

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5467 of 2014 (O&M)
Date of Decision: July 29, 2015

Balwinder Kaur and another

...Appellants

Versus

Raksha Malik and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamaldeep Singh Sidhu, Advocate
for the appellants.

Ms.Geeta Sharma, Advocate
for the respondents.

INDERJIT SINGH, J.

Appellants-defendants Balwinder Kaur and Darshan Singh have filed this regular second appeal against respondents-plaintiffs Raksha Malik, Suman Gupta, Dr.Anurag Gupta and Sandeep Gupta, challenging the impugned judgment and decree dated 04.07.2014 passed by learned Addl. District Judge, Patiala, vide which the appeal filed by the plaintiffs was accepted and judgment and decree dated 08.01.2013 passed by learned Add. Civil Judge (Senior Division) Patiala, dismissing the suit filed by the plaintiffs, was set aside.

The brief facts of the case are that plaintiffs-respondents filed a suit against defendants-appellants for possession by way of specific performance of agreement to sell dated 04.04.2006 relating to

plot No.25, Anand Nagar-B, Patiala measuring 400 sq. yards by mainly stating that Darshan Singh and Amrik Singh were the owners of plot No.25 measuring 400 sq. yards, which was purchased by them in equal shares vide sale deed dated 29.01.1990. Amrik Singh expired on 04.06.1995 bequeathing his property in favour of his widow Balwinder Kaur vide registered Will. The defendants became joint owners of the suit plot. Darshan Singh executed the General Power of Attorney dated 28.03.2006 in favour of Beant Singh regarding the property in dispute. It is further stated that defendant Balwinder Kaur and Beant Singh entered into agreement to sell with Prem Chand for the said plot and agreement to sell was signed by Balwinder Kaur and Beant Singh and received ₹1,25,000/- from Prem Chand as earnest money. The date for execution and registration of the sale deed and payment of balance sale consideration was fixed as 08.08.2006. The defendants failed to get the revenue record corrected in their names in ownership column and failed to get the mutation sanctioned on the basis of ownership in favour of Darshan Singh. Amrik Singh further failed to get the mutation sanctioned in favour of his widow Balwinder Kaur on the basis of the Will. It is also stated in the plaint that date of execution and registration of the sale deed was extended to 08.09.2006. Even after 08.09.2006 the defendants failed to get the revenue record corrected and to execute the sale deed in favour of Prem Chand. Prem Chand expired on 30.05.2007 and the present plaintiffs are his legal heirs. It is further the case of the plaintiffs that mutation No.21354 was sanctioned in favour of Amrik Singh and

Darshan Singh on the basis of sale deed dated 29.01.1990 and further they got sanctioned the mutation No.21433 relating to the share of Amrik Singh in favour of his widow Balwinder Kaur vide order dated 15.01.2008. The defendants failed to execute and register the sale deed in favour of Prem Chand and after his death, in favour of the plaintiffs. The plaintiffs also served a legal notice dated 19.04.2008 upon the defendants requesting them to execute the sale deed in their favour but the defendants refused to do so and sent unsigned and undated reply to the legal notice through Sh.Achhar Kumar, Advocate. It is also stated in the plaint that Prem Chand remained ready and willing to perform his part of the contract and he was having sufficient funds for payment as balance sale consideration and after his death the plaintiffs were always ready and willing to perform their part of the contract but the defendants failed to perform their part of the contract.

Upon notice, defendants filed written statement and took preliminary objections that the suit is not maintainable and is barred by the provisions of Section 16 of the Specific Relief Act. It is submitted that Darshan Singh and Amrik Singh were the owners of the plot in question, who have purchased the same in equal shares vide sale deed dated 29.01.1990. It is admitted that Amrik Singh expired on 04.06.1995 bequeathing his property in favour of his widow Balwinder Kaur defendant vide registered Will and Darshan Singh also executed General Power of Attorney dated 28.03.2006 in favour of Beant Singh. It is also admitted that Balwinder Kaur and Beant

Singh agreed to sell the plot to Prem Chand and executed agreement to sell dated 04.04.2006 and received ₹1,25,000/- as earnest money from him and the date for execution and registration of the sale deed was fixed as 08.08.2006. It is further submitted that it was disclosed to Prem Chand at the time of execution of the agreement that the property is situated within the limits of Municipal Corporation, Patiala and it has permanent house number. The defendants requested Prem Chand to get the sale deed executed and registered in his favour but he was not ready and willing to purchase the suit property and delayed the matter on one pretext or the other and ultimately on 15.02.2007, Prem Chand sent a legal notice through his counsel, demanding his earnest money of ₹1,25,000/- from the defendants but the defendants sent written reply dated 05.03.2007 to the said legal notice through their counsel mentioning that they are ready to execute and register the sale deed in favour of Prem Chand but Prem Chand was not ready and willing to perform his part of the agreement and failed to get the sale deed registered in his favour. It is also the case of the defendants that Prem Chand had filed a criminal complaint against the defendants demanding back the earnest money from them. Prem Chand expired on 30.05.2007 and the complaint was dismissed on 18.08.2009 due to non-appearance of the complainant. It is further stated that originally Prem Chand, in whose favour agreement to sell was executed by the defendants, was not ready and willing to perform his part of the contract. After the sanctioning of mutation in favour of Darshan Singh and Balwinder Kaur, the plaintiffs

sent a legal notice and reply to the same was sent to the plaintiffs, in which it was alleged that the earnest money has been forfeited by the defendants.

After framing the issues and after the parties led evidence, learned Addl. Civil Judge (Senior Division) Patiala, dismissed the suit of the plaintiffs. An appeal was filed by plaintiffs-respondents and learned Addl. District Judge, Patiala, vide judgment and decree dated 04.07.2014 accepted the appeal and decreed the suit filed by the plaintiffs and the judgment and decree dated 08.01.2013 passed by learned Addl. Civil Judge, was set aside.

Aggrieved from the above-said judgment and decree dated 04.07.2014, present appeal has been filed by the defendants-appellants.

Notice of motion was issued and learned counsel for the respondents appeared and contested the appeal.

I have heard learned counsel for the parties and have gone through the record.

In the grounds of appeal, the appellants have given following substantial questions of law which arise in this regular second appeal:-

- “1. Whether the judgment and decree passed by the First Appellate Court suffers from perversity and is therefore liable to be set aside being based upon complete misreading of evidence and facts on record and misapplication of the law of the land?*
- 2. Whether the Ld. First Appellate Court has failed to read the legal notice dated 15.02.2007 (Ex.D1) in the correct perspective, where the only claim of the predecessor-in-interest of the plaintiffs was for refund of the earnest money and not for specific*

- performance?*
3. *Whether the legal heirs of the person who entered into a contract are estopped from seeking specific performance of the contract when the said person himself had chosen against doing so during his lifetime and has instead chose to peruse other options in view of his legal notice (Ex.D1) and Criminal complaint (Ex.DB)?*
 4. *Whether the plaintiffs and their predecessor-in-interest were themselves not willing and ready to perform their part of the contract in view of reply Ex.DA?*
 5. *Whether the defendants were justified and entitled to forfeit the earnest money as the plaintiff/their predecessor-in-interest were not willing to perform their part of the contract?*
 6. *Whether the suit of the plaintiffs was barred under Section 16 of the Specific Relief Act?*
 7. *Whether ownership was conferred only after sanctioning of mutation in favour of the defendants and whether mutation was prerequisite for registration of the sale deed?*
 8. *Whether the plaintiffs were not entitled to any relief considering the facts of the case and law in this regard and their suit was liable to be dismissed with costs?"*

From the record, I find that agreement to sell dated 04.04.2006 is an admitted fact between the parties. There is also no dispute regarding the description of the suit property. There is no dispute regarding receiving of ₹1,25,000/- as earnest money by Balwinder Kaur and Darshan Singh from Prem Chand. There is also no dispute regarding the date of execution of the sale deed. There is also no dispute between the parties that Balwinder Kaur was owner on the basis of Will. Neither there is any dispute regarding the death of Amrik Singh on 04.06.1995 nor there is any challenge to the ownership of Balwinder Kaur on the basis of the Will. There is also no dispute between the parties regarding the fact of execution of General

Power of Attorney on 28.03.2006 in favour of Beant Singh by Darshan Singh. Further, there is no dispute that Prem Chand expired on 30.05.2007 and the present plaintiffs are his legal heirs. The only dispute between the parties is whether plaintiff Prem Chand during his life time remained ready and willing to perform his part of the contract or whether by sending legal notice to the defendants, he had shown that he is not ready and willing to execute the sale deed. If it is proved that Prem Chand was not ready and willing during his life time to execute the sale deed, then it is of no consequence that his legal heirs were ready and willing to perform their part of the contract.

For getting relief of specific performance, the plaintiff is to prove that he always remained ready and willing and is still ready and willing to perform his part of the contract. The perusal of the evidence on record shows that during the life time Prem Chand sent the notice on 15.02.2007 demanding his earnest money of ₹1,25,000/- from the defendants. It is also duly proved by the defendants that they gave reply to that legal notice vide reply dated 05.03.2007 that they are ready to execute and register the sale deed in favour of Prem Chand. The legal notice sent by Prem Chand is Ex.D1. This notice was sent by the Advocate on the instructions of Prem Chand on 15.02.2007, which was addressed to Balwinder Kaur, Darshan Singh and Beant Singh and in paragraphs No.3 to 5 it is alleged as under:-

“3. *That you are unable to execute the sale deed on or before 8.9.2006 as you are not the owner of the property which you agreed to dispose off by way of agreement in the revenue record. My client also approached the revenue official and confirmed that*

you are not the owner of the property which you agreed to sell nor you can execute the sale deed more so the revenue official also disclosed that you cannot execute or dispose off the above said land as that property is owned by another person and not by you.

4. *That my client requested you several times to return the amount of Rs.1,25,000/- which you have received from my client but you failed to return that amount in spite of repeated demands and requests.*
5. *That received an amount of Rs.1,25,000/- from my client by way of fraud as you know that you are not the owner and you cannot dispose off the property which you agreed to dispose off so you have committed a fraud and induce my client with an intention to commit a fraud.”*

In the end of this notice, it is written “that by way of this notice, you are directed to return the amount of ₹1,25,000/- along with damages of ₹1,25,000/- and explain your position why you have committed a fraud with his client within a period of seven days.” The wording of this legal notice Ex.D1 clearly shows that nowhere Prem Chand has asked the defendants to execute the sale deed. Rather, he is levelling allegations against them that they are not the owners of suit property in the revenue record.

At the time of arguments, learned counsel for the respondents admitted that defendants-appellants are the owners of the property but the only argument was that their names have not been mentioned in the revenue record or municipal record nor mutation has been sanctioned. It is settled law that mutation does not confer title. It is only the completion of the revenue record. Balwinder Kaur became the owner on the basis of the Will executed in her favour by Amrik Singh and this fact was not concealed from Prem

Chand at the time of entering into the agreement to sell. It is even admitted that now the mutation etc. has already been entered in their favour. The mere fact that mutation has not been entered into by the concerned authority or entries are not corrected by the municipal authority, will not prove that the present appellants are not the owners of the property. The ownership comes to a person by the documents of title or by inheritance etc. and the person becomes owner on the day when he inherits the property after the death or when the document regarding transfer of ownership is executed. So, from the evidence on record, it is clear that Balwinder Kaur and Darshan Singh were owners of the property at that time and also after that but plaintiff Prem Chand has not asked them to execute the sale deed, rather he took plea that they are not owners and they have committed the fraud. Therefore, this conduct of Prem Chand shows that he was not ready and willing to execute the sale deed as per the agreement to sell when he sent the legal notice. The reply dated 05.03.2007 to the legal notice by the defendants, which is Ex.DA, clearly shows that defendants were ready and willing to execute the sale deed and in their reply, they asked Prem Chand to withdraw the notice immediately and get the sale deed registered within fifteen days from receipt of this reply. This averment in the reply rather shows that defendants were ready and willing to execute the sale deed. In the reply, it is also written that at the time of agreement to sell, defendants have shown all the relevant documents to Prem Chand i.e. original sale deed, sewerage connection and water connection and record of the

Municipal Corporation, Patiala. It is also written in the reply that defendants with other owners of the plot are in possession. This plot also got marked the Municipal Corporation No.2/10, Anand Nagar-B, Patiala and after getting the Municipal Corporation number, the sewerage and water connection were obtained and both are running in the plot.

Further, from the evidence on record, I find that Prem Chand also filed a criminal complaint against the defendants which is Ex.DB and Ex.DC is the application of LRs of the complainant Prem Chand. This complaint was filed by Prem Chand against Darshan Singh, Balwinder Kaur and Beant Singh under Sections 406, 420, 467, 468, 471 and 120-B IPC. This complaint which was filed on 23.03.2007, also shows that Prem Chand was not ready and willing to execute the sale deed.

Section 16(c) of the Specific Relief Act provides that Specific performance of a contract cannot be enforced in favour of a person, who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

The evidence produced on the record shows that as per Section 16(c) of the Specific Relief Act, the plaintiff is not entitled to specific performance of the agreement nor any relief regarding the receiving of earnest money etc.

From the above, I find that the findings given by learned Addl. Civil Judge (Senior Division), Patiala are correct, as per law and the findings given by learned Addl. District Judge, Patiala, setting aside the well reasoned judgment passed by learned Addl. Civil Judge, are perverse, against the evidence and record and not as per law.

In view of the above discussion, I find that first substantial question of law that judgment and decree passed by First Appellate Court suffers from perversity, is decided in favour of the appellants and against the respondents. As regarding second substantial question of law that First Appellate Court has failed to read the legal notice dated 15.02.2007 in the correct perspective, is also decided in favour of the appellant and against the respondents.

Further, I find that legal heirs of Prem Chand, who himself chose during his life time not to get specific performance of the contract or to get executed the sale deed, are also not entitled for any relief on the basis of agreement to sell, in view of the legal notice Ex.D1 and criminal complaint Ex.DB. From the above discussion, third and fourth substantial questions of law are also decided in favour of the appellants that plaintiff and their predecessor-in-interest were themselves not willing and ready to perform their part of the contract in view of the reply Ex.DA. The defendants were justified and entitled to forfeit the earnest money and the suit of the plaintiffs was barred under Section 16 of the Specific Relief Act. Further, the ownership is not conferred only on sanctioning of mutation. The plaintiffs are not

entitled to any relief. Therefore, all the substantial questions of law stand decided in favour of the appellants and against the respondents.

Therefore, finding merit in the present regular second appeal, the same is allowed. The judgment and decree dated 04.07.2014 passed by learned Addl. District Judge, Patiala is set aside and the judgment and decree dated 08.01.2013 passed by learned Addl. Civil Judge (Senior Division), Patiala is upheld and the suit filed by the plaintiffs-respondents is dismissed.

July 29, 2015
Vgulati

(INDERJIT SINGH)
JUDGE