

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2305 of 2015 (O&M)
Date of Decision : 07.12.2015

Surmukh SinghAppellant

Versus

Rajinder Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. O.P.S. Tanwar, Advocate
for the appellant.

Surinder Gupta, J.

Suit filed by plaintiff-appellant-Surmukh Singh on 21.05.2011 seeking relief of specific performance of agreements dated 12.04.1994 and 31.05.1994 with consequential relief of declaration and injunction was dismissed by Civil Judge (Junior Division), Kurukshetra. However, he was allowed relief of refund of ₹ 1.5 lac alongwith interest from April, 2011 from defendant no. 1.

2. In first appeal, order of the lower Court declining the relief of specific performance of agreement was maintained but the amount payable to appellant was enhanced from ₹ 1.5 lac to ₹ 3 lacs alongwith interest @ 12% per annum from the date of payment till final realization. Not satisfied, plaintiff-appellant has filed this second appeal.

3. Plaintiff's case, in brief, is that vide agreement dated 12.04.1994, defendant no. 1-Rajinder Singh agreed to sell land measuring 10 *kanals* being 200/3493 share out of land measuring 174 *kanals* 13 *marlas*, as fully described in the plaint, situated in village Ram Nagar, Tehsil Thanesar, District

Kurukshetra and received ₹ 50,000/- as earnest money. The date for execution and registration of the sale deed was fixed as 25.05.1994, on which date plaintiff reached office of Sub-Registrar, Thanesar with balance sale consideration, stamp and registration charges and remained present there throughout the day but defendant no. 1 did not turn up. He got his presence marked by moving application before Sub-Registrar through an affidavit. On coming to know that plaintiff had got his presence marked, defendant no. 1 contacted plaintiff and offered lame excuses. He requested for balance payment with the undertaking to execute the sale deed as and when plaintiff desire with one month prior notice. He also undertook to deliver possession of the suit land to plaintiff on receiving balance sale consideration. Consequently, plaintiff paid ₹ 1 lac to defendant no. 1 on 31.05.1994 and took possession of the disputed land. A separate agreement dated 31.05.1994 was also executed in favour of plaintiff. Thereafter, defendant no. 1 kept on postponing the matter on one pretext or the other and did not execute the sale deed as per terms and conditions laid down in the agreement. He had taken loan from PLDB, Kurukshetra after mortgaging the suit land and was assuring plaintiff that he will get the mortgage redeemed and execute the sale deed. Plaintiff always remained ready and willing to perform his part of the contract and was still ready and willing at the time of filing of the suit. He also remained in peaceful possession of the suit land from 31.05.1994 which was forcibly occupied by defendants no. 2 to 8 after April, 2011. On enquiry, plaintiff came to know that on the

basis of sale deed dated 24.08.1999 mutation no. 256 dated 21.12.1999 qua suit land had been sanctioned in favour of defendants no. 2 to 8. The sale deed in favour of defendants no. 2 to 8 is false, fictitious and forged document created to defeat the lawful and legal right of plaintiff over the suit land. Defendant no. 1 was not competent to sell the suit land to defendant no. 2 to 8 as he had already sold and delivered possession of the same to plaintiff. Defendant no. 1 was requested to cancel the sale deed in favour of defendants no. 2 to 8 which he refused resulting in filing of the instant suit seeking specific performance of agreement to sell dated 12.04.1994 and 31.05.1994. In alternative, plaintiff sought decree of recovery of double the amount already paid by him to defendant no. 1.

4. Defendant no. 1 did not appear to contest the suit and was proceeded *ex parte*. Defendants no. 2 to 7 filed written statement contesting and controverting the averments in the plaint. A plea was taken that suit filed by plaintiff was hopelessly time barred and the answering defendants were *bona fide* purchasers of the suit land which they have purchased from Rajinder Singh-defendant no. 1, who was recorded as absolute owner in possession of the same in the revenue record. The agreement propounded by plaintiff in his favour was dubbed as false and frivolous. It was averred that once entire sale consideration, as per case of plaintiff, was paid on 31.05.1994, there was no question of giving further time to defendant no. 1 for execution of the sale deed. He would have insisted for execution of the sale deed on payment of entire sale

consideration. It was also denied that plaintiff was delivered possession of the suit land on 31.05.1994. Entries in the *khasra girdawaries* were recorded in the name of Rajinder Singh when he sold the same to answering defendants and thereafter, entries in the *khasra girdawaries* were recorded in their names and mutation of the suit land was also sanctioned in their favour. It was averred that plaintiff had never been in possession of suit land nor he has any right to purchase the same. The claim by plaintiff that he was dispossessed from the suit land in the month of April, 2011 was denied and the sale deed in favour of answering defendants were asserted to be valid in all respect.

