

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.954 of 2000.

Decided on:-February 13, 2015.

Krishan Kumar.

.....Appellant.

Versus

Ram Pal.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. G.S. Bhatia, Advocate
for the appellant.

Mr. Dinesh Nagar, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

This Regular Second Appeal arises out of dismissal of appeal of plaintiff Krishan Kumar on 25.10.1999 whereby affirming the judgment of 15.10.1997 of the lower court.

2. Before embarking upon consideration of substantial questions of law arising for determination in this Regular Second Appeal in terms of Section 100 CPC, it would be appropriate to take brief stock of the factual matrix.

3. Agreement to sell of 7.4.1992 entered into between the parties viz. plaintiff Krishan Kumar, now appellant, and defendant Ram Pal, now respondent, regarding the suit land was sought to be specifically enforced by

the appellant-plaintiff by a decree of specific performance and in alternative, recovery of Rs.1,20,000/- was claimed. The said suit was hotly contested by the defendant-respondent herein, wherein total denial of the case of the plaintiff was made by him. Payment of Rs.1,15,000/- alleged to have been made by the plaintiff to him at the time of agreement to sell dated 7.4.1992, was also denied.

4. It was rather set up that as per the conditions of the allotment of the land to the defendant, respondent herein, there was a bar against selling the suit land for a period of twenty years and even thereafter, no such sale could be made to a non-scheduled caste person. Plea of fraud, misrepresentation and want of consideration had also been taken.

5. The parties had gone to trial on the following issues framed by the lower court:

1. Whether the defendant entered into an agreement dated 7.4.1992 with the plaintiff to sell the suit property as alleged? OPP
2. If issue No.1 is proved, whether the plaintiff was and is still ready and willing to perform his part of the contract? OPP
3. Whether in the alternative, plaintiff is entitled to recovery of Rs.1,20,000/- from the defendant? OPP
4. Whether the plaintiff is in possession of the suit land? OPP
5. Whether the suit is within time? OPP
6. Whether the suit is not maintainable in the present form? OPD
7. Relief.

6. Oral as well as documentary evidence was produced by the

parties. Deciding issues No.1 to 3, 5 and 6 in favour of the plaintiff and issue No.4 against him, resultantly, suit of the plaintiff for specific performance of agreement to sell (Ex.P1) was dismissed but a decree for recovery of Rs.1,20,000/- with costs was passed in his favour. It was on 15.10.1997. Appeal preferred by the appellant-plaintiff against this judgment and decree wherein specific performance of the agreement was sought, was also dismissed on 25.10.1999 holding it to be devoid of any merit.

7. In this Regular Second Appeal, it is claimed that the appellant-plaintiff is entitled for specific performance of the contract and alternative decree passed by the lower court is no substitute for the relief of specific performance, sought by the appellant.

8. Though at the time of motion hearing, entire focus of the appellant as also of this Court was on the aspect of interest having not been allowed on the amount of decree, later on, during subsistence of the appeal, few more substantial questions of law have been framed. On the date of motion hearing, the following substantial question of law arose for adjudication:

“Whether the courts below ought to have allowed reasonable interest on the amount of Rs.1,20,000/- as the said amount was utilized by the respondent?”

9. Further substantial questions of law requiring determination by this Court, are as under:

- (i) Whether the agreement to sell confer any right, title or interest in the property and execution of same ipso-facto amounts to transfer of property?
- (ii) Whether the party entering into agreement to sell can later on take a plea that he was not competent to sell

the same due to bar created in the Jamabandi and wants to back out from the agreement?

- (iii) Whether the judgment and decree passed by courts below not decreing suit for registration of sale deed is perverse especially when the agreement to sell is proved and the earnest money is proved to have been received by the respondent-defendant?
- (iv) Whether at the time of disposal of RSA bar of period of 20 years is already over as the auction took place in 1981?
- (v) Whether when substantial amount of sale consideration is already paid as earnest money, still specific performance can be refused?

10. Before embarking upon discussion on these questions of law, it would be appropriate to take stock of the facts about which there is no dispute. Defendant-respondent Ram Pal, a scheduled caste, was allotted land measuring 24 Kanals in an auction with restrictive covenant that no sale thereof was permissible for 20 years and not to a non-scheduled caste even thereafter. Jamabandi Ex.D2 also supports this version.

11. Though during the course of suit proceedings before the lower court, the defendant had set up a case of total denial, but while appearing as DW1 there, he, in his cross-examination, had admitted execution of agreement Ex.P8/A as also his signatures at point 'A' therein. Sequel, both the courts below have upheld execution of agreement Ex.P8/A by the defendant in favour of the plaintiff.

