IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3476 of 2013(O&M)
Date of decision: 22.01.2015

Anupma Jain

...Appellant

Versus

Ludhiana Improvement Trust Ludhiana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sandeep Arora, Advocate for the appellant.

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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?

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<u>ARUN PALLI J.</u> (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 02.01.2012. Appeal preferred against the said decree failed and was dismissed on 07.03.2013. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, she prayed for a decree for injunction, restraining defendant from recovering or cause to be recovered a sum of ₹ 12,19,898/-, pursuant to a letter dated 03.07.2006, as fine/non-construction charges qua shop-cum-office No.19, situated in truck stand scheme, Transport Nagar Ludhiana. Or resuming the said property on failure of such deposit, as the said demand was illegal and void ab initio. Further, a decree for mandatory injunction, directing the defendant to withdraw the said demand of ₹ 12,19,898/-. And enter the name of the plaintiff as owner in the record of the Trust and issue No Dues Certificate so as to enable the plaintiff to get a site plan sanctioned from the Municipal Corporation, Ludhiana. It was averred that Narinder Singh Chadha was originally allotted a shop-cum-office No.19, which was transferred by him in the name of Prithvi Raj Sharma, pursuant to a sale deed dated 13.12.1996. Prithvi Raj Sharma further sold the said plot to Sarabjit Singh, who in turn sold the same to the plaintiff vide sale deed dated 12.09.2005. Subsequently, plaintiff approached the defendant-Trust for recording her name in the records and for issuance of No Dues Certificate, but to no avail. Rather, a letter dated 03.07.2006 was sent to the plaintiff raising a demand of ₹ 12,19,898/- on account of non-construction charges for the period 1997 to 2006. The demand raised was wholly illegal and void ab initio. It was maintained that there was no such agreement on the basis whereof any such demand could be raised. Further, there was no document, which entitled the defendant, that in case the building is not constructed within the statutory period, the allottee shall be liable to pay non-construction charges. Further, no details were given as to how the amount that was being asked for was calculated. No instructions or rules existed at the time of original allotment in the year 1981 and therefore, plaintiff was not liable to make good the demand.

In defence, it was pleaded, inter alia, that currently Prithvi Raj Sharma was recorded to be the allottee of the plot and there was no information as regards the sale of the suit property to Sarabjit Singh etc. and likewise to the plaintiff. As plaintiff had moved an application for transfer of the suit property in her name and SCO No.19 was still unconstructed, a demand for non-construction fee was raised. As per the records, a sum of ₹ 12,19,898/- were recoverable by the defendant qua the property in question from Prithvi Raj Sharma. And the plaintiff was bound to deposit the necessary amount.

Trial court, on a consideration of the matter in issue and the evidence on record, found that the suit property was allotted in the year 1981, and the sale deed was executed by the defendant-Trust in the year 1996. Accordingly, it was observed that Ludhiana Improvement Trust Land Disposal Rules, 1964, were not applicable to the matter in hand but the subsequent rules framed by the Trust fully applied. It was observed that plaintiff had purchased the suit property from the previous owner after coming into force of the subsequent rules. Therefore, the plea that the Rules of 1964 would apply, could be raised by the original allottee only and not by the subsequent purchaser. Resultantly, it was concluded that

Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 were applicable to the matter in issue. And the said rules envisaged, if any person does not construct the building within the prescribed period, the Trust would be within its right to impose penalty. In fact, defendant had proved on record the letters (Ex.D8 to Ex.D19) in regard to policy for non-construction charges. And on a consideration of the said documents, it was observed that the defendant-Trust was fully entitled to impose penalty in case of non-construction of the building by an allottee or a subsequent vendee. Therefore, it was concluded that defendant had raised a demand as per law. Consequently, demand raised by the defendant for a sum of ₹ 12,19,898/-, vide letter dated 03.07.2006, was held to be wholly valid. Resultantly, the suit was dismissed.

Being aggrieved against the said decree, plaintiff preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Ex facie, the letter of allotment of SCO No.19 (Ex.D2) mandates that the construction over the allotted site was required to be raised within a period of 3 years, failing which the security deposit, was liable to be forfeited. So much so, defendant-Trust brought on record copies of the affidavits (Ex.D6 & Ex.D5), executed by Narinder Singh Chadha i.e. original allottee and Prithvi Raj Sharma, vide which they had conceded their liability and undertaken to pay all the remaining installments, interest, penalty and extension fee etc. to be specified by the Executive Officer of the defendant-Trust. And to be abide by the building rules. Still further, Ex.D10 to Ex.D20 were the policies, as regards the non-construction fee and extension of time limit, pursuant whereto the demand was raised by the defendant-Trust. As observed by the first appellate court, non-construction fee was being claimed by the defendant in consonance with the said policies. And as original allottee was required to raise construction within a period of 3 years from the date of allotment and had failed to comply with the said condition, defendant-Trust was well within its right to demand non-construction charges. Since Narinder Singh Chadha and subsequent vendee i.e. Prithvi Raj Sharma had undertaken vide Ex.D6 & Ex.D5 to defray all arrears including extension fee etc., plaintiff having stepped into their shoes, was obligated to meet the said demand (Ex.D8). Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

January 22, 2015
Rajan