

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.1628 of 2015 (O&M)

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Date of decision:29.4.2015

Parveen Kumari

.....Appellant

v.

Megh Raj

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Alka Sarin, Advocate for the appellant.

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Inderjit Singh, J.

Parveen Kumari-appellant/defendant has filed this regular second appeal against Megh Raj-respondent/plaintiff challenging the impugned judgment and decree dated 6.12.2014 passed by the learned Additional District Judge, Moga, allowing the appeal filed by Megh Raj-plaintiff against the impugned judgment and decree dated 12.2.2014 passed by Additional Civil Judge (Senior Division), Moga, vide which the suit filed by the plaintiff has been partly decreed.

The brief facts of the case are that Parveen Kumari-defendant being absolute owner of the suit house agreed to sell the same to the plaintiff vide agreement to sell dated 28.5.2004 for a sale consideration of ₹ Three Lacs. A sum of ₹ Two Lacs were paid by the plaintiff to the

defendant in the presence of marginal witnesses on 28.5.2004. The sale deed was agreed to be executed qua the house measuring 8 Marlas 2½ Sarsai on 27.5.2005, but later on through separate endorsement, the date was mutually extended upto 27.11.2005. The plaintiff had always been ready and willing to perform his part of contract. When the date was extended to 27.11.2005, husband of the defendant was duly present. It is also the case of the plaintiff that he got marked his presence before the Sub Registrar, but the defendant did not turn up. Again the plaintiff gave notice and called upon the defendant to execute the sale deed, but the defendant did not turn up.

The case of the defendant in the written statement is that the suit is not maintainable as it is based on forged and fabricated documents i.e. agreement dated 28.5.2004 and forged endorsement dated 20.5.2005. Site plan submitted by the plaintiff is wrong. The plaintiff has concealed material facts from the Court. In fact, the husband of the defendant had cordial relations with son of the plaintiff and they had blind faith on each other and both are known to each other for the last so many years. Husband of the defendant had raised loan of ₹ One lakh from Jagsir Singh, son of the plaintiff and in lieu of the same, the son of the plaintiff had got executed special power of attorney with regard to the house in dispute from the defendant in his favour on 28.4.2004 as a token of security to secure the loan amount. On the same day, son of the plaintiff had fraudulently obtained signatures of the defendant and her husband on some blank papers in the shape of special power of attorney. As the defendant came to know

about the intention of son of the plaintiff to grab the house of the defendant by misusing power of attorney, the defendant got revoked the said power of attorney on 25.11.2005 and sent a registered letter to Jagsir Kumar son of the plaintiff with regard to its cancellation and also filed a civil suit against son of the plaintiff, which is pending in the Court of learned Civil Judge (Junior Division), Moga.

After framing issues and both the parties led their evidence, learned Additional Civil Judge (Senior Division), Moga, vide judgment and decree dated 12.2.2014 upheld the execution of the agreement to sell and also that the plaintiff remained ready and willing to perform his part of the contract, but by holding that the suit property is not identifiable as Khasra numbers have not been given, decreed the suit of the plaintiff partly for alternative relief of recovery of ₹ 2 Lacs along with interest @9% per annum and future interest. Aggrieved against the judgment and decree of the learned Additional Civil Judge (Senior Division), Moga, appeal was filed by the plaintiff against the defendant asking for the relief of specific performance. The learned Additional District Judge, Moga, vide judgment and decree dated 6.12.2014 accepted the appeal of the plaintiff and set aside the findings of the learned lower Court by holding that the property has been duly described by boundaries and are totally in consonance with boundaries mentioned in Ex.P.1 and there is no need for giving Khasra numbers. It is also considered by the first appellate Court that there is no dispute in the written statement regarding identity of the property or title thereof.

Learned counsel for the defendant argued before the first appellate Court that relief of specific performance of contract has been rightly declined as property in dispute bears Khasra numbers and no Jamabandi has been placed on record and he prayed for dismissal of the appeal and stated that the plea of the plaintiff for specific performance of contract has been rightly declined.

I have heard learned counsel for the appellant-defendant and have gone through the record.

Learned counsel for the appellant at the time of arguments argued that the agreement to sell dated 28.5.2004 is a result of fraud and the defendant has not executed any agreement to sell in favour of the plaintiff. She raised the argument as per the pleadings of the defendant in the written statement. She also argued that no Khasra numbers have been mentioned in the plaint and the property cannot be identified and the judgment passed by the learned Additional District Judge, Moga that the plaintiff is entitled to specific relief of performance of the agreement to sell are also incorrect and not as per evidence and law.

