

# RAJASTHAN HIGH COURT

Uma Kant

Vs.

Niranjan Prasad Mahesh

Civil Spl. A. No. 20 of 1987  
(Shiv Kumar Sharmay and Jitendra Ray Goyal, JJ.)

15.09.2005

## JUDGEMENT

**Shiv Kumar Sharma, J.**

1. Learned Additional District Judge Alwar vide judgment and decree dated November 11, 1974 decreed plaintiff's suit for specific performance and directed defendants Nos. 1 to 5 to execute sale deed and to effect its registration. The defendants 1 to 5 preferred civil regular first appeal against the said decree. Learned single Judge vide judgment dated August 14, 1986 dismissed the suit against defendants 1, 2, 4 and 5 but decreed it only against defendant No. 3, who was directed to execute sale deed for his undivided 1/9th share. The plaintiff in the instant special appeal has assailed the findings of learned single Judge.

2. As per the pleadings of the plaint the plaintiff is a firm registered as a Private Limited Company under the Companies Act, of which Shashi Kant is the Managing Director. There is a plot of land measuring 33,173 Sq. ft. near Station Road in Alwar which is known as Bawari and Bagichi Modiyani, belonging to defendant's ancestors. Defendant No. 1 Niranjan Prasad and defendant No. 2 Vishveshwar Prasad are brothers being sons of Bakhtawar Mal; whereas Ramesh Chand defendant No. 3, Suresh Chand defendant No. 4 and Naresh Chand defendant No. 5 are the sons of Gangadeen Modi (since dead) and who was son of Bakhtawar Mal and brother of defendant Nos. 1 and 2. Defendants were originally residents of Alwar but now they have all shifted from Alwar. Defendant No. 1 was staying in Meerut, whereas defendant No. 2 was staying in Chandigarh and defendant No. 3 in Delhi. Defendant Nos. 4 and 5 were staying in United States of America whereas defendant No. 6 Prabh Dayal Modi is a close relation. It was further averred that defendant Nos. 1

and 2 have got 1/3rd share whereas defendant Nos. 3 to 5 have got 1/9 share each in the said property. Defendants ultimately agreed to sell their property to the plaintiff for a sum of Rs. 12,000/- and defendant No. 3 has sent a sum of Rs. 500/- as earnest money. Ultimately, Ramesh Chand, defendant No. 3 Niranjan Prasad, defendant No. 1 and Vishveshwar Prasad defendant No. 2 came to Alwar on January 5, 1962 and purchased the stamps for a sum of Rs. 312/-. The sale deed was typed on the stamp paper. Since the Registrar was not available on 6th and 7th being Sunday, the sale deed was to be registered on January 8, 1962 but the defendant left Alwar before 8th January, 1962 and did not get the sale deed registered. Therefore, the plaintiff gave a notice to the defendant Nos. 1 to 3, asking them to get the sale deed registered but since they declined, hence, the plaintiff had filed the present suit on February 6, 1962. The suit proceeded *ex parte* against defendant Nos. 2, 3, 4 and 5 as they did not file any written statement in spite of due service.

3. The defendant No. 1 contested the suit and filed written statement, denying that he had agreed to sell the land in dispute to the plaintiff. It was of course, admitted that he had come to Alwar but only with a view to assess the proper value of the land and that defendant No. 3 was not authorized to act as his Agent as the disputed land was ancestral property. Subsequently, the defendant No. 5 appeared and got the *ex parte* order set aside and filed the written statement admitting the factum of relationship with other defendants but submitted that the power of attorney given by him in favor of defendant No. 3 was not duly attested and since he had returned to India, it stood automatically cancelled. It has further been asserted that the property was ancestral and two Samadhis of their ancestors were existing in the disputed property and that there was no necessity to sell the ancestral property and that defendant No. 3 had no authority to agree to sell the disputed property.

