IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.236 of 2015 (O&M)
Date of decision : 20.01.2015

Sohan Lal

...Appellant

Versus

Hari Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Kumar Gupta, Advocate with
Mr. Deepak Girotra, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

This Regular Second Appeal is directed at the instance of appellant/plaintiff against the judgments and decrees of the Courts below, whereby relief of specific performance of agreement to sell dated 23rd October, 2002 had been declined and only a relief of refund of earnest money along with 9% interest had been decreed.

Mr. Ajay Kumar Gupta, learned counsel appearing on behalf of the appellant-plaintiff has raised the following arguments in support of the present appeal which are enumerated herein as below:-

1. In view of the provision of Section 13 of the Specific Relief Act, both the Courts below ought to have been decreed the suit of the plaintiff-appellant.

2. In view of the provision of Sections 41, 43 and 44 of the Transfer of Property Act, defendant No.1 was

ostensible owner.

3. Both the original owners of SCF No.20 bearing MC Unit No.1014/20, measuring 160 square yards i.e. Khem Chand and Sham Lal were the attesting witnesses to the agreement to sell dated 23rd October, 2002 have been examined.

4. That before filing of the suit, defendant No.1 had become the owner of the property by virtue of the decree dated 10.01.2004, whereas the suit had been filed on 10.12.2004.

5. Defendant No.1 had mortgaged the property with defendant No.2 on 29.01.2004.

6. That in the record of the Municipal Corporation, the defendant No.1 had already been shown as owner.

7. That as per the decree dated 10.01.2004, it is evident that the original owners had also orally exchanged the property in dispute with defendant No.1 and, therefore, defendant No.1 was owner prior to the agreement to sell.

In support of the aforementioned arguments, learned counsel for the appellant cited the judgment of *Kartar Singh and another Vs. Kuldeep Singh and another 2010(2) RCR (Civil) 702,* to contend that in identical situation, the defendant No.1 was not the owner of the property. This Court while interpreting the provision of Section 13 of the Specific Relief Act decreed the suit of the plaintiff in toto.

I am afraid that the aforementioned arguments of learned counsel for the appellant sans merit.

Judgment cited in support of the arguments by relying upon the provision of Section 13 of the Specific Relief Act is not applicable to the facts of the case as in that judgment while granting the relief of the appellant therein, no ratio descendi has been laid down. For the sake of brevity, findings rendered by this Hon'ble Court in the aforementioned judgment culled out from paragraph Nos.14 to 17 are reproduced hereinbelow:-

> *"14. The only ground for denial of the relief for specific performance by learned trial Court was, that the vendor was not the owner of the property on the date of agreement to sell as he acquired the title only subsequently, therefore, the agreement was not specifically enforceable.*
>
> *15. This finding of the learned trial Court was rightly set aside. The decree passed by the learned lower appellate Court is in consonance with Section 13(1)(a) of the Specific Relief Act, 1963, which reads as under:-*
>
> > *"13. Rights of purchaser or lessee against person with no title or imperfect title. - (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely :-*
> > *(a) if the vendor or lessor has subsequently to the contract acquired any interest in the*

property, the purchaser or lessee may compel him to make good the contract out of such interest."

16. *The first substantial question of law, therefore, does not arise for consideration.*
17. *For the reasons recorded above, the second substantial question of law is also answered against the appellants, as in view of Section 13(1)(a) of the Specific Relief Act, on acquisition of the title in the property subsequently, the vendee can enforce the contract of specific performance."*

The provision of Section 13 of the Specific Relief Act has already been referred in the judgment cited (supra). In order to comply with the provision of Section 13 of the Specific Relief Act, the appellant was required to specifically plead in the plaint that prior to filing of the suit, the defendant No.1 was called upon to perform his part of the agreement, whereas the pleadings in this regard in the plaint are conspicuously absent. Even in the agreement to sell, there is no clause that defendant No.1 was not the owner and he would acquire the ownership later on. The Municipal record Ex. D7 do not conform title of defendant No.2 as these are the assessment proceedings for the purpose of imposing the tax. The signatures of the actual owners of the property, who are none else but brother of the defendant No.1, on the agreement to sell cannot be taken to understand that other owners had relinquished their right of ownership in the suit property in favour of defendants.

It is a matter of record that by virtue of decree Ex.D6, the defendant No.1 for the first time acquired the ownership of the SCF on

10.01.2004. As per the decree, the defendant No.1 was not the owner of the suit property but became the owner of only one shop which he is alleged to have been exchanged with Khem Chand and Sham Lal by way of family settlement.

The appellant-plaintiff has also not taken any steps prior to filing of the suit or have taken any stand much less in the legal notice, that the defendant No.1 was called upon to seek the redemption of the suit property mortgaged with defendant No.2. In the absence of compliance of provision of Section 13 of the Specific Relief Act, the appellant-plaintiff cannot be permitted to take the benefit of the aforesaid provisions.

Both the Courts below have rendered the findings of the facts of law by partly decreeing the suit whereby the appellant-plaintiff has been granted the relief of refund of the earnest money along with interest of 9%. The findings of both the Courts below are based on appreciation of facts and law.

There is no illegality and perversity in the judgment rendered by both the Courts below.

No substantial questions of law arises for the adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

20.01.2015 **(AMIT RAWAL)**
pawan **JUDGE**