

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

RSA No.4967 of 2001
Date of decision : 28.09.2016

Balbir Singh and others

...Appellants

Versus

Bhajan Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: None for the appellants.

Mr. G.S. Savra, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

Originally four appellants namely Balbir Singh, Gurbinder Singh, Harvinder Singh and Sukhbir Singh had filed the appeal, but during the pendency of the appeal vide CM No.5718-C of 2002, appellant No.1- Balbir Singh son of Ajaib Singh had withdrawn the appeal qua his half share in the land by entering into the compromise with the plaintiff, whereby Balbir Singh had paid a sum of ₹1,75,000/- against the receipt dated 15.05.2002 to Bhajan Kaur, Sarabjit Kaur and Paramjit Kaur Vendees. Now the dispute revolves between appellant Nos.2 to 4 and respondent Nos.1 to 3-plaintiffs before the trial Court. The respondents-plaintiffs instituted the suit, on 11.07.1990, seeking specific performance of agreement to sell dated 01.08.1989, alleged to have paid a sum of ₹60,000/-

as earnest money in respect of land measuring 63 kanals 19 marlas at the rate of ₹63,000/- per killa. The terms and conditions of the agreement provided that two sales deeds qua half share each would be executed on 30.11.1989 and 30.06.1990. As per averments in the plaint, at the time of execution of agreement to sell, defendant Nos.1 and 2 namely Balbir Singh and Baldev Singh were owner of the land measuring 38 kanals 12 marlas only and the remaining land was to be purchased by them from Bachan Kaur. It has been stated that on 21.12.1989, plaintiff No.1 namely Bhajan Kaur, purchased 8 kanals 0 marlas of land out of 38 kanals 12 marlas for a consideration of ₹60,000/- from defendant No.1-Balbir Singh and thus, the defendant Nos.1 and 2 were left with ownership of the land measuring 30 kanals 12 marlas. They did not purchase the remaining land from Bachan Kaur and, therefore, plaintiffs were not left with any option but to seek specific performance of agreement to sell of the aforementioned land only. The respondents-plaintiffs asserted that they were ready and willing to perform their part of the agreement and on 29.06.1990 plaintiff No.1 appeared before the office of Sub-Registrar, Samrala by submitting duly sworn affidavit regarding marking of presence and was also in possession of the passbook showing the balance sale consideration, but the defendant Nos.1 and 2 did not come, rather they refused to perform their part of the agreement to sell. During the pendency of the suit, an application for amendment of the suit was moved, as in violation of the injunction order, defendant No.2 namely Baldev Singh on 23.12.1992 had sold the land measuring 15 kanals 0 marlas, out of the land in dispute, in favour of defendant Nos.5 to 7 namely Gurbinder Singh, Harvinder Singh and

Sukhbir Singh-appellant Nos.2 to 4 being alleged bona fide purchasers. It was also pleaded that the aforementioned defendants-appellant Nos.2 to 4 were aware of the pendency of the suit and, therefore, they could not take up the benefit of provision of Section 41 of Transfer of Property Act. Defendant No.1 had executed the mortgage deed dated 04.08.1994, in favour of bank, regarding 14 kanals 8 marlas out of property agreed to be sold, therefore, the sale deed in respect of mortgaged land/property was said to be void, on the principle of lis pendens.

The defendant Nos.1, 5 to 7 filed their joint written statement, contested the suit that the land measuring 30 kanals 12 marlas was purchased by the defendant Nos.1 and 2 from defendant No.4 vide sale deed dated 08.11.1988 and another 8 kanals 0 marlas of land was purchased by defendant No.1 from defendant No.4 namely Bachan Kaur on 12.07.1989. The factum of 8 kanals 0 marlas of land having been sold by defendant No.1 in favour of plaintiffs was admitted, much less, the execution of the agreement and receipt of earnest money. It was also stated that on 29.06.1990, defendant Nos.1 and 2 also attended the office of Sub-Registrar, Samrala and submitted their affidavit dated 02.07.1990, but the plaintiffs were not ready and willing to perform their part of the agreement to sell, thus, agreement was unexecutable. It was stated that the defendant Nos.5 to 7 were/are bona fide purchaser for a valuable consideration and mortgage of land in favour of defendant Nos.5 to 7 was also in accordance with law. The defendant No.3 filed separate written statement averring therein, that a suit against Bachan Kaur was filed and was equipped with order of status-quo. Bachan Kaur had also filed independent written

statement challenging the locus standi.