4. As many as eight issues were framed on the basis of pleadings of parties, which have been incorporated in the impugned judgment. Learned single Judge discussed in details the oral and documentary evidence adduced by the parties and observed as under:-

"It has been amply proved that the disputed property is ancestral property of the defendants and that all the defendants had left Alwar and had shifted to Meerut, Delhi and United States of America. It is not disputed that Gangadeen, father of defendants Nos. 3, 4 and 5 died on 8-6-1961 and he left his widow Smt. Raj

Kumar who has not been impleaded as a party. It is also amply proved that defendant No. 1 had three sons namely, Vidhya Bhushan, Bharat Bhushan and Virendra Bhushan and defendant No. 2 had got one son and they have also not been impleaded as a party. It has also come in evidence that the defendants were very well placed and were not in need of money so as to sell their ancestral property. The plaintiff has not been able to prove that the property was sold for some legal necessity or was for the benefit and in the interest of the joint Hindu Family. It is also clear that defendant No. 3 was not the Karta of the joint Hindu Family nor he had any express authority on behalf of other coparceners to enter into an agreement to sell the disputed property. All the coparceners have not been impleaded as party to the suit. It has also not been proved that defendant No. 3 had authority on behalf of even defendant Nos. 4 and 5. Only a typed copy of the so-called power of attorney (Ex. 7) has been produced. It does not bear any signatures or any authentication that this is a true copy. Defendant No. 5 Naresh when he examined himself in connection with getting the *ex parte* order set aside, has of course admitted that he gave power of attorney in favor of defendant No. 3. So at best we can assume that defendant No. 3 had authority or power of attorney on behalf of defendant No. 5. Defendant No. 4 has not appeared in the witness box and defendant No. 3 also has not admitted that Ex. 7 is the true copy of the power of attorney. The original power of attorney has not been produced. It is true that defendant No. 3 purported to act on behalf of other defendants and agreed for selling the disputed property for a sum of Rs. 12,000/- and also received a sum of Rs. 500/- as earnest money but this action of the defendant No. 3 cannot bind other defendants unless he had an express authority on their behalf. Defendant No. 1 has entered the witness box and has denied on oath that he had authorized defendant No. 3 to agree on his behalf. Other defendants have of course not appeared. Similarly, it is also true that defendants Nos. 1, 2 and 3 came to Alwar on 5th and also purchased the stamps, as has been duly proved by Ex. 19 and Ex. 20. It has not been proved that the draft sale deed was typed on those stamp papers as there is no evidence of the Typist who must have typed the sale deed on those stamp paper. Even if the sale deed had been typed on the stamp papers, there is no evidence that it was signed by the defendants Nos. 1 to 3, and therefore, was of no avail. Letters written by defendant No. 3 agreeing to sell the disputed property for a sum of Rs. 12,000/- cannot bind other defendants unless it was shown and duly proved that he had express authority to

enter into an agreement on their behalf. As such, decree for specific performance for the sale of the disputed property could not be granted so as to bind all the co-parceners, particularly when all the co-parceners are not before the Court and the so-called agreement as not entered by the Manager and/or Karta of the Joint Hindu Family, and there is no proof that there was any legal necessity or that the transaction was in the interest of and for the benefit of joint Hindu family."

5. Since defendant No. 3 agreed to sell the disputed property for a sum of Rs. 12000/- and he accepted a sum of Rs. 500/- as earnest money, learned single Judge held that the plaintiff was entitled to decree for specific performance for the share of defendant No. 3 in the disputed property which is admittedly 1/9th share of the whole area 33,173 sq. ft. on payment of a sum of Rs. 11,500/- to the defendant No. 3.

6. Having heard the rival submissions and on a careful scrutiny of the material on record we find no error in the impugned judgment of learned single Judge.

7. From the testimony of Shashi Kant (P.W. 1) and Niranjan Lal (D.W. 2) it is evident that defendant No. 3 had no authority on behalf of other defendants to enter into an agreement on their behalf. Even the plaintiff did not know as to who were the owners of the land in question. Shashi Kant (P.W. 1), who is director of plaintiff company, in his deposition stated as under :-

(Vernacular matter omitted....Ed.)

Niranjan Lal (D.W. 1), the defendant No. 1, in his statement categorically deposed as under :-

(Vernacular matter omitted....Ed.)

8. Since the plaintiff has failed to establish that defendant No. 3 had an express authority to enter into an agreement on behalf of other defendants, the decree for specific performance for the sale of the disputed property could not be passed against all the defendants and the suit of the plaintiff could only be decreed against defendant No. 3.

9. For these reasons we do not find any merit in the instant appeal and it stands accordingly dismissed. There shall be no order as to costs.

Appeal dismissed.

