IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: February 26, 2015

1. R.S.A.No.4256 of 2014

Upinder Singh Goindi @ Bhupinder Singh

...Appellant

Versus

Manjit Singh & others

...Respondents

1. R.S.A.No.3570 of 2014

Manjit Singh & others

...Appellants

Versus

Upinder Singh Goindi @ Bhupinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Amit Dhawan, Advocate,
for the appellant (in RSA No.4256 of 2014).

Mr.Satbir Rathore, Advocate,
for the appellants (in RSA No.3570 of 2014).

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AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeal Nos.4256 of 2014 (Upinder Singh Goindi @ Bhupinder Singh Versus Manjit Singh & others) and 3570 of 2014 (Manjit Singh & others Versus Upinder Singh Goindi @ Bhupinder Singh). As the common question of law and fact is involved in both the appeals, the facts are being taken from RSA No.4256 of 2014.

The Regular Second Appeal No.4256 of 2014 has been filed at the instance of the defendant-vendor and, whereas, RSA No.3570 of 2014 has been filed by the plaintiff-vendees.

It would be appropriate to give the brief preface to the matter in controversy.

Upinder Singh Goindi @ Bhupinder Singh appellant-defendant No.1 stated to have entered into an agreement to sell dated 4.11.1999 in respect of land measuring 54 kanals 13 marlas on his behalf and on behalf of defendant Nos.2 to 8, who were stated to be the owners of the aforementioned land, with a condition that in case he is unable to bring the other co-owners, then in alternative, will sell the house bearing No.S-140-A, situated at Village Sahlpur, Industrial Area (A), Jalandhar allegedly owned by him. In pursuance to the said agreement to sell, a sum of ₹4,00,000/- has been paid as earnest money by the plaintiffs to defendant No.1 and the target date for execution and registration of the sale deed was fixed as 11.4.2000.

It has been stated that on 16.11.1999, another sum of ₹2,00,000/- was paid and prior to the execution and registration of the sale deed, a legal notice dated 1.4.2000 was served upon the defendants and thereafter the suit was filed on 9.5.2000 on the premise that on the date fixed, defendant No.1 did not come present.

The aforementioned plea of the plaintiffs was contested by defendant No.1 by denying the agreement to sell dated 4.11.1999 and came up with a stand that, in fact, he has entered into an agreement dated 2.11.1999 with regard to the sale of agricultural land with Ramesh Chander Bassi, Vipin Kumar, Madan Lal and B.S.Chauhan for a total sale consideration of ₹7,28,000/- and had received a sum of ₹3,00,000/- as earnest money. The aforementioned purchasers were requested to pay the balance sale consideration and get the sale deed executed, but they put off the matter on one pretext or the other and, thus, the plaintiffs played a fraud and committed cheating with defendant No.1 by putting forward a very interesting story. The aforementioned purchasers, in connivance with each other, forged and fabricated the alleged agreement to sell dated 4.11.1999 as he never appended his signatures on the said agreement. It was further stated that a separate application against all the persons had been filed with the higher police officials for registration of the case.

Defendant No.2 filed a separate written statement and stated that he is exclusive and legal owner of House No.S-140-A, Industrial Area (A), Jalandhar and he had not authorised defendant No.1 to enter into any kind of agreement with regard to the said house or land of which he is one of the co-owners and defendant No.1 had no authority to enter into an agreement to sell with respect of the land and house without the consent of the other defendants. In essence, it was stated that defendant Nos.2 to 8, through their separate written statement, stated that they never agreed to sell the land/house and agreement was not binding upon them, much less, they did not give any consent to defendant No.1 for entering into an agreement on their behalf.

The plaintiffs filed replication controverting the averments made in the written statements and reiterated the averments made in the plaint.

It is a matter of record that the original agreement to sell dated 4.11.1999 has not come on record and the photo copy thereof has been brought on record on the premise that the plaintiffs had lost the agreement to sell dated 4.11.1999 and affidavit dated 16.11.1999, which was allegedly got attested by marking his presence before the Sub Registrar against Sr.No.5764, though the trial Court granted the permission to the plaintiffs to prove the aforementioned documents through secondary evidence subject to the condition of proving the existence and loss of the agreement.

The trial Court, on the basis of the evidence led by the parties to the lis, came to a categoric conclusion that the plaintiffs had proved that defendant No.1 had executed the agreement to sell dated 4.11.1999 and a sum of ₹4,00,000/- had been paid to defendant No.1 at the time of entering into agreement to sell and a sum of ₹1,00,000/- was given to Hazara Singh for handing over the vacant possession of the land to the plaintiffs, but declined to grant discretionary relief under Section 20 of the Specific Relief Act on the ground that since defendant No.1 was not the exclusive owner of the land, much less, of the house, therefore, even for the land which was not partitioned, the suit for specific performance was incompetent and ordered a recovery of amount of ₹5,00,000/- and another sum of ₹5,00,000/- as damages. In all, a sum of ₹10,00,000/- was ordered to be paid by defendant No.1.

Since the parties to the lis were aggrieved against the aforementioned judgment and decree of the trial Court, defendant No.1 and the plaintiffs filed Civil Appeal Nos.172 of 1.12.2009/2.12.2010, titled as Upinder Singh Goindi @ Bhupinder Singh Versus Manjit Singh & others, and Civil Appeal No.175 of 8.12.2009/2.12.2010, titled as Manjit Singh & others Versus Upinder Singh Goindi @ Bhupinder Singh & others respectively and the Lower Appellate Court dismissed both the appeals filed by defendant No.1 and as well as by the plaintiffs and in view of dismissal of the appeals, both the plaintiffs and defendant No.1 filed the aforementioned Regular Second Appeals.

