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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.2467 of 2015 (O&M)

Date of Decision: September 14th,2015

Baldev Singh and others

.....Appellants

Versus

Amarjit Singh (now deceased) through his LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Parvinder Singh, Advocate,
for appellants.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kartik Gupta, Advocate,
for respondents-caveator.

SHEKHER DHAWAN, J

Present Regular Second Appeal is against concurrent findings of both the Courts below whereby suit for specific performance of agreement of sale dated 20.09.2001 filed by plaintiffs was decreed by Court of first instance and appeal filed by the defendants-appellants was dismissed by Court of first appeal. Defendants-appellants are now before this Court by way of present Regular Second Appeal.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

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3. Relevant facts of the case that Amarjit Singh (since deceased) and nine other plaintiffs filed suit against Avtar Singh and others (14 defendants) for specific performance of agreement of sale dated 20.09.2001 for land measuring 40 Kanals 13 Marlas as entered in Jamabandi for the year 2001-02 situated in village Khairabad, Tehsil and District Amritsar.

4. Defendants contested the suit inter-alia taking the pleas that the suit was not maintainable as defendant No.1, Avtar Singh, had died on 9.12.2001, i.e., much prior to the institution of the suit and as such, the suit was nullity. Plaintiffs were not willing and ready to perform their part of the agreement and they were not ready with the balance sale consideration and even subsequent conduct of the plaintiffs is sufficient to prove that they were not ready and willing to perform their part of the agreement. The plaintiffs failed to put in appearance in the office of Sub Registrar on the target date and prayed that the suit be dismissed.

5. Learned Court of first instance after considering the material and evidence available on file decreed the suit for specific performance and defendants preferred appeal before First Appellate Court but remained unsuccessful and as such present second appeal is before this Court.

6. After hearing learned counsel for both the parties and going through the record of the case, this Court is of the opinion that for disposal of present appeal and deciding the controversy, following substantial questions of law are involved which require determination and decision by this Court :-

- 1]. What is the effect of death of Avtar Singh and effect of application for impleading LR's of Avtar Singh at a subsequent stage?

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- 2]. Whether plaintiffs were ready and willing with balance sale consideration at the relevant time, if not, its effect?
- 3]. What is the effect of filing of suit against 13 defendants and thereafter giving up one of the defendants and whether that made specific performance of agreement of sale impossible qua remaining defendants?
- 4]. Whether agreement of sale is not legally enforceable because land was to be used for residential purposes by constructing colony but no such project having been got approved from PUDA?

7. Learned Senior Counsel representing the appellants-defendants took the plea that Courts below have completely ignored the material facts in this case, i.e., alleged agreement dated 22.09.2001. However, the civil suit was filed against dead person as Avtar Singh died on 09.12.2001 whereas suit was filed on 04.06.2003. This fact was in the knowledge of plaintiff as is evident from Jamabandi Exhibit PX for the year 2001. The factum of death finds recorded in Jamabandi itself. Thereafter, defendants-appellants had filed written statement taking preliminary objection No.1 that Avtar Singh died on 09.12.2001 i.e. much prior to the institution of the suit. The said written statement was filed on 03.08.2003. Still application for impleading LRs of Avtar Singh was filed much beyond the period of limitation of 3 years as the application for impleading LRs of Avtar Singh was filed on 11.09.2004. The said application was allowed by the Court subject to just exception.

8. Learned counsel for appellants urged that in the present case, plaintiffs were fully aware of the fact that Avtar Singh died before filing of the suit. For the sake of arguments, even if it is presumed that plaintiffs were not having any knowledge about death of Avtar Singh, the same fact was specifically brought to the notice of plaintiffs by taking preliminary objection No.1 in the written statement. Learned Court below placed

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reliance upon judgment of Hon'ble Supreme Court in case **Balkar Singh Vs. Baljinder Singh and others**, 1993(2) HLR 440, which is otherwise distinguishable on facts and as such is not applicable in the present case.

9. Learned counsel for appellants while assailing the judgments of the Courts below also took the plea that there was no readiness and willingness on the part of plaintiffs-appellants so as to perform the agreement of sale dated 22.09.2001. The target date for execution of sale deed was 01.10.2002. On the said date only one person had come although the agreement was executed by 10 persons.

10. As per learned counsel for appellants-defendants, plaintiffs were not ready with balance sale consideration on the target date. There was no proof on the file that how the money was arranged. It had come in evidence that plaintiffs admitted that they had not deposited the money in any bank and they were not having any proof regarding bringing money for execution of sale deed on the target date. The source explained for arranging the fund are 'J Forms' but the same are not valid. Rather the same were issued by plaintiffs Amarjit Singh himself. Learned counsel for appellant also took the plea that Courts below completely ignored the fact that agreement was for sale of land for construction of residential colony by laying down roads which is not permissible as per law without getting approval from PUDA and the project itself which is subject matter of the agreement is illegal and such an agreement cannot be ordered to be specifically enforced lawfully.

11. Learned counsel for the appellants also took the plea that suit was filed against 13 defendants whereas one defendant was given up and the subsequent application giving up of one of the defendant made the

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specific performance of agreement in question to be not enforceable by law against remaining also. In support of his arguments, learned counsel for the appellants placed reliance of Hon'ble Supreme Court in case **I.S.Sikandar [D] By LRs. Vs. K. Subramani and others, 2014(1) RCR Civil, 236.**

12. Learned senior counsel for the respondents-plaintiffs mainly took up the plea that death of Avtar Singh was not in the knowledge of the plaintiffs and application for impleading L.Rs of deceased Avtar Singh was filed when the same fact came to the knowledge of the plaintiffs. More so, there were 10 plaintiffs in the case and 14 defendants. Application for impleading LR's of Avtar Singh has already been accepted by the Court below. Both the Courts below have recorded positive findings on the basis of evidence available on file and the same do not call for any interference by this Court in this Regular Second Appeal and the same be dismissed.

