IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1897 of 2016 (O&M)
Date of decision : 29.04.2016

Anoop Singh

...Appellant

Versus

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sudeep Mahajan, Advocate for the appellant.

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AMIT RAWAL, J.

The appellant-defendant No.2-subsequent vendee is aggrieved of the concurrent findings of fact, whereby suit seeking specific performance of agreement to sell dated 21.08.2003 in respect of land measuring 15 kanals 7 marlas, as, described in the suit, against the payment of earnest money of ₹60,000/- agreed to be sold for total sale consideration of ₹3,00,000/- per killa, has been decreed against respondent No.1 and sale deed dated 12.12.2003, has been held to be nonest and invalid document as the same has been executed during the currency of the agreement to sell, much less, appellant-defendant No.2 has not been held to be bona fide purchaser.

Mr. Sudeep Mahajan, learned counsel appearing on behalf of appellant-defendant No.2 in support of his arguments has raised multifold submission which are summarized hereinbelow:-

1. He submits that target date for execution and registration of the sale deed was 03.02.2005. However, defendant No.1-vendor sold the land to the appellant-defendant No.2 vide sale deed dated 12.12.2003 which was purchased for total sale consideration of ₹5,76,000/-. The aforementioned property was purchased after making proper enquiry. Having found the defendant No.1 as owner purchase the same thus appellant is bona fide purchaser for valuable consideration.
2. The land was under mortgage with the plaintiffs and there were no encumbrances upon suit land.
3. The appellant-defendant No.2 filed application for redemption of the two mortgages made in favour of plaintiff under the provision of Punjab Redemption of Mortgages Act.
4. The aforementioned proceedings were contested by the respondents-plaintiffs and vide order dated 08.06.2004, both the mortgages were redeemed.
5. The mortgage consideration has been deposited on behalf of defendant No.2 before the Collector, Amritsar, therefore, plaintiffs were not left with any right or title or interest in the suit land.
6. The defendant No.1 colluded with the plaintiff by admitting the agreement to sell but in reply to para Nos.2, 3 and 4 submitted

that plaintiff was not having sufficient funds required for the execution and registration of the sale deed, thus, the readiness and willingness on the part of the respondent-plaintiff was conspicuously absent. The aforementioned averments have not been denied by the respondent by filing replication and thus, the averments made in the plaint are deemed to be admitted as per the provision of Order 8 Rule 5 of the Code of Civil Procedure.

7. No sane person would keep the target date of execution and registration of the sale deed for a period of more than 1 ½ years, much less, no explanation has come forth affixing the stipulated date earlier to the one noticed in the agreement to sell. The agreement to sell dated 21.08.2003 Ex.P3 has not been proved as only one witness namely Kulwinder Singh has been examined and he admitted in cross-examination that plaintiff-Surjit Singh was his real uncle.

8. The scribe of the agreement to sell spilled the beans as he admitted that note in the register and the acknowledge of sale of the suit land by Khushal Singh in favour of defendant No.2 was in his own hand.

9. Note Ex.D3 or Ex.D1 clearly states that purchaser i.e. plaintiff have been told regarding sale deed of land had already been executed in favour of appellant-defendant No.2, therefore, agreement to sell is nothing but shrouded by suspicious circumstances, much less, antedated documents.

10. Both the Courts below have erred in disregarding the note and the register and also testimonies of witness PW3 who stated that said note was is in own hand.

11. The deed writer not only admitted the note at the end of the photocopy of his register in his own hand, but also that of the photocopy Ex.D1 of his register as per the original, thus, both the courts below have committed fallacy in decreeing the suit.

In support of his submissions, he has cited following judgments to contend that once plaintiff has not complied with legal mandatory requirement as provided under Section 16(c) of the Specific Relief Act, the discretionary relief under Section 20 of 1963 Act should not be granted:-

1. *2015(3) Civil Court Cases 001 (S.C.), Padmakumari & ors. Vs. Dasayyan & ors.*
2. *2011 (4) Civil Court Cases 330 (S.C.), Coromandel Indag Products (P) Ltd. Vs. Garuda Chit and Trading Co. P. Ltd. and another.*

and urges this court for formulating following substantial question of law as carved out in memorandum of appeal:-

"1. Whether the judgments of both the courts below are not based on complete misreading of evidence on record thereby trial court as well as the appellate court having reached conclusions which are completely perverse being not supported by correct reading and interpretation of the evidence on record?