The trial Court on the basis of the oral and documentary evidence held that respondents-plaintiffs were not always ready and willing to perform their part of the agreement, as plaintiffs had purchased 15 kanals 4 marlas of land directly from Bachan Kaur on 21.11.1989, whereas, defendant No.1 and 2 had purchased 25 kanals 7 marlas of land, therefore, defendant Nos.1 and 2 could not execute the sale deed in respect of entire land i.e. 63 kanals 19 marlas. The trial Court also found that plaintiffs violated the terms of the agreement as they were defaulter having purchased the land from Bachan Kaur, much less, Registrar had also recorded that they were not equipped with sufficient money, and dismissed the suit, but the lower Appellate Court decreed the suit, on the premise that Ex.P1 and Ex.P2 i.e. affidavits dated 29.06.1990 and 02.07.1990 submitted by plaintiffs to the office of Sub-Registrar did not reveal anything contrary, as readiness and willingness was conspicuously absent. The observation recorded by the Sub-Registrar on the application was also debated upon.

As per the memorandum of grounds of appeal, it has been agitated, that defendants No.5 to 7 as per the sale deed dated 23.12.1992 are the bona fide purchasers of the land measuring 15 kanals 0 marlas. The revenue record did not reveal any entry with regard to the execution of the agreement to sell, therefore after having making reasonable enquiries, purchased the land, aforementioned. The plaintiffs vide sale deed dated 21.11.1989 had also purchased the land measuring 8 kanals 0 marlas directly from Bachan Kaur, much less, from the defendant Nos.1 and 2. The lower Appellate Court did not appreciate the fact, that the respondents-

plaintiffs have not been able to prove the ingredients of Section 16 (b) and (c) of 1963 Act, therefore, discretion, under Section 20 ought not to have been granted. Even the land purchased by the defendant was more than what agreed to be sold and urges this Court for setting aside of the judgment and decree of the lower Appellate Court.

Mr. G.S. Savra, learned counsel appearing on behalf of respondent Nos.1 to 3-plaintiffs submits that as per the contents of the application noticed by this Court, the plaintiff had compromised the matter with the appellant No.1, therefore, would not have any grievance if compensated in terms of money, but the fact remains that sale deed, aforementioned, was mortgaged during the pendency of the suit and, therefore, being hit by doctrine akin to lis pendens. Readiness and willingness has also been proved to the hilt i.e. since the time of execution of agreement to sell till filing of suit, much less, during its pendency. The submission of the application before the office of Sub-Registrar was sufficient but was not competent to write on the application with regard to the inadequate consideration which is not requirement of law as per the explanation I & II of Section 20 of 1963 Act and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the respondents-plaintiffs and appraised the paper book.

The fact that the appellant No.1 had already compromised with respondents-plaintiffs having taken a sum of ₹1,75,000/- qua his half share is not in dispute. Now dispute revolves regarding 15 kanals of land approximately. The civil suit was filed in the year 1990, whereas present

appeal is of year 2001, much water has flowed during the pendency of the appeal. The defendant Nos.5 to 7 have already acquired the ownership, by way of sale deed noticed above. Their possession cannot be disturbed by putting clock back. The trial Court had examined the fact that respondents-plaintiffs were not ready and willing with regard to the inadequate consideration.

I am in agreement with the findings rendered by the lower Appellate Court. Inadequate consideration could not be the ground for declining the relief under Section 20 of the Act.

Keeping in view that one of the co-owner compromised with the plaintiff, I do not deem it appropriate to affirm the findings rendered by the lower Appellate Court decreeing the suit with regard to the balance share as it is too late in day.

Plaintiff has already been compensated in terms of money vis-a-vis earnest money of ₹60,000/- and has obtained a sum of ₹1,75,000/-, therefore, there can be no order of compensation.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble

Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 – 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of

Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons aforementioned, I am of the view that judgment and decree rendered by the lower Appellate Court is not sustainable in the eyes of law due to subsequent events narrated above.

Accordingly, present appeal stands allowed.

Judgment and decree of the trial Court to the extent of remaining land and as per the compromise is also declined. There shall be no order as to the costs.

28.09.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No