13. After hearing both the sides and perusal of the record and grounds of appeal in the present case, this Court is of the considered view that both the Courts below have already recorded concurrent finding that agreement of sale dated 20.09.2001 was duly executed. More so, execution of agreement dated 20.9.2001 is not disputed from appellants' side even. The oral as well as documentary evidence has been duly appreciated by the Courts below.

14. As regards to effect of death of Avtar Singh and impleading his LR's at a subsequent stage, the application was filed before the Court of competent jurisdiction and same was allowed by the Court. Similar controversy had gone before Hon'ble Supreme Court of India in **Karuppaswamy Vs. C. Ramamurthy, 1993 AIR (SC) 2324.** The relevant

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provisions incorporated in Section 21 of the Limitation Act, 1963 [For short, “the Act”] read as under:-

“21. Effect of substituting or adding new plaintiff or defendant.-

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

The above quoted provisions makes it ample clear that even after the institution of suit, such an application can be allowed and the person included by way of application, may be plaintiff or defendant, shall be deemed to have been instituted on an earlier date. Applying the same proposition of law, the Court below allowed the application for impleading L.Rs of Avtar Singh.

15. Similar controversy was before Hon`ble Apex Court in **Munshi Ram Vs. Narsi Ram, 1983 AIR [SC] 271** and it was observed that if non-impleading of any party is because of certain mistake and the said mistake is made in a good faith, the proviso to Section 21[1] of the Act would be attracted and the same is covered as per act having been done in good

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faith. A Division Bench of this Court in **Jaswant Vs. Financial Commissioner, Haryana and ors.**, 1993[1] RRR 103 has also held that if there is a bona fide mistake regarding impleading any dead person and subsequently an application is moved for impleading his LRs, the same is bona fide act duly covered under Section 21[1] of the Act.

16. Identical question of law was before a Co-ordinate Bench of this Court in **Dhan Singh Vs. Gurdev Kaur and others** 2005[4] R.C.R. [Civil] 805 and it was held that if LR of one of the defendants is dead person, application for impleading L.Rs of the deceased was maintainable if such suit subsists despite the death of one of the defendants. In the present case also, the suit subsisted despite the death of Avtar Singh and application for impleading his LRs was rightly allowed by the Court below. More so, rule of procedure are handmaid of justice to enhance the same and not to scuttle it. Similar view was also taken by Hon`ble Andhra Pradesh High Court in **Telagareddy Yesu Rama Eswara Prasad & Anr. Vs. Life Insurance Corporation of India & Ors.** 2010[7] RCR [Civil] 1097.

17. Regarding readiness and willingness on the part of the plaintiffs, it is the positive case of the plaintiffs that they were always willing and ready to perform their part of the agreement. More so, it has been held repeatedly by Hon`ble Supreme Court of India that in such like cases of suit for specific performance of agreement of sale of immovable property, readiness and willingness of plaintiffs to perform their part of the agreement is not a question of law, but a question of fact. In the present case, both the Courts below have already appreciated the entire evidence and returned the finding that plaintiffs were willing and ready to perform their

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part of the agreement and the same do not call for any interference. Such a view was taken by Hon`ble Apex Court in **Harjeet Singh & Anr. Vs. Amrik Singh and Anr., 2005 [12] SCC 270; Jogendra Ram and another Vs. Phullan Mian [D] by LRs & Ors. 2012 [3] CivCC 258** and **Abdul Raheem Vs. The Karnataka Electricity Board & Ors., 2008 [1] RCR [Civil] 105.**

18. As regard to the plea taken by learned counsel for the appellants that plaintiffs were actually not ready with balance sale consideration and the balance amount was not produced on the target date, the law on the point is settled that it is not necessary for the purchasers to prove that they had enough liquid cash in their hands inasmuch as for the said purpose, it would be sufficient to show that they could arrange for such an amount for payment of consideration at the appropriate stage. Such a view was taken by Hon`ble Supreme Court of India in **Azhar Sultana Vs. B. Rajamani & Ors. 2009[2] CivCC 1; Coromandel Indag Products [P] Ltd. Vs. Garuda Chit and Trading Co. P. Ltd. and another 2011 [4] R.C.R. [Civil] 677; Sukhbir Singh and others Vs. Brij Pal Singh and others 1997 [2] SCC 200.** Identical view was taken by a Co-ordinate Bench of this Court in **Lakhvir Singh and another Vs. Chanan Masih and others 2010 [7] R.C.R. [Civil] 1310.**

19. As regards to plea taken by learned counsel for the appellants at question of law at Sr.No. 4, it is not disputed that the agreement of sale was qua the suit land. If at all any permission was required by the plaintiffs to construct a residential colony on the same, it was for them to obtain such a permission at that stage. But at this stage, suit for specific performance cannot be dismissed on the ground that no such permission had been

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granted by any authority including PUDA. The plaintiffs might have used the land for any other purpose after purchase of the same, but on that count, specific performance of the agreement of sale could not be denied.

20. As regards to effect of filing of suit against 13 defendants and thereafter giving up one of the defendants, giving up of one of the defendants does not make specific performance of agreement of sale impossible qua remaining defendants.

21. In view of the above discussion, the questions of law, posed above, are hereby returned against the appellants-defendants. Resultantly, the present Regular Second Appeal is without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

September 14th, 2015
msd/som