2. Whether by virtue of the fact that defendant No.1 has in his written statement categorically averred that the plaintiffs did not have sufficient funds required for execution of the sale *deed and as such defendant No.1 has rightly executed the sale deed in favour of defendant No.2-appellant, which assertion of defendant No.1-owner of the land in question, was not even denied by plaintiffs by filing replication to the written statement of the defendant No.1, it does not amount to admission under Order 8 Rule 4 and 5 CPC, of the fact that the plaintiffs indeed had no money to clinch the sale of the land in dispute?*

3. *Whether in view of the fact that the plaintiffs have never denied the assertion of defendant No.1 that they never had any money to execute the sale deed, can it be said that the plaintiffs have fulfilled the requirement of Section 16(c) of Specific Relief Act and if not, can the plaintiffs be held to be entitled to decree of specific performance?*
4. *Whether the testimony of PW3, the scribe of alleged agreement to sell dated 21.8.2003 (exhibit P-3) has not been wrongfully discarded, which on its correct interpretation, does not lead to the inevitable conclusion that the said document is a forged and an antedated document?*
5. *Whether, in any case, it is not apparent from the entire evidence on record that the defendant No.2-appellant is a bonafide purchaser for valuable consideration and without notice and the conclusions to the contrary of the trial Court as well as the first appellate Court are not based upon a complete misreading of the evidence on record and disregarding of the credible evidence to the effect that the defendant No.2-appellant is a bonafide purchaser for valuable consideration without notice?"*

I have heard learned counsel for the appellant-defendant No.2 and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Mahajan, for, Ex.D1 is attested copy of the entry in the deed writing register of Pradeep Kumar Sancher of agreement to sell dated 21.08.2003.

On perusal of the statement of witness i.e. PW2-plaintiff, it is evident that he simply admitted signatures as well as signatures of Khushal Singh and Kulwinder Singh but never admitted the endorsement Mark-A i.e. note regarding the presence of the plaintiff with regard to sale deed dated 12.12.2003. On the contrary, the plaintiffs have also perused on record the entry contained in the deed writer register Ex.PX/1 but said entry does not carry any entry of note Mark-A as contained in Ex.P1. The appellant DW6 during cross-examination did not deny the correctness of Ex.PX/1. Having admitted the correctness, it does not lie in the mouth of the appellant to contend that agreement to sell dated 21.08.2003 was antedated. As regards the non-filing of replication in bringing into the aid of provision of Order 8 Rule 4 and 5 CPC, it is observed that evidence is not to be pleaded, as pleadings have to be precise and concise. There is specific averments in the suit regarding readiness and willingness which has been proved through the testimonies of the witness and the plaintiff whereas on the contrary, defendant No.1/vendor has admitted the execution of agreement to sell but has not been able to lead any evidence to disprove whether respondent-plaintiff had been not ready and willing to perform his part of the agreement. There is no dispute to the ratio decidendi culled out in the aforementioned judgment but the facts and circumstances of each of the case along with evidence brought on record has to be seen to decide the question raised whether plaintiff had been able to prove the statutory ingredients of Section 16(c) of the Specific Relief Act. PW2 categorically stated that he had sufficient funds for execution of the sale deed and other expenses. Even otherwise it is settled law that where inadequacy of the consideration cannot be the ground for discarding the relief as per Section 20 of the Specific Relief Act. The view of aforementioned of mine is fortified from the judgment rendered by Hon'ble Supreme Court in *Azhar Sultana Vs. B. Rajamani, 2009(2) RCR (Civil) 123*. Thus, the note Mark-A brought on record on behalf of defendant pales into insignificance.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the findings rendered by both the Courts below, much less, no substantial question of law arises for adjudication.

Appeal stands dismissed.

29.04.2016 **(AMIT RAWAL)**
pawan **JUDGE**