

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 1648 of 2013 (O&M)

Date of decision: 09.10.2015

M/s Moksha Buildtech Private Limited

... Petitioner

versus

Devika Real Estate and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arun Jain, Senior Advocate with
Mr. Vishal Gupta, Advocate for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Prateek Gupta, Advocate for the respondents.

K.Kannan, J.

The revision is against the order dismissing the application filed for rejection of the plaint filed by the plaintiff. The plaintiff held an agreement of sale in his favour executed by the defendant Nos. 1 to 5 on 23.07.2006 for a consideration of approximately Rs. 11,00,000/-, the consideration having worked out @ Rs. 1 crore 24 lacs per acre. The agreement has stipulated several obligations on both the parties and the date fixed for execution of the sale was 16.09.2006. Admittedly, the sale could not be completed and according to the plaintiff the defendants had not performed their part of the contract in securing appropriate sanctions

from public authorities. The plaintiff was making reference to the fact that the plaintiff's right to secure the sale will be extended till the sanctions are obtained. The plaintiff, therefore, felt constraint to file the suit when defendant Nos. 1 to 5 executed a sale in respect of 67 kanals 8 marlas out of 91 kanals to the 6th defendant on 14.06.2011. The plaintiff took the sale by plaintiff Nos. 1 to 5 as constituting the breach by defendant Nos. 1 to 5 to perform their obligations and sought for a declaration that the sale dated 14.06.2011 is null and void "till the subsistence of agreement dated 23.07.2006 executed by defendant Nos. 1 to 5" (sic), that the defendants shall not disturb plaintiff's possession; that the defendants shall furnish their relevant land use certificate and NOC from the authorities; the plaintiff shall be declared entitled to be indemnified to the extent of loss and the plaintiff shall be declared entitled to all the losses.

The defendant Nos. 1 to 5 denied the agreement and stated that the plaintiff had already obtained several signatures on blank papers and the plaintiffs themselves had originally volunteered to secure all the necessary State sanctions on the basis of signatures obtained from them on blank papers. They also took up several other pleas denying the plaintiffs' entitlement. The petition for rejection of the plaint was made on the ground that the suit was barred by limitation and the suit as framed was incompetent. The Court below rejected the plea and allowed for further process of trial of suit. The subsequent purchaser who is the 6th defendant is in revision petition before this Court. Learned senior counsel appearing on behalf of the petitioner states that if the sale

agreement was executed on 23.07.2006, the suit could not have been filed for declaration relating to this purchase without a prayer for specific performance. The suit for declaration was not competent and it was also barred by limitation. The plaintiff had deliberately drafted the plaint for declaration and paid the Court fee of Rs. 200/- and that the plaintiff was bound to pay *ad valorem* Court fee on the value of the agreement, if he was seeking for enforcement of the property in the agreement and for assailing the sale made in favour of the 6th defendant. Learned counsel appearing on behalf of the respondents join issues with the revision petitioner's contention to state that the agreement did not contain any stipulation of the date before when the sanctions were required to be obtained from the State authorities and since defendant Nos. 1 to 5 were in breach, the time was liable to be extended till the sanctions were obtained. If the act of sale by defendant Nos. 1 to 5 were to be construed as constituting cause of action for denial of the plaintiff's right to obtain a sale, the suit filed in the year 2012 was within time. According to the learned counsel for the respondent-plaintiff, when the State sanctions through NOC had not been obtained, the cause of action would have arisen only on 14.06.2011 when the sale was made and since the suit contained all necessary averments for specific performance, the Court would only direct him to pay Court fee if it was found to be deficient and allow for necessary amendment for specific performance and cannot reject the plaint. Learned senior counsel would also contend that there are also prayers for damages and that prayer cannot be rejected and the Court would determine the same and call upon the plaintiff, to pay the

Court fee for the amount it determined.

I reject the entire argument as made by the learned counsel appearing on behalf of the respondent as legally untenable. An agreement of sale does not create any transfer of interest in the property or title to the same, except that it provides for an equitable relief of enforcement through specific performance. In the year 2011 when the plaintiff was filing the suit impugning the sale made in favour of the 6th defendant, the plaintiff had surely taken the cause of action as having arisen. The act of sale to 6th defendant constituted an implied denial of the plaintiff's right of enforcement. The plaintiff's prayer for any relief impugning the sale could have been possible only in a suit for specific performance since Section 19 of the Specific Relief Act protects an agreement holder even against the subsequent purchaser, unless provided the subsequent purchaser or as bona fide without notice of agreement. There is never any compulsion for a plaintiff to sue only for specific performance. A prospective purchaser under an agreement of sale may give up his right and settle for lesser claims for damages or return of any amounts advanced and opt for securing a charge on the property sought to be sold by resort to Section 55 (6) of the Transfer of Property Act. However, if he files a suit merely for the relief of declaration that the sale made in favour of the 6th defendant is not valid, then it is necessary to examine whether the plaintiff's suit is competent and whether such a suit would required to be entertained and proceeded through the gamut of trial. In my view, such a course is simply not possible. The plaintiff cannot rely on his express averment in the plaint that he is ready and

willing to perform his part of the contract. To be treated as a suit for specific performance itself most significantly, till date, the plaintiff has made no attempt to even have the plaint amended for the relief of specific performance. It is not as if the plaintiff is unaware of what he was foregoing, if he was not pressing for the relief for the specific performance. The party that had all the legal assistance through at his end cannot plead ignorance of the process of law to secure a relief which he is bound to ask for.