5. Learned Civil Judge (Junior Division), Kurukshetra held agreement dated 12.04.1994 (Ex. P-1) as validly executed by defendant no. 1 on receipt of ₹ 50,000/- as earnest money. It was also observed that defendant no. 1 further received ₹ 1 lac and in this manner the entire sale consideration of ₹ 1.5 lac was paid. The suit of plaintiff was held to be hopelessly time barred. The plea of plaintiff that he was delivered possession on payment of sale consideration was not believed and it was observed that defendants no. 2 to 8, who purchased the land measuring 65 *kanals* 1 *marla* from defendant no. 1 vide sale deed No. 2423 dated 24.09.1999 were *bona fide* purchasers without notice of agreements dated 12.04.1994 (Ex. P-1). Plaintiff was declined the relief of specific performance of agreements dated 12.04.1994 and 31.05.1994 and was allowed alternative relief of refund of this amount with interest from defendant no. 1.

6. Ist Appellate Court affirmed the findings of learned

trial Court that defendants no. 2 to 8 are *bona fide* purchasers of the suit land while observing in para 11 of the judgment as follows:-

“11. So far as plea of bonafide purchasers for valuable consideration as pleaded by the respondents-defendants no. 2 to 8 is concerned, then said plea is believable because of the fact that in the revenue record, there is no mention of the fact that the appellant-plaintiff was in possession of the disputed land in any capacity. Even otherwise also, there is no evidence available on the file whereby it can be assumed that the respondents-defendants no. 2 to 8 were having knowledge and notice of the fact of execution of the agreements of sale Ex. P-1 and Ex. P-4 earlier entered into between the appellant-plaintiff and respondent-defendant no. 1 regarding the disputed land way back in the year 1994. So, in these circumstances, the respondents-defendants no. 2 to 8 are held to be bonafide purchasers for a valuable consideration of the disputed land.”

7. Learned counsel for the appellant has argued that both the Courts below have gone wrong while recording the finding that suit of plaintiff was barred by time. The entire sale consideration had already been paid to defendant no. 1 and it was stipulated that the sale deed could be got registered at any

time with one month notice to defendant no. 1. Possession of the suit land was delivered to plaintiff and remained with him till the year 2011 when he was forcibly dispossessed. As possession of the suit land was not given to defendants no. 2 to 8 under the sale deed dated 24.08.1999, the plea that they are *bona fide* purchasers of the suit land for consideration is not available to them.

8. On giving a careful thought to submission of learned counsel for the appellant, I find that plaintiff has tried to set up a case that he agreed to purchase the suit land measuring 10 *kanals* but never got the sale deed registered. The agreement (Ex. P-1) was allegedly executed by defendant no. 1 on 12.04.1994. The date for execution of sale deed was fixed as 25.05.1994. Plaintiff has alleged that on that day he had gone to the office of Sub-Registrar where defendant no. 1 did not turn up. This conduct of defendant no. 1 had given the cause of action to plaintiff to seek the specific performance of agreement. Instead, as per case of plaintiff, he paid the entire sale consideration to defendant no. 1 on 31.05.1994. On payment of entire sale consideration nothing more was required to be done by plaintiff except to seek execution and registration of sale deed in his favour which he could call upon defendant no. 1 to execute. Strangely enough he remained silent till the year 2011 i.e. for a long period of about 17 years when the instant suit was filed. Plaintiff and defendants are all residents of same village and it is highly unbelievable that after execution of sale deed by defendant no. 1 in favour of defendants no. 2 to 8 in the year

1999-2000 and thereafter, sanctioning of mutation in their favour, plaintiff never came to know of the sale of suit land by defendant no. 1. In villages, particularly in the agricultural community, every sale transaction, particularly of the land in which a villager has special interest, comes to the notice/knowledge of all the residents of village. It cannot be believed that plaintiff despite execution and registration of the sale deed and sanctioning of mutation in favour of defendants no. 2 to 8 did not come to know of the same. Both the Courts have rightly observed that agreements dated 12.04.1994 and 31.05.1994 were not in knowledge of defendants no. 2 to 8 and they are *bona fide* purchasers of suit land alongwith other land from defendant no. 1 for consideration. Even otherwise a person who had remained silent and kept on sleeping over his right for such a long time is not entitled to the relief seeking specific performance after 17 years of execution of the agreements.

9. In view of my above discussion, I find no legal or factual infirmity in the observations of Courts below declining the relief of specific performance of agreements to plaintiff. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 07, 2015
jk

(SURINDER GUPTA)
JUDGE