

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1198 of 2014

Date of Decision.14.09.2015

Rajesh Kumar

.....Appellant

Versus

Smt. Raj Rani and another

.....Respondents

Present: None for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J.

1. The plaintiff is the Appellant. An agreement executed by the 1st Defendant in favour of the plaintiff on 23/11/2006 was the subject of suit. The property was agreed to be sold by the 1st defendant in favour of the plaintiff for ₹ 4,88,000/-. The document recited that an advance of ₹ 4,18,000/- had been paid on the date of the agreement. The date for completion of the sale was fixed at 30.05.2007. The plaintiff would contend that the time was mutually extended for completion of the sale to 07.07.2007 by an endorsement made on 29.05.2007. Since 07.07.2007 to 09.07.2007 happened to be holidays, the plaintiff waited at the Registrar's office on 10.07.2007 expecting the defendant to execute the sale deed. However she did not turn up but instead executed sale deed in favour of the 2nd defendant. According to the plaintiff, the sale in favour of the 2nd defendant was a sham and nominal document. The 2nd defendant had full knowledge about the

agreement of sale and it was not valid. The plaintiff was, therefore, seeking for specific enforcement of the agreement in his favour.

2. The defendant contended that it was no doubt true that there was an agreement of sale dated 23.11.2006 but the plaintiff had suppressed very many important facts. According to her, there was an agreement of sale between the plaintiff and the 1st defendant on 17.2.2006 that provided for a time up to 25.05.2006 for completion of the sale transaction. However on 24.05.2006 yet another document was executed that provided for time for performance up to 23.11.2006. On that day yet another document was prepared which is the document that is sued upon. The plaintiff actually knew about the execution of the sale deed by the 1st defendant in favour of the 2nd defendant and it was only the plaintiff who was responsible for directing the sale deed to be executed in favour of the 2nd defendant. The defendant would contend that there had been an earlier sale agreement executed by the plaintiff himself in favour of the 2nd defendant on 4.6.2007 and the copy of the document was filed in the court. The defendant wanted to contend, therefore, that the plaintiff was only looking for some other person to purchase the property and that he could take a margin of sale consideration as his own profit.

3. The trial court declined the relief of specific performance and granted only the relief for return of the advance that was paid under the agreement. Even while holding that the copy of the document dated 04.06.2007 filed by the defendant could not be received in evidence for want of proof, the trial court found that the plaintiff had not come to court with clean hands and he had suppressed the fact that

there was an earlier transaction of agreement of sale in respect to the very same subject matter and that the period for performance was getting extended from time to time only because the plaintiff was not willing to purchase property but was only looking for some other purchaser to purchase at a higher price when you could take a margin of profit out of the enhanced consideration. The Appellate Court also confirmed the same line of reasoning. The Appellate Court had also considered the explanation which was sought to be given by the plaintiff for periodical extensions that the suit property was a house and since the 1st defendant did not have any other accommodation, the time for completion of the sale deed was being extended from time to time at her instance. The court was rejecting this explanation also to find that the several documents which have come about in respect of the very same property only proved that the plaintiff was not interested in purchasing the property but wanted some profit to be made by a sale transaction to be done in favour of some other party.

4. The court also observed that the conduct of the plaintiff in not taking a sale deed in his own name on 10.07.2007 ought to have been only in a situation when the 1st defendant was directing a sale deed in favour of the 2nd defendant. It was inconceivable that the plaintiff did not know that the defendant was appearing on the very same day at the Registrar's office and she was executing sale in favour of the 2nd defendant. If the plaintiff had not been a consenting party to such a transaction, he would have definitely objected to the same at the time when the 1st defendant came to the Registrar's office and executed a transaction in favour of the 2nd defendant. The court took

judicial notice of the fact that the formalities of sale transaction at the Registrar's office cannot be done within a few minutes and the fact that the sale deed had been executed by the 1st defendant in favour of the 2nd defendant on 10.07.2007 was a clear pointer to the fact that the plaintiff knew about the whole transaction and he was deliberately concealing the said fact.

5. The two Courts below have correctly found that the conduct of the plaintiff had not been such as to enable the plaintiff to secure a decree for specific performance. There was certainly some material fact which the plaintiff was attempting to conceal. If the plaintiff had enough resources to purchase the property he would have done so without taking an extension of time for performance on four different occasions. The fact that on 10.07.2007 sale had been prepared was also unusual. Registration of sale deed in respect of the very same subject matter to 2nd defendant was consistent with the case of the 1st defendant that the plaintiff knew that the 1st defendant was selling the property to the 2nd defendant and that it was being done so only at the bidding of the plaintiff himself. The courts below have considered the facts and evidence correctly and has declined the relief of specific performance for adequate reasons.

6. There is no error in the judgments of the courts below for intervention. The 2nd appeal is dismissed as not raising any substantial question of law.

(K. KANNAN)
JUDGE

September 14, 2015
Pankaj*