2022 SCeJ 1144

Balram Singh v. Kelo Devi

SUPREME COURT OF INDIA

Before :- M.R. Shah and Krishna Murari, JJ.

BALRAM SINGH - Appellant

Versus

KELO DEVI - Respondents.

Civil Appeal No. 6733 of 2022.

Suit for permanent injunction - Unregistered agreement to sell - Suit for permanent injunction only on the basis of an unregistered agreement to sell for restraining the defendant from disturbing plaintiffs possession in the suit property - Defendant filed a counter-claim seeking the decree of possession – Plaintiff filed a suit simplicitor for permanent injunction only being conscious of the fact that plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered - In a given case, an unregistered document can be used and/or considered for collateral purpose - However, plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, the relief for specific performance - Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession - Specific Relief Act, 1963 Section 38.

Held,

Plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.[Para 6]

Mr. Sanjeev Bhatnagar, Mr. Sounak S. Das, Mr. Anshul Kumar, Mr. Manish Kumar, Mr. M.K. Verma, Ms. Sarika Tyagi, Mr. Dipankar Pokhariyal and Dr. Sushil Balwada, For the Appellant . Mohd. Fuzail Khan, Mr. Ashutosh Srivastava, Ms. Anshu Gupta, Mr. Samant Singh, Ms. Preeja Nair and Mr. Niraj Gupta, For the Respondent.

JUDGMENT

M.R. Shah, J. - *(23.09.2022)* - Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.12.2019 passed by the High Court of Judicature at Allahabad in Second Appeal No. 330/2001, by which the High Court has dismissed the second appeal and has confirmed the judgment and decree passed by the first appellate Court reversing the judgment and decree of dismissal of suit passed by the learned trial Court, the original defendant has preferred the present appeal.

2.The facts leading to the present appeal in a nutshell are as under:

That the respondent herein - original plaintiff (hereinafter referred to as the `original plaintiff') instituted Original Suit No. 696 of 1997 before the learned trial Court for permanent injunction only. The said suit was filed on the basis of an unregistered agreement to sell dated 23.03.1996. The original plaintiff sought permanent injunction restraining the defendant from disturbing her possession in the suit property.

2.1 In the said suit, the appellant herein - original defendant filed a counter-claim seeking the decree of possession.

2.2 The learned trial Court dismissed the suit filed by the original plaintiff and refused to grant permanent injunction and

allowed the counter-claim of the defendant on the ground that original plaintiff could not prove the agreement to sell dated 23.03.1996 and that the original plaintiff is in unauthorised possession of the suit property since 08.07.1997. The learned trial Court also held that the original plaintiff could not prove the agreement to sell for a sale consideration of Rs. 14,000/- and also could not prove that she was put in possession of the suit property on 23.03.1996.

2.3 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court dismissing the suit of the original plaintiff and allowing the counter-claim of the defendant, the original plaintiff preferred an appeal before the first appellate Court. The learned first appellate Court allowed the said appeal and set aside the judgment and decree passed by the learned trial Court and consequently decreed the suit for permanent injunction against the defendant. The learned first appellate Court also dismissed the counter-claim of the defendant.

2.4 The judgment and decree passed by the first appellate Court has been confirmed by the High Court, by the impugned judgment and order passed in Second Appeal No. 330 of 2001.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in dismissing the second appeal and confirming the judgment and decree passed by the learned first appellate Court, decreeing the suit for permanent injunction and dismissing the counter-claim, the original defendant has preferred the present appeal.

3. Learned counsel appearing on behalf of the appellant - original defendant has vehemently submitted that the original plaintiff filed a suit for permanent injunction solely on the basis of the agreement to sell dated 23.03.1996, which, as such, was unregistered.

3.1 It is submitted that such an unregistered agreement to sell is not admissible in evidence. It is submitted that therefore both, the learned first appellate Court as well as the High Court have committed a grave error in passing a decree for permanent injunction and dismissing the counter-claim.

3.2 It is further submitted that both, the learned first appellate Court as well as the High Court have not properly appreciated the fact that the suit filed by the original plaintiff was only for permanent injunction and she by adopting a clever drafting did not seek the relief for specific performance of agreement to sell as she was well aware that she would not succeed in the suit for specific performance on the basis of an unregistered agreement to sell. It is submitted that when the original plaintiff cannot get the substantive relief of specific performance of the unregistered agreement to sell dated 23.03.1996, she would not be entitled to a decree for permanent injunction on the basis of such an unregistered document.

3.3 Making the above submissions, it is prayed to allow the present appeal.

4. The present appeal is vehemently opposed by the learned counsel appearing on behalf of the respondent - original plaintiff.

4.1 It is vehemently submitted that as per the settled position of law, an unregistered document can be used for collateral purpose and therefore both, the first appellate Court as well as the High Court have rightly passed a decree for permanent injunction restraining the defendant from interfering with her possession, considering the agreement to sell dated 23.03.1996 for collateral purpose of grant of permanent injunction.

4.2 Making the above submissions, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent

injunction only, which was claimed on the basis of the agreement to sell dated 23.03.1996. However, it is required to be noted that the agreement to sell dated 23.03.1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence.

6. Having conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter- claim for getting back the possession which was allowed by the learned trial Court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.

7. In view of the above and for the reasons stated above, both, the learned first appellate Court and the High Court have committed a grave error in passing a decree for permanent injunction in favour of the plaintiff as against the defendant and dismissing the counter-claim filed by the original defendant. The impugned judgment and order passed by the High Court, confirming the judgment and decree passed by the first appellate Court and the judgment and decree passed by the first appellate Court decreeing the suit for permanent injunction and dismissing the counter- claim of the defendant are unsustainable and the same deserve to be quashed and set aside and the judgment and decree passed by the learned trial Court dismissing the suit filed by the plaintiff for permanent injunction and allowing the counter-claim of the defendant deserves to be restored.

8. Accordingly, the present appeal is allowed. The impugned judgment and order dated 10.12.2019 passed by the High Court dismissing Second Appeal No. 330/2001, confirming the judgment and decree passed by the first appellate Court and the judgment and decree dated 29.01.2001 passed by the first appellate Court decreeing the suit for permanent injunction in favour of the original plaintiff and dismissing the counter-claim of the defendant are hereby quashed and set aside. Consequently, the suit instituted by the original plaintiff for permanent injunction on the basis of an unregistered agreement to sell is hereby dismissed and the counter-claim filed by the original defendant is hereby allowed. The judgment and decree passed by the learned trial Court dismissing the suit and allowing the counter-claim is hereby restored. There shall be no order as to costs.

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