

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A.No.2488 of 2012 (O&M)
Date of decision:21.8.2015

Billu Ram and another

.....Appellants

Versus

Bimla Devi

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Malkeet Singh Balianwali, Advocate,
for the appellants.

Mr. Ankush Singla, Advocate
for the respondent.

Raj Mohan Singh, J.

1. Plaintiffs have come in Regular Second Appeal against the concurrent findings recorded by the Courts below in a suit for specific performance of agreement to sell.

2. Plaintiffs filed a suit for specific performance of agreement to sell dated 31.5.2005 for the sale of shop measuring 15x60 feet including structures which is part of house No. R/773, situated at Paras Ram Nagar Chowk, Bathinda having specified boundaries as given in the plaint. In alternative a decree for recovery of ₹ 4,00,000/- on account of earnest money and damages has been claimed in lieu of non performance of agreement to sell along with interest @ 18% p.a. as per market usage.

3. Respondent- Bimla Devi is the vendor, whereas, Billu Ram and Manpreet Singh are the proposed vendees. Total amount of consideration was fixed as ₹ 5,75,000/-. Amount of ₹ 2,00,000/- was paid towards earnest money and 15.9.2005 was fixed as target date for execution and registration of sale deed. As per case of the plaintiffs, the defendant did not come present before the Sub Registrar on the target date for execution and registration of sale deed, whereas, proposed vendees appeared and got their presence marked. Thereafter, suit for specific performance was filed on 5.12.2005.

4. Defendant contested the suit, thereby denying the execution of agreement to sell and receiving of any earnest money from the plaintiffs. Agreement to sell was claimed to be forged and fabricated and was not scribed by any regular deed writer or an Advocate. It was also pleaded that on 15.9.2005, plaintiffs never approached the defendant for execution and registration of the sale deed. The attestation of affidavit was also claimed to be false. Possession was never delivered to the plaintiffs, therefore question of their dis-possession does not arise. Defendant pleaded that there was no cause of action for filing the suit.

5. On the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled for specific performance as alleged ? OPP

2. Whether the suit is not maintainable in the present form ? OPD

3. Whether the plaintiffs have got no locus standi or cause of action to file the present suit ? OPD

4. Whether the defendant is entitled to exemplary cost of ₹ 50,000/- under Section 35-A CPC and Order 20-A CPC ? OPD

5. Relief.”

6. Both the Courts below have concluded that the execution of agreement to sell dated 31.5.2005, Ex.PW-3/B has been proved on record. The agreement to sell has not been found to be forged and fabricated in any manner. In the evidence, it has come on record that ownership of the property in question has not been proved on record. Defendant has tendered a copy of plaint, mark D1, of a civil suit titled Bimla Devi vs. Union of India and others. The said civil suit was for declaration, depicting that Bimla Devi sought declaration of the property and the suit was pending. Ownership of Bimla Devi had not crystalised vis-a-vis suit land and therefore for the purposes of giving effect to the present agreement to sell, Bimla Devi was not having any valid title.

7. In view of aforesaid, Courts below have observed that when the defendant was not proved to be owner of the property which is subject matter of present agreement to sell then how the plaintiffs can be entitled to specific performance of agreement to sell, Ex.PW-3/B. In such a situation, the Courts below have granted alternative relief to the plaintiffs to the extent of awarding decree for recovery of ₹ 2,00,000/- of earnest money along with interest @ 9% p.a. from the date of agreement to sell Ex.PW3/B till decree and @

6% p.a. from the date of decree till realization of principle amount of ₹ 2,00,000/- from the defendant with interest.

8. At the time of framing the grounds of appeal, learned counsel for the appellants framed following questions of law:-

“(i) Whether respondent-defendant, by virtue of Order 7 Rule 2 CPC, is not bound by the pleadings in her written statement?

(ii) Whether learned lower Courts are justified in accepting the documentary evidence tendered by the respondent-defendant beyond the scope of her pleadings and contrary to her stand in examination-in-chief contrary to Order 7, Rule 2 and 9 and also Order 2 Rule 2 CPC?

(iii) Whether learned trial Court is justified in reading into evidence inadmissible documents Mark D1 and D2 tendered by the respondent- defendant after closure of her evidence ?

(iv) Whether learned lower Courts have not went beyond reference by observing that the respondent-defendant is not owner of suit prooperty?”

9. A perusal of substantial question No.1 shows that in the context of proving agreement to sell such a question cannot be answered. Question No.2 also does not arise inasmuch as that for proving agreement to sell, the Courts below have considered admissible evidence. No evidence has been considered beyond the scope of pleadings and contrary to the stand in the examination-in-chief. No such plea under Order 7 Rule 2 and 9 CPC arises for

determining the findings on execution of agreement to sell between the parties.

10. Question No.3 is of no consequence as mark D-1 and mark D-2 have not been read in evidence. Rather it is an admitted position on record that Bimla Devi had filed a suit against Union of India seeking declaration of title, which was subsequently made subject matter of agreement to sell in the present suit. Question No.4 is necessary to be answered in the context of grant of decree for alternative relief. Ownership of vendor Bimla Devi is not proved on record by way of any cogent evidence. Filing of suit by Bimla Devi for declaration against Union of India is a fact which did not confer any lawful title on Bimla Devi for the purposes of entering into the agreement to sell in the present case. Both the Courts, as a matter of fact, have found execution of agreement to sell. Absence of vendor before the Sub Registrar on the target date is an incriminating fact to be read against the vendor.

11. The claim of the plaintiffs has been accepted by both the Courts below to the extent of awarding alternative relief of recovery of ₹ 2,00,000/- along with interest @ 9% p.a from the date of agreement till decree and future interest @ 6% p.a. from the date of decree till final realisation of principle amount with interest. In the prayer clause of the plaint, plaintiffs have specifically pleaded for recovery of ₹ 4,00,000/- from the defendants on account of earnest money and damages for not performing her part of contract along with interest @ 18% p.a. as per market usage. In the normal circumstances, award of double of the earnest amount is a convention in a suit for specific

performance. Since the agreement to sell has been proved on record and the vendor- respondent could not prove herself to be owner of the suit property, therefore, double of the earnest amount can be granted towards alternative relief taking into consideration failure of the defendant to perform her part of obligation for want of title in her favour, which she intentionally concealed from the plaintiffs at the time of entering into agreement to sell.

12. In this way, it is ordered that the suit of the plaintiffs is decreed for recovery of amount of ₹ 4,00,000/- along with interest @ 9% p.a. from the date of agreement to sell till passing of decree and @ 6% p.a. as future interest from the date of decree till final realisation on the amount in question. With the aforesaid modification, the appeal is disposed of and the impugned judgments and decrees passed by the Courts below are accordingly modified.

(RAJ MOHAN SINGH)
JUDGE

August 21, 2015

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