

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 20th, 2015

1. R.S.A.No.4206 of 2009 (O&M)

N.K.Ghai

...Appellant

Versus

Gopal Singh and others

...Respondents

2. R.S.A.No.4801 of 2010 (O&M)

Ltd.Col.N.K.Ghai

...Appellant

Versus

Ramesh Kumar Gupta & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.N.K.Ghai, Appellant in person.

Mr.Chetan Mittal, Senior Advocate with
Mr.Vishal Garg, Advocate,
for respondent Nos.2 & 3 in RSA No.4206 of 2009 &
for the respondents in RSA No.4801 of 2010.

AMIT RAWAL, J.

By this order, I intend to dispose of Two Regular Second Appeal bearing Nos.4206 of 2009 and 4801 of 2010 as the common questions of law and facts involved in both the appeals are the same.

Regular Second Appeal No.4206 of 2009 has been filed against

the judgment and decree, whereby Civil Suit bearing No.232 dated 6.5.1989 for permanent injunction restraining the defendants from dispossessing the plaintiff, except in due course of law from plot bearing No.500/430 Sq.yards bearing No.39, situated at South Model Gram, Guru Arjun Dev Park, Ludhiana, has been dismissed and Regular Second Appeal No.4801 of 2010 has been filed against the judgment and decree, whereby Civil Suit No.232/9.5.1989/346/22.8.1989 for specific performance of the agreement to sell dated 7.11.1987/15.7.1988 has been decreed.

It would be apt to give brief preface to the facts leading to filing of the aforementioned suits, before advertng to the contentions and rival contentions of the parties to the lis.

Plaintiff N.K.Ghai filed a suit for permanent injunction against defendants Ramesh Kumar and Smt.Veena Gupta (defendant Nos.2 and 3) on 6.5.1989 on the basis of agreement to sell dated 7.11.1987/15.7.1988. Subsequently, he filed a suit for specific performance of the aforementioned agreement to sell on 22.8.1989. Vide order dated 27.8.1990, the trial Court consolidated both the aforementioned civil suits. For the sake of convenience, civil suit for injunction shall be referred as “injunction suit” and other as “specific performance suit”. In the injunction suit, the plaintiff sought a restraint order against defendant Nos.2 and 3, who are stated to be vendees in pursuance to the sale deed dated 31.1.1989, executed by vendor Gopal Singh, alleging therein that in pursuance to the agreement to sell, he was given the possession of the plot and the Municipal Corporation sanctioned the site plan vide letter No.849 dated 20.1.1988. Gopal Singh did not obtain the desired Fard and Clearance Certificate as per the terms and

conditions for the purpose of absolute transfer of ownership, despite the fact that the plaintiff was ready and willing to perform his part of the agreement and since defendant Nos.2 and 3, who alleged to have purchased the property from defendant No.1-vendor-Gopal Singh, wanted to take forcible possession, the cause of action arose to seek injunction. It has been further submitted that the appellant-plaintiff gave a legal notice dated 8.10.1988 to Gopal Singh, but the same received back undelivered as the whereabouts of Gopal Singh vendor were not known.

Vis-a-vis the relief of specific performance, it has been averred that against the total sale consideration of ₹2,05,000/-, the plaintiff paid a sum of ₹20,000/- as earnest money to defendant No.1 in suit for specific performance and the balance sale consideration was to be paid on 2/4.2.1988, i.e., at the time of execution and registration of the sale deed. The agreement to sell was witnessed by attesting witnesses H.S.Arora and P.P.Sharma. Gopal Singh moved complaints dated 22.6.1988, 29.6.1988 and 4.7.1988 to various authorities and ultimately compromise, dated 15.7.1988, was arrived at between the parties, according to which, defendant No.1-Gopal Singh agreed to execute the sale deed regarding area measuring 438 Sq.yards on receipt of a sum of ₹1,79,580/- less ₹20,000/- already received. It was further agreed that in case the area of the plot came out to be more than 438 Sq.yards, the plaintiff shall pay another sum of ₹9215/-. The aforementioned agreement-cum-compromise was scribed by Kartar Singh Shah, DSP, Police Lines and was signed by Gopal Singh and attested by P.P.Sharma and Kartar Singh Shah. Defendant Gopal Singh could not secure necessary clearance certificate from the Income Tax

authorities and as well as under the Urban Land Ceiling Act and, therefore, could not execute the sale deed.

It has been further stated that defendant No.,1 after committing breach of agreement to sell, sold the property for ₹1,00,000/- to defendant Nos.2 and 3 fully knowing about the agreement to sell dated 7.11.1987 and subsequent compromise dated 15.7.1988, whereby the target date was fixed as 15.10.1988.

Along with the injunction suit, an application under Order 39 Rule 1 & 2 CPC was filed, but the same was declined and the appeal and revision filed against the order also met with the same fate. The trial Court, on the basis of the evidence brought on record, decreed the suit vis-a-vis the specific performance, but declined the relief qua injunction. Aggrieved against the aforementioned findings, both the parties, i.e., plaintiff and as well as defendant Nos.2 and 3 filed the appeals. The appeal filed by defendant Nos.2 and 3 has been accepted, whereby, decree qua specific performance of the agreement to sell has been set-aside, whereas the appeal filed by the appellant-plaintiff qua dismissal of the injunction suit has been dismissed. It is in these circumstances, the aforementioned appeals have been filed.

