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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 09.12.2016

1.

RSA-3352-2011 (O&M)

Manjit Singh

... Appellant

Versus

Jaidrath Singh and others

... Respondents

2.

RSA-3357-2011 (O&M)

Manjit Singh

... Appellant

Versus

Jaidrath Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arvind Singh, Advocate
for the appellant(s) in both the appeals.

Mr. Ashok Singla, Advocate and
Mr. Aakash Singla, Advocate
for respondent No.1 in both the appeals.

Mr. Manohar Lall, Advocate
for respondent Nos.2 to 6 in both the appeals.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals,
aforementioned, arising out of the decision of the Civil Suit No.8 of 2001
titled as **“Jaidrath Singh V/s Harbans Singh and others”** which was

decreed in part holding the vendee/respondent(s)-plaintiff(s) to be entitled for refund of earnest money, but equally held the appellant-Manjit Singh not to be a *bona fide* purchaser, resulting into, filing of two appeals, one by the plaintiff(s) and the other by the defendant(s).

Mr. Arvind Singh, learned counsel appearing on behalf of the appellant in both the appeals, submits that the claim in the suit, aforementioned, was for seeking the specific performance of the agreement to sell dated 03.08.2000 in respect of land measuring 14 kanals 15 marlas agreed to have been sold for a total sale consideration of ₹ 7,37,500/- against which earnest money of ₹ 3,26,000/- had been paid and the balance amount of ₹ 4,11,500/- was to be paid on 03.08.2001. During the currency of the agreement to sell, but before filing of the suit, the vendor-Harbans Singh had entered into two agreements to sell dated 20.11.2000 and 12.12.2000 and also sold the land vide sale deed dated 12.12.200 and 18.12.2000. The appellant instituted two Civil Suits bearing Civil Suit No.411 of 2000 & Civil No.2 of 2001 against Jaidrath Singh and Harbans Singh seeking injunction, which were decreed by the trial Court.

He further submits that the lower Appellate Court, in an appeal preferred by the vendee-Jaidrath Singh, decreed the suit *in toto* by granting the discretion under Section 20 of the Specific Relief Act, 1963 and decree of possession against Manjit Singh, who had been put into possession in pursuance to the sale deeds, aforementioned. The appellant(s) were erroneously held to be not *bona fide* purchasers by relying upon the statement of the Scribe, PW-1 Subhash Chander, who was also scribe of the agreement to sell dated 03.08.2000. In fact, the appellant(s) made a

reasonable enquiry before entering into agreement to sell and there was no reflection of the agreement to sell in the revenue record. On the contrary, DW-3 Gian Singh, the witness of the plaintiff-Jaidrath, the real uncle of the plaintiff rather, demolished the case of the vendee that it was a loan transaction as Harbans Singh-vendor had taken a loan for sending his son abroad. The lower Appellate Court has not referred to the aforementioned evidence and held the finding of the trial Court to be erroneous, therefore, there was an abdication and gross illegality and perversity. The appellant(s) is already in possession. It is, in this background of the matter, the Court below ordered for possession and rightly granted the injunction in a suit preferred by the appellant(s). PW6-Numberdar, witness of the plaintiff, has also deposed regarding the possession with Manjit Singh.

He further submits that there is no challenge to the sale deed in the suit seeking specific performance, in essence, no Court fee had been paid or any such prayer. All these factors have not been taken care of, thus, there is gross illegality and perversity and urges this Court for setting aside the findings under challenge.

Per contra, Mr. Ashok Singla, Advocate and Mr. Aakash Singla, learned counsel appearing on behalf of respondent No.1-vendee-Jaidrath Singh, submits that PW-1 Subhash Chander, Scribe, deposed that he had disclosed the factum of entering into an agreement to sell dated 03.08.2000 to Manjit Singh and therefore, he cannot be said to be a *bona fide* purchaser and rightly so, the discretion has been granted as the suit was instituted on 08.01.2001 before the target date as there was already a breach by virtue of the two sale deeds having been entered by Harbans Singh. A

categoric stand of Harbans Singh, in the written statement, was that he never executed the agreement to sell. It was a ploy by Manjit Singh and act of collusion, rather played a friendly match to belie the claim of the plaintiff, for, he denied the execution of the sale deed, much less, agreement to sell.

He further submits that there is a categoric averment with regard to the challenge to the sale deed in the prayer, the Court can always mould the relief in the manner which it deems appropriate, by taking into consideration the relevant fact and evidence on record. Both the parties have not led any evidence particularly Manjit Singh regarding having put into possession in pursuance to the agreement to sell and sale deed. The payment of the earnest money has not been denied, rightly so, the lower Appellate Court granted the discretion and held the plaintiff to be always ready and willing to perform the part of the agreement to sell, thus, urges this Court for affirming the findings under challenge as there is no gross illegality and perversity.

Mr. Manohar Lall, learned counsel appearing on behalf of the LR's of Harbans Singh, that his wife had appeared and supported the case of Jaidrath Singh by stating that Harbans Singh had not entered into any agreement to sell or sale deed in favour of Manjit Singh.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit and force in the submissions of Mr. Arvind Singh, for, DW-3 Gian Singh, witness of the plaintiff-Jaidrath, did not support their case. He, in unequal terms, observed that it was a loan transaction. The parties had not intended to enter into

agreement to sell, in essence, there was no intention. If it was so, it was incumbent upon the lower Appellate Court to uphold such finding rendered by the trial Court. On going through the judgment and decree of the lower Appellate Court, I do not find any discussion, thus, there is an abdication. The statement of a Scribe would not incapacitate the appellant(s) to be not *bona fide* purchasers as they made a reasonable enquiry before entering into the agreement to sell, the sale deed and found that the revenue record did not have any entry qua agreement to sell or in the office of the Sub-Registrar. PW-6, Rattan Singh, Numberdar, common witness in the agreements to sell entered into amongst Manjit Singh, Harbans Singh and Jaidrath Singh, stated that it was Manjit Singh, who had been put into possession. On the contrary, it was also a categorical stand of Jaidrath Singh that he was put into possession, but no evidence, in this regard, has been led. It is, in this backdrop of the matter, the lower Appellate Court has ordered for decree of possession. I am of the view that the lower Appellate Court ought not to have granted discretion in view of such circumstances particularly statement of DW-3, Gian Singh, thus, there is a fallaciousness.

During the course of the hearing, learned counsel appearing on behalf of the respondent No.1, relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Premier Tyres Limited V/s Kerala State Road Transport Corporation” 1993 AIR (SC) 1202**, to contend that the findings arrived at, in a injunction suit, against Manjit Singh of holding not to be *bona fide* purchaser, have not been challenged and therefore, the cross-objections at their instance before the lower Appellate Court were not maintainable.

I am afraid the aforementioned argument is not sustainable, for, in an injunction suit, the framing of issues and finding of *bona fide* purchaser was not required to be called for, particularly when the suit for specific performance was pending.

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 V/s. 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 V/s. 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 appeals, aforementioned.

For the foregoing reasons, the judgment and decree of the lower

Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of trial Court is restored and the finding that the appellant- Manjit Singh is not *bona fide* purchaser, is hereby expunged. Accordingly, the appeals are allowed.

09.12.2016	(AMIT RAWAL)
Yogesh Sharma	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No