area Phase-I Urban Estate, Panchkula(hereinafter referred to as "the suit land").

4. Haryana Urban Development Authority (hereinafter referred to as "HUDA") had allotted the suit land to one Shri Ved Prakash Kakaria in the year 1973. Thereafter Shri Ved Prakash Kakaria, on 24.04.1980, entered into an agreement with the appellant to sell the suit land to him on certain terms and conditions.

5. On 05.02.1985, Shri Ved Prakash Kakaria expired, leaving behind two sons and one daughter (respondent Nos.1 to 3) as his legal heirs. Respondent Nos.1 to 3 however, sold the suit land to respondent No.4.

6. On 10.10.1992, the appellant filed a suit against the respondents for a declaration that the transfer made by respondent Nos.1 to 3 in favour of respondent No.4 is null and void and not binding on the appellant, that the respondents be restrained from interfering in appellant's possession over the suit land as he claimed to be in possession of the suit land, and lastly, for

issuance of mandatory injunction against respondent Nos.1 to 3 directing them to transfer the suit land in favour of appellant.

7. The suit was essentially based on an agreement dated 24.04.1980 and the Will alleged to have been executed by late Shri Ved Prakash Kakaria in his favour for claiming the aforementioned reliefs against the respondents.

8. The respondents filed their respective written statements and denied the plaintiff's claim. The respondents denied the agreement dated 24.04.1980 and also denied the execution of alleged Will said to have been executed by Ved Prakash Kakaria in favour of the plaintiff. The respondents defended the sale of the suit land made by respondent Nos.1 to 3 in favour of respondent No.4 for valuable consideration and contended that respondent No.4 was put in its actual possession and has also set up their factory over the suit land and running the same.

9. The Trial Court framed the issues and the parties adduced their evidence. The Trial Court, by its judgment and decree dated 22.01.2005, dismissed the suit. It was held that the appellant (plaintiff) failed to prove the agreement dated 24.04.1980, that the Will was also not proved, that respondent Nos. 1 to 3 being the owner of the suit land rightly sold the suit land to respondent No. 4 for consideration, and lastly, that respondent No.4 was in possession of the suit land and has set up their factory over the suit land.

10. Felt aggrieved, the appellant filed first appeal before the Additional District Judge, Panchkula. By judgment/decree dated 21.10.2005, the First Appellate Court dismissed the appeal and upheld the judgment/decree of the Trial Court. Felt aggrieved, the appellant pursued the matter in second appeal before the High Court. The High Court, by impugned judgment, dismissed the second appeal holding that the concurrent findings of two Courts below are binding on the High Court and that the appeal does not involve any substantial question of law under Section 100 of Code of Civil Procedure. It is against this judgment of the High Court, the appellant (plaintiff) felt aggrieved and filed this appeal by special leave before this Court.

11. Heard Mr. Jaideep Gupta, learned senior counsel for the appellant and Mr. Sanjay Kumar Visen, learned counsel for the respondents.

12. Having heard the learned counsel for the parties and on perusal of the record of the case including written submissions, we find no merit in the appeal.

13. In our considered view, the three Courts below have rightly rendered the aforementioned findings in favour of the respondents and we find no difficulty in concurring with the findings which, in our view, do not call for any interference by this Court.

14. In our considered opinion, the findings recorded by the three Courts on facts, which are based on appreciation of evidence undertaken by the three Courts, are essentially in the nature of concurrent findings of fact and, therefore, such findings are binding on this Court.

Indeed, such findings were equally binding on the High Court while hearing the second appeal and it was rightly held by the High Court also.

15. It is more so when these findings were neither found to be perverse to the extent that no judicial person could ever record such findings nor these findings were found to be against the evidence, nor against the pleadings and lastly, nor against any provision of law.

16. Even apart from what is held above, we are of the considered opinion that the appellant's suit is wholly misconceived and was, therefore, rightly dismissed by the three Courts below. We concur with the reasoning of the Courts below and also add the following three reasons in addition to what is held by the Courts below.

17. In the first place, the appellant had no title to the suit land. All that he had claimed to possess in relation to the suit land was an agreement dated 24.04.1980 to purchase the suit land from its owner (Shri Ved Prakash Kakaria). The appellant, as mentioned above, failed to prove the agreement. In this view of the matter, the appellant had no prima facie case in his favour to file a suit nor he had even any locus to file the suit in relation to the suit land once the agreement was held not proved.

18. Second, the proper remedy of the appellant in this case was to file a civil suit against respondent Nos.1 to 3 to claim specific performance of the agreement in question in relation to the suit land and such suit should have been filed immediately after execution of agreement in the year 1980 or/and within three years from the date of execution. It was, however, not done. The suit was, however, filed by the appellant almost after 12 years from the date of agreement and that too it was for declaration and mandatory injunction but not for specific performance of agreement. It was, in our opinion, a misconceived suit and was, therefore, rightly dismissed.

19. Third, the suit was otherwise hopelessly barred by limitation because, as mentioned above, the date of agreement is 24.04.1980 whereas the suit was filed on 10.10.1992. There is nothing to show that the agreement was to be kept alive for such a long time. It is apart from the fact that the alleged agreement itself was not held proved and, therefore, no suit for claiming any relief in relation to the suit land could be filed by the appellant. Even the Will was rightly held not proved by the Courts below and we are inclined to uphold the finding on this issue too. Indeed when the deceased has two sons and one daughter (respondent Nos.1-3), why should he execute a Will in appellant’s favour, who was not related to him.

20. We are, therefore, of the view that keeping in view the concurrent findings of three Courts below, which were rendered against the appellant (plaintiff) coupled with our three reasonings mentioned supra, the appeal has no merit.

21. In view of foregoing discussion, we find no merit in this appeal. The appeal thus fails and is accordingly dismissed.