The appellant-plaintiff, impugning the judgment, filed Regular Second Appeal No.4206 of 2009 by attaching the judgment rendered in suit for specific performance, but did not file the Regular Second Appeal vis-a-vis the decree rendered in injunction suit and thereafter filed Regular Second Appeal No.4801 of 2010 along with an application for seeking condonation of delay of 510 days. Though no reasonable explanation has

come forth in not filing the appeal within the period of limitation, but in view of the principles culled out in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 Supreme Court Cases 649**, I am of the view that the person should not be thrown on the ground of limitation in case the appeal can be heard and decided on merits. Accordingly, CM No.14324-C of 2010 is allowed and the delay of 510 days in filing RSA No.4801 of 2010 is condoned.

Mr.N.K.Ghai-appellant, appearing in person, contended that the judgment rendered by the Lower Appellate Court, suffers from illegality and perversity inasmuch as there are no interpolations on the back site of the agreement to sell dated 7.11.1987 and also got swayed away from the evidence, whereby it has not been proved that the electric connection, obtained by the appellant-plaintiff after getting the possession of the plot in view of the agreement to sell, was cancelled, much less, the sanctioned site plan vis-a-vis the site plan was also withdrawn. He further submits that Gopal Singh vendor did not step into the witness box, much less, did not contest the case even by filing the written statement. Plaintiff had been throughout ready and willing to perform his part of the agreement. The agreement to sell has been proved through the testimony of attesting witness H.S.Arora. The Lower Appellate Court has not appreciated the fact that the appellant-plaintiff, had been throughout, ready and willing to perform his part of the agreement. In pursuance to the possession having been taken, as noticed in the agreement to sell, he had applied to the Punjab State Electricity Board Authorities for granting electric connection and the same was installed in the said plot by the Junior Engineer and even site plan

Ex.PW8/1 was got approved. The notices sent to Gopal Singh to perform his part of the agreement were not received by him as he had left the place of his abode, but yet he did not turn up to perform his part of the agreement. Gopal Singh never got the permission from the Income Tax Department for execution of the sale deed and defendant Nos.2 and 3 with the help of the police obtained the forcible possession of the plot in dispute, thus, prays that the impugned judgment and decree is not sustainable and is liable to be set-aside.

The trial Court had rightly granted the permission under Section 20 of the Specific Relief Act, but the Lower Appellate Court non-suited, by embarking on path, based upon the surmises and conjectures and, therefore, there is illegality and perversity in the findings and, thus, the appeal involves the following substantial questions of law to be determined by this Court:-

- 1) Whether the Lower Appellate Court has committed illegality and perversity in setting-aside the well reasoned judgment of the trial Court?
- 2) Whether Gopal Singh vendor could sell the property vide sale deed dated 31.1.1989 during the currency of the agreement to sell dated 7.11.1987/15.7.1988?
- 3) Whether the Courts below have erroneously declined the injunction for restraining the defendants from interfering into the possession, particularly when the plaintiff had obtained the electric connection and got the site plan approved from the competent authority?

- 4) Whether the judgment of the Lower Appellate Court is sustainable as it failed to take into consideration the entire oral and documentary evidence being last Court of law?

Mr.Chetan Mittal, learned Senior Counsel assisted by Mr.Vishal Garg, appearing on behalf of respondents submitted that defendant Nos.2 and 3, in pursuance to the sale deed dated 31.1.1988, have built a house and are living therein along with the family since long. All the applications submitted by the plaintiff with the authorities, i.e., Electricity Board and Municipal Corporation branded himself as owner, whereas the agreement to sell does not confer any right or title. It is a matter of record that the possession was never handed over to the plaintiff by Gopal Singh. Gopal Singh was in need of money, whereas the appellant was delaying the matter and ultimately, being frustrated, after sending legal notice whereby the agreement to sell was cancelled and the earnest money stood forfeited, sold the said plot to defendant Nos.2 and 3. The plaintiff, in cross-examination, had admitted that defendant No.1-Gopal Singh vendor had sold the plot by way of sale deed to defendant Nos.2 and 3. Having acquired the knowledge of the sale, at the best, it can be presumed that Gopal Singh had breached the terms and conditions of the agreement to sell. Nothing prevented the appellant-plaintiff to file the suit for specific performance at the first instance, yet he chose to seek permanent injunction by filing the suit on 6.5.1989. By that time, the sale deed dated 31.1.1989 had already been executed and the suit for specific performance was filed on 22.8.1989. Though the plea of Order 2 Rule 2 CPC had been taken, but such finding on the said issue/plea has been rendered against the defendants, but yet the

provisions of Order 41 Rule 31 CPC, can be pressed into service in the present appeal as well. He further submits that the appellant-plaintiff was not ready and willing to perform his part of the agreement, inasmuch as, that he did not mark himself present before the Registrar on the stipulated date, i.e., 15.10.1988 and chose to file the suit on 22.8.1989. He further submits that defendant Nos.2 and 3 are bonafide purchasers for a valuable consideration. As there was no clog on the title of Gopal Singh and after verifying the revenue record, plot in question was purchased. In essence, defendant Nos.2 and 3 were not aware of the execution of the agreement to sell, sought to be performed through the process of the Court and judgment of the Lower Appellate Court, being the last Court of law, is based on the appreciation of oral and documentary evidence and does not suffer from any illegality and perversity, much less no substantial question arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book and the records of the Courts below with their able assistance.

