

CASE NO.:
Appeal (civil) 4499 of 2001

PETITIONER:
NAWAL KISHORE TULARA

Vs.

RESPONDENT:
DINESH CHAND GUPTA & ORS.

DATE OF JUDGMENT: 25/07/2001

BENCH:
S.P. Bharucha, Y.K. Sabharwal & Brijesh Kumar

JUDGMENT:

Brijesh Kumar, J.

Leave granted. Heard learned counsel for the parties.

The facts necessary for disposal of this appeal briefly are that one Ram Sahay filed Civil Suit No. 31/93 in the Court of Civil Judge (A.B.) Gangapur City (SM), praying for relief of declaration of ownership of Shop No.141 in Bazar Katla and also for possession over the said shop. The plaintiff died during the pendency of the proceedings and is being represented through his legal representatives as respondents in this appeal. The present appellant viz. Nawal Kishore, defendant in the suit, resisted the claim of the plaintiff and pleaded that the plaintiff Ram Sahay had entered into an agreement, with the defendant, to sell Shop No.141 situate at Bazar Katla for a sum of Rs.7,100/- out of which a sum of Rs.1,100/- had been paid and the balance amount was to be paid at the time of registration of the sale deed. The said agreement dated 17/19.8.1985 is in writing on a stamp of Rs.5/-. During the course of the examination-in-chief of the defendant (present appellant), the plaintiff objected to exhibit the document dated 17/19.8.1985, purported to be an agreement to sell, on the ground, that the document was unregistered and insufficiently stamped. The objection has been upheld by the trial court, by its order dated 31.10.2000 holding that the document was not admissible in evidence for any purpose.

The appellant preferred a civil revision in the High Court, against the aforesaid order of the trial court. It appears that a plea was raised on behalf of the petitioner-revisionist that the document in question was executed in the year 1985, whereas the amendment in the Indian Registration Act for compulsory registration of agreements to sell, in the State of Rajasthan, came into force in the year 1989. The other plea raised is that an insufficiently stamped document can very well be impounded under the provisions of the Stamp Act.

The revision was however rejected by the High Court observing as follows:

Even though the reasons given by the trial court for not exhibiting the document cannot be sustained but the perusal of the document..

The High Court thereafter goes on to consider the document on its merit leaving aside the question of its admissibility any more and observed that signatures of Ram Sahay are not admitted by the other

side nor the document bears the acceptance of the proposer therefore the contract could not be said to be a valid agreement under the relevant provisions of the Contract Act. Finally it is observed in such circumstances document is not an agreement, as is being argued, now, in the eyes of law. No injustice has been done to the petitioner by not admitting the said document

A perusal of the order passed by the High Court and the discussion held clearly shows that the court had completely mis-directed itself in embarking upon an enquiry into the validity of the document and ultimately, in holding that the document, sought to be exhibited by the defendant could not be held to be a valid agreement under the relevant provisions of the Contract Act. As a matter of fact, the question for consideration before the revisional court was confined to the admissibility of the document on the grounds raised by the plaintiff. The revisional court, after holding that the reasons given by the trial court, for not exhibiting the document, could not be sustained, exceeded its jurisdiction in entering into the question of validity of the document on merits in the light of the provisions of the Contract Act. The order of the High Court virtually decided the suit. It is beyond the scope of the revision petition and suffers from patent illegality on the face of it causing prejudice to the case of the defendant.

In view of the discussion held above, the impugned order passed by the High Court is set aside and the case is remanded to the High Court for its decision afresh, in accordance with law.

We are informed that the trial court has now decided the suit and a first appeal is pending. The order of the trial court on the suit and further proceedings thereafter at any stage and orders passed thereon shall be subject to the orders on the revision petition by the High Court.
Costs easy.

-----J.
(S.P. Bharucha)

-----J.
(Y.K. Sabharwal)

-----J.
(Brijesh Kumar)

July 25, 2001

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