12. Similarly, though receipt of Rs.1,15,000/- allegedly executed at the time of execution of agreement Ex.P8/A itself on 9.6.1982 was denied but after appraisal and evaluation of the entire evidence produced by the parties where the plaintiff appeared as PW3 and attesting witness of

agreement viz. Pran Nath appeared as PW2 and the defendant himself entered the witness box as DW1, it was held by the courts below that payment of Rs.1,15,000/- was received by the plaintiff as earnest money vide receipt Ex.P2.

13. While seeking relief of specific performance of the agreement, in the alternative, claim for recovery of Rs.1,15,000/- as also of damages to the tune of Rs.5,000/- was made.

14. The respondent-defendant concedingly is a member of a scheduled caste, whereas the appellant-plaintiff is not. Date of auction is 11.12.1981 whereas agreement to sell was executed on 9.6.1982. Even though out of sale consideration of Rs.1,20,000/- fixed in the agreement to sell (Ex.P8/A), a sum of Rs.1,15,000/- had been paid vide receipt Ex.P2, it cannot be said that the agreement was enforceable at law. When condition of allotment of land to the respondent was clear and apparent that the sale could not have been made within 20 years of the auction, there is no escape from the same. Law would not enforce an agreement which is not enforceable by law being bound by the restrictive condition governing the allotment of land.

15. The lower court considering the entire aspect as also the fact that after allotment of the land to the defendant, his installments were being paid vide receipts Ex.P9 to Ex.P13 by the plaintiff to the concerned department, had held the plaintiff only entitled to the recovery of the entire amount of Rs.1,15,000/- and also had allowed damages of Rs.5,000/- claimed by the plaintiff.

16. Plea of the appellant that since now more than 20 years have elapsed after the auction sale in favour of the defendant and he is entitled for execution of the sale deed from the defendant, does not have any merit. An

agreement to sell which is vitiated by overreaching the condition of ban on further sale for 20 years cannot be sanctified at the stage of Regular Second Appeal merely because now with efflux of time, it is more than 20 years for the auction sale. The agreement to sell even otherwise is in favour of a non-scheduled caste, which is not permissible. There is neither any perversity nor misappreciation of evidence nor it is a case of taking away any benefit of his own wrong by the defendant. Rather, it is apparent that he was neither competent to sell nor was competent to receive any sale consideration and thus, the agreement was laced with non-enforceability at law right from the beginning itself.

17. Agreement to sell by its very nature does not confer any right, title or interest in the property and only execution of sale deed passing title from the vendor to the purchaser could be the document of recognition of the title in the land.

18. Apparently, while making evaluation of evidence, both the courts below have not allowed the defendant to make undue enrichment and sequently, decree for recovery of an amount of Rs.1,15,000/- paid by him at the time of execution of agreement to sell and Rs.5,000/- as damages claimed by the plaintiff totalling to an amount of Rs.1,20,000/-, was allowed.

19. There is force in the argument of the counsel for the plaintiff-appellant, however, that since the money was used by the defendant till it was paid back, he is entitled to a reasonable interest on the said amount. After the amount was paid by the plaintiff to the defendant, the defendant had all along been using the said amount. It is also noteworthy that at the time of agreement to sell, possession had not been delivered to the plaintiff-appellant. This is also one of the factors which goes in favour of the

appellant-plaintiff for recovery of the stated amount with reasonable interest.

20. When the defendant was not competent to transfer, he cannot take benefit of his own wrong and cannot be allowed to retain the cash paid by the plaintiff vide agreement dated 7.4.1992.

21. Keeping in view the facts and circumstances as discussed earlier, modification of the decree is allowed to the extent that interest @ 9% per annum would be payable by the defendant to the plaintiff from the date of payment to the date of its realization. In all other respects, decree of the lower court dated 15.10.1997 confirmed by the first appellate court on 25.10.1999 is maintained even in this appeal. The payment of interest would be made by the defendant to the plaintiff within a period of sixty days with costs through out. If the payment is not made within this stipulated period, interest @ 12% per annum would be payable instead of 9% per annum.

22. Sequelly, deciding the substantial question of law which was framed at the time of motion hearing, in favour of the plaintiff, appellant herein, all other substantial questions of law are held against the appellant-plaintiff.

23. Thus, with the aforesaid modification in the impugned decree, this appeal is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

February 13, 2015
'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes