

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R.No.3235 of 2015 (O&M)

Date of Decision: April 22nd, 2016

Smt.Kamal Kanta & others

...Petitioners

Versus

Labh Singh & another

...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.S.K.Garg Narwana, Senior Advocate with
Mr.Karan Garg, Advocate,
for the petitioners.

Mr.Aditya Bhushan, Advocate,
for respondent No.1.

AMIT RAWAL, J.

Petitioner-defendant Nos.2 to 4 are aggrieved of the impugned order dated 1.5.2015 (Annexure P-4), whereby the application filed under Order 7 Rule 11 CPC (Annexure P-2) for rejection of the plaint (Annexure P-1) on the premise that Nyayadhipari, Gram Nyayalaya, Shahabad (M), Kurukshetra does not have the jurisdiction to try and entertain the suit, has been dismissed.

Mr.S.K.Garg Narwana, learned Senior Counsel assisted by Mr.Karan Garg, Advocate, appearing on behalf of the petitioner-defendants submits that as per the prayer clause of the suit (Annexure P-1), the Nyayadhipari, Gram Nyayalaya, Shahabad (M) would not have jurisdiction in setting-aside the judgment and decree dated 17.10.2014. He submits that as per Section 13 of the Gram Nyayalayas Act, 2008 (for short "2008 Act"),

the Civil Court shall not have any jurisdiction to try all the suits or

proceedings of a civil nature falling under the clauses of disputes specified in Part I of the Second Schedule and as per Schedule I, no doubt the suit for specific performance of agreement to sell would fall within the embrace/ ambit, but vis-a-vis the relief qua declaration for setting-aside of the judgment and decree, the Schedule does not specify the same and, thus, the remedy would be of Civil Court as per Section 9 of the Civil Procedure Code. In support of his contention, he has relied upon the order dated 23.11.2011 (Annexure P-7) passed by the coordinate bench , where identical situation had arisen and the Court has ordered for return of the plaint, to be tried by a Civil Court of competent jurisdiction.

Mr.Aditya Bhushan, learned counsel appearing on behalf of respondent No.1 submits that petitioner-defendant Nos.2 to 4 had obtained the ex-parte judgment and decree dated 17.10.2014 in Civil Suit No.11 of 2014 from the Court of Nyayadhikari, Gram Nyayalaya, Shahabad (M), Kurukshetra in a suit for specific performance with declaration, copy of which has been annexed as Annexure R-1 and, therefore, it is the said judgment and decree which has been sought to be challenged in the same Court and, therefore, the Nyayadhikari, Gram Nyayalaya, Shahabad (M) would have the jurisdiction to try and entertain the suit and, thus, urges this Court for affirming the order.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the operative part of the judgment dated 17.10.2014:-

"I have given thoughtful consideration on the arguments put forwarded by learned counsel for the plaintiff and on appraisal of entire oral as well as documentary evidence on file, it is

apparent on the face of record that statements of witnesses namely Parlad Bhagat as PW1, Rakesh as PW2 and Sham Sunder as PW3 are un-rebutted and un-challenged duly supported with documentary evidence i.e. agreement to sell Ex.P1, GPA Ex.P2, Sale Deed No.10850/1, Ex.P3, Sale deed no.10851/1 Ex.P4, Sale Deed No.10852/1, Ex.P5, Sale deed no.7610/1 Ex.P6, affidavit Ex.P10, Jamabandi for the year 2010-11 Ex.P11. The agreement to sell Ex.P1 is duly executed by defendant and so there is no ground to disbelieve the same. Since, plaintiff has duly proved execution of agreement to sell Ex.P1 after due execution of payment of earnest money of Rs.20,00,000/- and date of execution of sale deed was fixed for 10.01.2014 and as such, plaintiff being vendee was liable to pay balance sale consideration as per agreement to sell and on receipt of the same, defendant being vendor is bound to perform his part of contract in a zeal and legal manner. So, in the circumstances, I have no hesitation to say that plaintiffs have always been ready and willing to perform their part of contract on payment of balance sale consideration, but defendant failed to perform his part of contract and so, present suit is exparte decreed with costs to the effect that plaintiff is hereby entitled to get execution of sale deed on the basis of agreement to sell Ex .P1 after making entire balance sale consideration within a period of two months positively. In case, defendant fail to execute sale deed on receipt of balance sale consideration in favour of plaintiff within a period of two months then plaintiff shall deposit balance sale consideration in account of treasury as per rules within next one month and then he shall be entitled to get execution of sale deed of land as per agreement in accordance with law. Decree sheet be drawn up accordingly. File be consigned to the record room after due compliance.”

In Civil Suit No.11 of 2014, petitioner-plaintiff had also sought the declaration for affirming the agreement to sell, but Nyayadhikari, Gram

Nyayalaya, Shahabad (M) did not grant the same. However, in the present suit, the respondent-plaintiff has sought the following prayer:-

"That suit property is situated at Village Teora, Tehsil Shahabad Markanda, District Kurukshetra, which is within the territorial jurisdiction of this Hon'ble Court and this Hon'ble Court have got jurisdiction to entertain and try the present suit.

It is therefore prayed that the suit for possession by way of specific performance of agreement to sell dated 19.03.2013 may kindly be decreed in favour of the plaintiff and against the defendants with costs and the plaintiff may please be put into the possession of the suit property and a decree for declaration to the effect that the judgment and decree dated 17.10.2014, sale deed No.3590 dated 6.1.2015 and mutation No.2741 which is sanctioned on 8.1.2015 may kindly be declared null, void, illegal, inoperative and not binding on the rights of the plaintiff, be passed in favour of the plaintiff and against the defendants. It is further prayed that the defendants may kindly be restrained not to alienate the suit property in any manner except to the plaintiff by passing a decree for permanent injunction in favour of the plaintiff and against the defendants. Any other relief for which the plaintiff is ultimately found entitled may also be awarded to the plaintiff."

I would be failing in my duty if I do not refer to the provisions of Section 13 of 2008 Act and as well as relevant extract of the Schedule.

The same read thus:-

"13. Civil jurisdiction.-(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, and subject to sub-section (2), the Gram Nyayalaya shall have jurisdiction to-

(a) try all suits or proceedings of a civil nature falling under the clauses of disputes specified in Part I of the Second Schedule;

(b) try all classes of claims and disputes which may be notified by the Central government under sub-section (1) of Section 14 and by the State Government under sub-section (3) of the said section.

(2) The pecuniary limits of the Gram Nyayalaya shall be such as may be specified by the High Court, on consultation with the State Government, by notification, from time to time.

THE SECOND SCHEDULE

(See sections 13 and 14)

PART 1

SUITS OF A CIVIL NATURE WITHIN THE JURISDICTION OF GRAM NYAYALAYAS

(i) Civil Disputes:

(a) right to purchase of property;

(b) use of common pasture;

(c) regulation and timing of taking water from irrigation channel.”

I am of the view that the declaration qua setting-aside of the judgment and decree dated 17.10.2014 and sale deed bearing No.3590 dated 6.1.2015 would not fall within the ambit/embrace of 2008 Act and the Civil Court would have the jurisdiction to try and entertain the suit, much less pass the judgment and decree in case respondent-plaintiff succeeds in proving the averments made in the plaint.

Accordingly, the impugned order dated 1.5.2015 is hereby set-aside. The plaint is ordered to be returned to the respondent-plaintiff to be presented before the Civil Court having competent/territorial jurisdiction.

The revision petition stands allowed.

April 22nd, 2016
ramesh

(AMIT RAWAL)
JUDGE