223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1467-2015 (O&M)
Date of decision : 02.06.2016

Harjit Singh

... Appellant

Versus

Pawan Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Sharma, Advocate
for the appellant.

****

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.2 is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit of the respondent(s)-plaintiff(s) seeking specific performance of the agreement to sell dated 23.12.2003 has been decreed *in toto*.

Mr. Vijay Sharma, learned counsel appearing on behalf of the appellant-defendant No.2 submits that the story as coined by the respondent(s)-plaintiff(s) in the suit was that defendant No.1 had entered into aforementioned agreement to sell for a sale of the property, in dispute, for a total sale consideration of ₹ 1,10,000/- against the payment of earnest money of ₹ 72,600/-. The Civil Suit was filed on 13.07.2004 preceded by the legal notice, whereas the appellant-defendant No.2, in pursuance to the agreement to sell dated 13.02.2004 had entered into a sale deed dated

14.06.2004 against the amount of ₹ 3,50,000/-, though the sale deed was of ₹ 1,40,000/-.

He further submits that the agreement dated 13.02.2004 has been proved. The appellant is the *bona fide* purchaser for a valuable consideration as he did not know about the existence of the previous agreement to sell entered between the defendant No.1 and the plaintiff, moreover, is entitled to seek the protection under sub-clause (b) of Section 19 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act').

He further submits that the respondent(s)-plaintiff(s) has miserably failed to prove the readiness and willingness qua the balance sale consideration i.e. on the date of the alleged date of execution of the sale deed i.e. 22.06.2004. The trial Court on the basis of the oral and documentary evidence declined the relief of specific performance on the premise that the respondent(s)-plaintiff(s) did not get the presence mark before the sub-Registrar, but before the Notary. In support of his contentions, he relies upon the judgments rendered by Hon'ble Supreme Court in ***"Padmakumari and others" V/s Dasayyan and others" 2015(2) RCR (Civil) 972*** and in ***M/s J.P. Builders and another V/s A. Ramadas Rao and another", 2011 (1) RCR (Civil) 604***.

He further submits that the appellant-defendant No.2, in examination-in-chief examination, asserted the factum of the *bona fide* purchaser and in case, the same has not been rebutted, thus, the onus is deemed to be discharged and in this regard, he relies upon the ratio decidendi culled by the Hon'ble Allahabad High Court in ***"Durga Prasad and another V/s Smt. Lilawati and another" 1972 AIR (Allahabad) 396***, He further submits that the substantial questions of law arises for determination as carved out in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendant No.2 and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Vijay Sharma. For the sake of brevity, the provisions of Section 19 of the 1963 Act read thus:-

> *"19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—*
>
> *(a) either party thereto;*
>
> *(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;*
>
> *(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;*
>
> *(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;*
>
> *(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."*

A perusal of the aforementioned provisions, it is evident that the respondent(s)-plaintiff(s) cannot seek the specific performance on the agreement to sell against the transferee. In the instant case, no relief has been sought against the appellant-defendant No.2 for specific performance. The relief has been sought only against defendant No.1 i.e. original vendor, therefore, the ratio decidendi culled out by the judgment rendered in ***"Durga Prasad's*** case (supra), does not apply to the facts and circumstances of the instant case.

The trial Court dismissed the suit only on the ground that affidavit was notarized, whereas on the contrary, the lower Appellate Court found that the sale deed dated 14.06.2004 did not envisage any agreement to sell, whereas the agreement to sell purported to have been entered into between the defendant No.1 and the appellant-defendant No.2 is dated 13.02.2004, during the currency of the agreement to sell, in question, for a ₹ 3,50,000/-, but the sale deed is of only ₹ 1,40,000/-. It appears that the agreement has been anti-dated and the sale deed is only 8 days before the stipulated date. In my view, the appellant-defendant No.2 is entitled to claim damages against defendant No.1 for having been duped them in not apprising of the previous agreement to sell.

As regards the readiness and willingness, I am of the view that the ratio culled out by the judgment of Hon'ble Supreme Court in ***M/s J.P. Builders'*** **case** (supra) has only described the definition of the readiness and willingness, whereas as per ratio decidendi culled out by Hon'ble Supreme Court in ***"Azhar Sultana V/s B. Rajamani and others" 2009 (2) RCR (Civil) 123***, wherein it has been held that it is not necessary that the balance consideration should have been ready at the time of the registration of the sale deed. The proposition of law before the Allahabad High Court was with regard to the alleged discharge of the burden, but the fact remains that the provisions of Section 19 of the 1963 Act had neither been raised in the grounds of appeal before the lower Appellate Court or before the trial Court.

It is too late in a day to raise the plea for the first time in this Court, much as already noticed above, do not apply and it has been stated that the execution application is stated to be pending.

In case, the respondent(s)-plaintiff(s) has not deposited the amount as per the judgment and decree, the Executing Court shall take into consideration the provisions of Section 28 of the 1963 Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

02.06.2016
yogesh