There can be instances where a plaint is inartistically drawn up but the true fact of the plaint could be discerned and the Court could modify the relief as is legally capable of enforcement. Learned counsel appearing on behalf of the respondent plays down the suit for declaration as merely inartistically drawn and the Court should even make possible a prayer for specific performance which can be allowed to be modified and the Court fee being called upon to be collected from the plaintiff. If the prayer in the suit as already filed was merely an euphemism for relief of specific performance, I could have allowed for such a cross-examination. The suit, on the other hand, is designed only to interdict the sale made in favour of the 6th defendant. Such a prayer is incompetent and barred by law as not merely a issue that is barred by limitation, but, that it cannot be granted for a person who holds merely an agreement of sale. There is no way that an agreement holder can escape the consequences of the sale by his vendor through a registered document except when his own right could be enforced by means of specific performance. If the plaintiff chooses not to ask for such a relief, a prayer for a sale deed to be

declared as null and void does not arise. Such a prayer could be possible if not in a suit for specific performance only by the vendor himself if the sale was vitiated under any of the circumstances which the Contract Act can admit of. The defendant Nos. 1 to 5 have stood by the sale in favour of the 6th respondent and therefore, that prospect of challenging the sale is unavailable for the plaintiff.

The counsel would argue that there is a prayer for protection of his possession and that relief ought to be possible in the suit and that cannot be thrown out. Even a protection which an agreement holder obtains can only be a protection which allows for protection under Section 53A of the Transfer of Property Act. The Section underwent an amendment by Act 48 of 2001 that took effect from 24.09.2001 to allow for protection to a person in possession in part performance under an agreement of sale which was duly registered. An un-registered agreement cannot allow for any benefit under Section 53A either as a plaintiff or as the defendant. The question of protection of decision under Section 53A is also incompetent and cannot be granted.

Learned counsel would also argue that the defendant Nos. 1 to 5 have not secured the State sanctions as contemplated under the agreement and the right of enforcement of the agreement itself is liable to be extended during the said obligations are performed. If at the time of institution of the suit, the sale had been executed in defiance of the obligations under the agreement, it should have itself triggered an action for specific performance and in such a suit Section 13 of the Specific Relief Act makes possible the plaintiff to secure permissions to do such

an act which the contract stipulates. Section 13 deals with the right of the purchaser against a person with no title or imperfect title. Imperfect title contemplates the concurrence of other persons necessary for validating the title as specified under Section 13 (1) (b) of the Specific Relief Act. It would have been possible for the plaintiff to seek such sanction only in competent suit for specific performance and not in a suit for declaration when such a right of declaration was itself incompetent for an agreement holder.

The further argument as a last leg was that there was a claim for damages and that should be possible. I must only reproduce the manner of relief which was asked for:

“(d) That besides the plaintiff shall be declared entitled to be indemnified by the defendants to the extent of all losses actually caused by the acts and conducts of the defendant on account of deal relating to properties shown in para No.3 of the plaint.”

This prayer can hardly be termed as prayer for damages. The plaintiff has sought for indemnity to secure the last actual loss. That is invariably capable of being ascertained. The plaintiff was at all times competent to make such an assumption, if he was seeking for damages apart from enforcement of specific performance or after foresaking the right of enforcement. If he chooses neither, the question of collection of damages on a stand alone basis should have been made on an assessment made by the plaintiff and stated in the plaint as to the actual damage suffered by him. There is no averment anywhere in the plaint except in

the prayer clause that he should be declared entitled to be indemnified. I cannot treat this prayer as an action for damages which could survive for consideration in the petition for rejection of the plaint.

The plaint cannot be supported for any of the reliefs which are sought for. The question of allowing for amendment of any type ought to treat the same as taking effect from the date when he instituted the suit in the year 2011. The plaint was incompetent and if the plaintiff still pleads that he has a right to specific performance in any way and his right is not fettered by any law of limitation, he will indulge in such adventurism, if he is so advised.

The impugned order is set aside and the revision petition is allowed. The plaint is ordered to be reported.

(K.KANNAN)
JUDGE

09.10.2015

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