It is settled law that the readiness and willingness has to be from the date of the agreement to sell, during its currency, till filing of the suit, during the pendency of the suit and till passing of the decree. In my view, the appellant-plaintiff was not ready and willing to perform his part of the agreement inasmuch as that he had not appeared before the Registrar on 15.10.1988, i.e., the target/stipulated date for execution and registration of the sale deed. Though a notice prior to the aforementioned date has been sent, but nothing prevented the plaintiff to appear and mark himself present.

On receiving a sum of ₹20,000/- as earnest money against the total sale consideration of ₹2,05,000/-, no sane person would hand over the possession of the plot until and unless a considerable amount or entire amount of sale consideration has been paid. The witnesses from the Electricity Department have proved that the electric connection was obtained by the appellant on false representation branding himself to be owner and a penalty of ₹25/- was imposed for submitting the wrong information. The plaintiff was audacious enough to brand himself owner before regulatory body, i.e., the Municipal Corporation by making an application for sanctioning of the site plan. The agreement to sell does not confer title until and unless the entire sale consideration is passed on and resultantly the sale deed is executed. Both the Courts below found that the appellant-plaintiff was not in possession of the suit property and declined the relief of injunction. Even the Local Commissioner appointed in a suit for injunction gave the report that the possession was of defendant Nos.2 and 3 and not of the plaintiff. The genesis of the claim of plaintiff show that he was seeking protection of the possession by invoking the provisions of Section 53-A of the Transfer of Property Act, which has not been found to be correct but rather has been belied.

It is settled law that the person, who does not come to the Court with clean hands, can be thrown out at any stage. Gopal Singh, before the compromise, had even sent a notice terminating the agreement since the appellant-plaintiff had been harassing him for one reason or the other and was not getting the sale deed executed on or before 2/4.2.1988.

DW-1 Ramesh Kumar Gupta has proved that defendant Nos.2

and 3 are bonafide purchasers for a valuable consideration as they made a reasonable enquiry from the neighbourers, Halqa Patwari and the office of Municipal Corporation and found that Gopal Singh was in possession of the plot and the title also stood in his name. It is immaterial that the property has been sold for lesser value, which was agreed to be sold to the appellant-plaintiff.

There is another aspect of the matter. Once the appellant-plaintiff had acquired the knowledge that there was a breach of terms and conditions of the agreement dated 7.11.1987/15.7.1988, no explanation has come forth in not seeking the specific performance in the first instance, when the injunction suit, on 6.5.1989, was filed. The appellant-plaintiff, in his cross-examination, admitted that he was in the knowledge of the sale deed dated 3.11.1988, thus, in my view, he would have deemed to have forgone the relief of specific performance and filed the suit on 22.8.1989. The entire conduct of the plaintiff shows that he was not ready and willing to perform his part of the agreement. The Local Commissioner appointed has submitted his report that defendant Nos.2 and 3 were in possession of the plot in dispute, therefore, the Courts below did not grant the injunction. Though the cause of action in the injunction suit and the present suit was different, but the fact remains that nothing prevented the plaintiff to seek specific performance in the first instance.

The Lower Appellate Court has ordered the refund of the earnest money of ₹20,000/- along with interest @ 6% per annum from the date of payment till its realisation from Gopal Singh. In my view, instead of ordering the refund of earnest money of ₹20,000/-, the Court should have

ordered for refund of double of the earnest money along with interest. Accordingly, the judgment and decree of the Lower Appellate Court, reversing the judgment and decree of the trial Court, whereby the suit for specific performance vis-a-vis the aforementioned agreement to sell has been declined, is upheld. However, the judgment and decree of the lower Appellate Court, ordering the refund of earnest money of ₹20,000/- along with interest @ 6% per annum is modified. The appellant-plaintiff shall be entitled to refund of ₹40,000/- along interest @ 6% per annum from the date of payment till its realisation.

With the aforementioned modification, the judgment of the Lower Appellate Court is modified and the appeal is partly allowed. The questions of law, noticed above, are answered in favour of the appellant-plaintiff and against the respondents.

Accordingly, Regular Second Appeal No.4206 of 2009 is dismissed and Regular Second Appeal No.4801 of 2010 in the abovesaid terms is partly allowed.

October 20th, 2015
ramesh

(AMIT RAWAL)
JUDGE