IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3160 of 2015 (O&M)
Date of decision: 03.11.2015

Balwinder Singh and others

... Appellants

versus

Joginder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Karanjit Singh, Advocate for the appellants.

K.Kannan, J.

The plaintiff who filed a suit for specific performance on 15.09.2006 was seeking for an enforcement of an agreement dated 19.02.1968. The agreement was with reference to 24 kanals 15 marlas and according to the plaintiff, the property was put in possession of the plaintiff and it was agreed that the property will be sold at any time when the plaintiff demanded. The further averment in the plaint was that the defendant had sold a portion of the property on 03.05.1978 comprising to an extent of 17 kanals and the balance to the extent of 6 kanals 9 marlas was alone left unsold. The defendant had a dispute with the Government in relation to the said property and after the dispute was over in the year 2004, the plaintiff instituted the suit on 15.09.2006.

The defendant denied the agreement and denied that he undertook to sell the property after sorting out the issue of title with the Government. The trial Court decreed the suit and the Appellate Court reversed the judgment and allowed the appeal and dismissed the suit.

Learned counsel appearing on behalf of the plaintiff submitted that when the agreement was admitted in the course of trial and the original agreement itself did not stipulate any time, the institution of suit in the year 2006 ought to have been taken as not barred. I asked the specific question of whether there had been any agreement or negotiations between the parties that were brought on evidence which could prove that on the day when the plaintiff purchased the portion of the property of about 17 kanals on 03.05.1978, there had been any contemporaneous agreement to subject the defendant to continue the obligation that was brought under the agreement dated 19.02.1968 and that the defendant had undertaken to sell the remaining extent of property also at any time that the plaintiff sought for. The counsel would only contend that there was no plea regarding any contemporaneous agreement on 03.05.1978 and there was also no evidence brought on record that there was any dispute by the Government in relation to the property unsold at the time when the sale deed was made in favour of the plaintiff on 03.05.1978.

The suit for specific performance and the reliefs are statutory recognition of equitable principles enunciated in common law, Section 20 of the Act of the Specific Relief Act itself enacts that the Court will not grant the decree for specific performance merely because there exists lawful agreement but the Court will exercise the discretionary relief after being fully satisfied that the plaintiff's conduct deserves to him such a relief. Even hardship that could exist at the time of agreement of the vendor would be relevant for an adjudication on whether the relief of specific performance should be granted or not. Courts have engrafted the duty of the plaintiff to be acting with all alacrity and person's readiness and willingness to be proved to the hilt that any conduct which shows laches will disentitle the party to secure the relief. If the agreement dated 19.02.1968 was admitted at the trial by the defendant, the right of enforcement by the plaintiff will depend on whether the plaintiff has shown an adequate conduct worthy of securing the relief for specific performance. If the plaintiff had obtained also a document of purchase of substantial portion of property on 03.05.1978, the plaintiff is required to prove that the purchase did not constitute an extinguishment of the obligation of the defendant and that the plaintiff had still a subsisting right with reference to the remaining extent. That would have been possible only on the proof of the contemporaneous agreement on 03.05.1978 to sell the remaining extent of property or when there was a specific undertaking between the parties that the defendant will sell the property of what was unsold after resolving the dispute with the State there was no such pleadings nor was there such a proof. The fact that the defendant had a litigation with the State could have been also explained by the plaintiff if there existed such a situation when the defendant was actually fighting the State only in order so sell the unencumbered property to the plaintiff.

Learned counsel relies on a judgment in Gunwantbhai Mulchand Shah and others Vs. Anton Elis Farel and others, 2006 (2) SCC 634, where the Court was considering the effect of Article 54 of the Limitation Act in a case where the time for performance had not been specified and the suit had been filed after 29 years of agreement. The Court found in that case that where there was no time specified the right of enforcement will obtain only from the date when the demand and refusal were made and the Court elicited at the time of trial that the plaintiff had demanded compliance only six months prior to the filing of the suit and the defendant had refused to perform the contract. This principle would apply in a situation where the cause of action pleaded the demand and refusal within a period of 3 years as the cause of action. It is in that context I raise the query whether there was any undertaking when the remaining property would be sold after the disposal of the property in the year 1978. If there was no such undertaking the time of purchase of substantial portion of property, it must be taken that when the plaintiff was exercising his right under the agreement and if he was not purchasing the whole of the property, he ought to be taken as having lost his right of enforcement for the remaining.

There is also a reference to yet another ruling in Rathnavathi and another Vs. Kavita Ganashamdas, 2015 (5) SCC 223.

The Court was again considering the issue of whether time was made essence of the contract. The Court was actually holding in that case that the entire consideration mentioned in the document had been already been parted with and the plaintiff was filing the suit for specific performance when there was no date fixed. The Court applied its discretion to allow for enforcement on the further direction to pay Rs. 4,00,000/- taking note of escalation of prices of immovable property. The Supreme Court was actually upholding the discretion exercised by the High Court to allow for the additional price to be paid by the purchaser to the vendor in a situation where the conduct of the party secured a favourable direction for payment of some additional amount only to perfect the title.

Here in case, I would find that the conduct of the plaintiff to be not vigilant and he was coming up with the case which was most artificial. The Lower Appellate court was justified in holding that there was nothing brought on record to show that when a sale deed was made on 07.05.1978 there was still some residual duty for the vendor to sell the remaining portion of the property mentioned in the document.

The decision of the Lower Appellate Court contains no vice of reasoning or error in application of law for interference in second appeal.

The regular second appeal is dismissed with above observations.

(K.KANNAN)
JUDGE

03.11.2015
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