After hearing the arguments of learned counsel for the appellant, I find that first of all the finding has been given by the learned Additional Civil Judge (Senior Division), Moga, vide judgment and decree dated 12.2.2014 regarding the execution of the agreement to sell dated 28.5.2004 by the defendant in favour of the plaintiff regarding selling the house in dispute. The learned trial Court also gave the finding that the plaintiff remained ready and willing to perform his part of the contract.

These findings have not been challenged by the defendant-appellant by filing appeal or cross-objection. Even these pleas that the agreement is a result of fraud or has not been executed by the defendant, have not been taken before the first appellate Court. The only argument of the learned counsel for the present appellant-defendant before the first appellate Court is that the suit for relief of specific performance has been correctly declined by the lower Court as the property cannot be identified as no Khasra numbers have been mentioned in the plaint nor any Jamabandi has been produced, which means that the defendant has not challenged the finding regarding the execution of the agreement and other findings before the first appellate Court except only on one point that as Khasra numbers of the property have not been mentioned, the relief of specific performance cannot be granted. Without challenging these findings before Additional District Judge regarding execution of the agreement or regarding fraud played by the plaintiff etc. or that the plaintiff was not ready and willing to perform his part of the contract now cannot be raised in this regular second appeal.

As regards the finding of the learned Additional District Judge, Moga, that there is no need for mentioning the Khasra numbers, I find that this finding is correct. The property is a house. It has been duly described by boundaries and dimensions in the agreement to sell. There is no need to give the Khasra numbers as it is not a vacant plot or agricultural land. Secondly, the property, as discussed above, has already been described by dimensions and descriptions by boundaries. There is no plea of the defendant in the written statement regarding any title or that the property

cannot be identified. There is no specific plea in the written statement that the description of the property is vague or uncertain.

Learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in Nahar Singh v. Harnak Singh and others, JT 1996 (9) SC 701. I have gone through this judgment. This judgment having distinguished facts will not apply in the present case as in that case it was held that the agreement to sell is vague and unidentifiable. In that case, the agreement to sell was for land measuring 4 Bighas 15 Biswas and Khasra numbers have not been mentioned, which are not the facts in the present case. In the present case, the property in dispute is a house which has been fully described in the agreement by boundaries as well as dimensions.

Learned counsel for the appellant further placed reliance on the judgment of the Hon'ble Supreme Court in Vimlesh Kumari Kulshrestha v. Sambhajirao and another, (2008) 5 SCC 58, regarding the identification of the property. It was held that agreement was uncertain for the reason that the appellant was in occupation of part of property as tenant whereas she was claiming specific performance for sale of the whole. It was held that specific performance is unenforceable due to uncertainty. This judgment having distinguished facts will not apply in the present case.

Learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in Ravinder Kumar Sharma v. State of Assam and others, Vol.CXXV(2000-2) PLR 165. I have gone through this judgment. It is held in this judgment that the respondent-defendant in an appeal can,

without filing cross-objections, attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose sustaining the decree to the extent the lower Court had dismissed the suit against the defendant-respondents. This judgment having distinguished facts will not apply in the present case as before the first appellate Court the defendant has not challenged these findings given by the learned Additional Civil Judge (Senior Division), Moga.

Learned counsel for the appellant further placed reliance on the judgments of Hon'ble Supreme Court in H. Siddiqui (Dead) by LRs. v. A. Ramalingam, (2011) 4 SCC 240; J.P. Builders and another v. A. Ramadas Rao and another, (2011) SCC 429; Pramod Buildings and Developers Private Limited v. Shanta Copra, (2011) 4 SCC 741 and Janak Dulari Devi and another v. Kapildeo Rai and another, (2011) 6 SCC 555. I have gone through the law laid down in these judgments which are having distinguished facts and will not apply in the present case.

Therefore, from the above discussion, I find that the findings given by the learned Additional District Judge, Moga in the judgment and decree dated 6.12.2014 are correct and as per law, which will not require any interference from this Court and the same are upheld. The findings given by the learned trial Court regarding execution of the agreement to sell and regarding the plaintiff being ready and willing to perform his part of the contract are also as per law and upheld. No question of law, much less any substantial question of law, arises in the present regular second appeal. The plaintiff is entitled to specific performance of the agreement to sell.

Finding no merit in the regular second appeal, the same is dismissed.

April 29, 2015.

(Inderjit Singh)
Judge

hsp