Mr.Amit Dhawan, learned counsel appearing for appellant-defendant No.1 in RSA No.4256 of 2014, in support of his grounds of appeal, submitted that the plaintiffs have not led any evidence to claim the damages of ₹5,00,000/-. He further submitted that since defendant No.1 had denied the agreement to sell and the plaintiffs failed to prove the same, which fact has erroneously and perversely been not noticed by the Courts below, thus, defendant No.1 is not liable to refund a sum of ₹5,00,000/-, which is alleged to have been paid by the plaintiffs as earnest money.

Mr.Satbir Rathore, learned counsel appearing for the appellant-plaintiffs in RSA No.3570 of 2014, submitted that both the Courts below have committed illegality and perversity in not decreeing the suit of the plaintiffs, much less, even the suit could have been decreed to the extent of share of defendant No.1. He further submitted that the Courts below ought to have exercised the jurisdiction as per Section 20 of the Specific Relief Act (for short "the Act"), particularly when the trial Court had recorded a finding that the plaintiffs had been able to prove the execution of the agreement to sell, much less, there is no reasoning of the Courts below as to how and why the plaintiffs were not entitled to decree for specific performance of the agreement to sell and urged this Court that the appeal involves the following substantial questions of law, to be adjudicated by this Court:-

> "1. Whether the Ld.Courts below are justified in declining the relief of specific performance in favour of the plaintiffs/ appellants inspite of the fact that the agreement to sale has been found to be duly executed by the defendant no.1 & 2?
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> 2. Whether the Ld.Courts below are justified in declining the relief of specific performance without recording any reasoning as required by law?
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> 3. Whether the discretion vested with the Ld.Court under Section 20 of the Specific Relief Act can be exercised in arbitrary and unfair manner?
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> 4. Whether the appellants are entitled for decree of specific performance of the property qua the share of defendant No.1 and 2 when it is proved that the property is divisible?
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> 5. Whether the impugned judgments and decrees passed by the Ld.Courts below are wrong, illegal, arbitrary against the facts and evidence on record and can be termed as perverse?
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> 6. Whether the manifest injustice has been caused to the appellants?

I have heard the learned counsel appearing on behalf of the parties and perused the judgments and decrees of both the Courts below with their able assistance and am of the view that the appeal filed by the plaintiffs qua declining the relief of specific performance is liable to be dismissed and the claim qua damages of ₹5,00,000/- granted by the trial Court in favour of the plaintiffs is liable to be set-aside for the following reasons:-

The agreement to sell dated 4.11.1999 envisaged that in case defendant No.1 failed to bring the other co-owners, i.e., defendant Nos.2 to 8, who are stated to be owners of land measuring 54 kanals 13 marlas which was agreed to be sold for a sum of ₹10,93,000/-, defendant No.1 would, in the alternative, sell his house bearing No.S-140-A. However, on the contrary, it is proved on record that house No.S-140-A was also not exclusively owned by defendant No.1 but was owned by defendant No.2. No consent of the co-owners has been obtained by defendant No.1 prior to or at the time of execution of the agreement to sell. It has also been proved on record that defendant No.2 is the exclusive and legal owner of the house. The land measuring 54 kanals 13 marlas had also not been partitioned and, therefore, the plaintiffs even could not be entitled to the relief of specific performance qua unpartitioned share of defendant No.1. The agreement to sell has not seen the light of the day and is stated to be lost on 28.3.2000 and DDR No.20 dated 3.4.2000, Police Station Dasuya was lodged in this regard. Since defendant No.1 had denied the execution of the agreement to sell, it was incumbent upon the plaintiffs to get his signatures proved by examining the Handwriting and Finger Print Expert by comparing his admitted signatures from the disputed signatures. No evidence has been led by either of the parties in this regard. Even otherwise also, defendant No.1 was not the owner of the entire land measuring 54 kanals 13 marlas, neither he had any power of attorney, much less, any authority letter or consent on behalf of respondent Nos.2 to 8 and even was/is not the owner of House No.S-140-A as it is stated to be owned by defendant No.2 and, therefore, the trial Court did not exercise the discretion under Section 20 of the Act and granted the alternative relief by ordering the refund of the earnest money. However, in the absence of any evidence led by the plaintiffs to claim damages of ₹5,00,000/-, the trial Court has committed illegality and perversity in awarding the damages of ₹5,00,000/-. No evidence has been led on behalf of the plaintiffs to claim the damages of ₹5,00,000/- and, therefore, the finding of the trial Court awarding the damages to the tune of ₹5,00,000/- over and above the refund of earnest money of ₹5,00,000/- is set-aside. In essence, the plaintiffs are only entitled to earnest money of ₹5,00,000/- along with interest @ 9% per annum from the date of execution of agreement to sell till passing of the decree and with future interest @ 6% per annum till its realization.

Accordingly, the appeal filed by defendant No.1 is partly allowed on the following substantial question of law:-

> "Whether the trial Court was justified in granting the relief of damages in the absence of evidence led by the plaintiffs?"

The impugned judgments and decrees rendered by the Lower Appellate Courts and as well as by the trial Court declining the relief of specific performance of the agreement to sell do not suffer from any illegality and perversity and are based on appreciation of oral and documentary evidence. Therefore, no substantial question of law arises in Regular Second Appeal No.3570 of 2014. Accordingly, this appeal is dismissed.

Decree-sheet be prepared accordingly.

February 26, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**