

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:8.2.2016

RSA No. 2301 of 2015(O&M)

Gurdev Singh

---Appellant

vs.

Manjinder Singh and others

---Respondents

RSA No. 2381 of 2015(O&M)

Jaswant Singh and another

---Appellants

vs.

Manjinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. V.K.Jindal, Senior Advocate
with Mr. Akshay Jindal and Mr. Raj Kumar Garg, Advocates
for the appellant(s)

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

Rekha Mittal, J.

By way of this order, I shall dispose of above-mentioned two Regular Second Appeals No. 2301 of 2015 and 2381 of 2015 as these have emerged out of common judgment and decree dated 23.12.2014 passed by

the Additional District Judge, Ferozepur. For the sake of convenience, facts are taken from RSA No. 2301 of 2015.

Manjinder Singh and Gurmeet Singh, respondents/plaintiffs filed a suit for specific performance of an agreement to sell dated 1.9.2005 on the premise that Gurdev Singh appellant executed the agreement in respect of land measuring 30 kanals 18 marlas, detailed in para No. 1 of the judgment of the trial court, for a sale consideration of Rs. 10,62,187.50/- out of which an amount of Rs. 9,00,000/- was received as earnest money at the time of execution of the agreement and the remaining amount was agreed to be paid at the time of execution and registration of the sale deed on 13.10.2005. On the stipulated date i.e. 13.10.2005, the respondents with balance sale consideration and necessary expenses for stamp and registration, came to the office of the Sub Registrar, Zira for execution of the sale deed but the appellant did not turn up. They got their presence marked by moving an application. They always remained ready and willing to perform their part of the agreement but the appellant committed breach thereof. It is further averred that in violation of agreement of sale, the appellant has sold suit land to Jaswant Singh and Mohan Singh, performas respondents in RSA No. 2301 of 2015/appellants in RSA No. 2381 of 2015 for an ostensible sale consideration of Rs. 10,00,000/-. The respondents came to know about the sale deed when they went to the partwai for obtaining a copy of the jamabandi of the suit land. The appellant did not execute any agreement of sale as mentioned in the sale deed dated 8.1.2008. The performas respondents were fully aware about the agreement to sell dated 1.9.2005 executed by the appellant in favour of the contesting

respondents. The alleged sale deed, agreement dated 17.5.2005 and the writing dated 16.11.2007 are forged, fabricated and ante dated documents to defraud and defeat claim of the respondents.

The appellant/defendant No. 1 filed the written statement, controverting the allegation in regard to any such agreement dated 1.9.2005 having been executed in favour of the respondents/plaintiffs with the averments that the agreement dated 1.9.2005 is false, forged and fabricated document prepared in connivance with Manga, Munshi of Sh. M.S.Rai, Advocate, the scribe, stamp vendor and the marginal witnesses of the agreement. It is averred that the answering defendant had relation with Manga and came to consult him for getting the HPA cancelled from his tractor. Manga, in connivance with the plaintiffs obtained his thumb impressions on blank papers and in some register by misrepresenting that the same are required to file an application with the registering authority for getting HPA cancelled. Later, a false and forged agreement has been prepared to cause wrongful loss to the answering defendant.

Palwinder Singh, father of plaintiff No.1 had obtained Rs. 7,00,000/- from the answering defendant on 23.7.2005 and executed a pronote and receipt in lieu thereof. The defendant demanded the said amount from Palwinder Singh and to avoid payment of loan taken by Palwinder Singh, the plaintiffs in connivance with father of plaintiff No. 1 and the aforesaid witnesses committed fraud with the answering defendant. The defendant has filed an application with Anti Fraud Cell at Ferozepur for taking action against aforesaid persons. He has denied all material averments made in the plaint with a prayer for dismissal of the suit.

The performa respondents (purchasers of the suit land under sale deed dated 8.1.2008) filed their written statement inline with the allegations raised in the written statement filed by the appellant. Later they absented and were proceeded against ex parte.

The learned trial court, on a thoughtful consideration of the rival submissions made by counsel for the parties in the light of issues framed for determination and evidence adduced by the parties, accepted plea of the plaintiffs in regard to execution of the agreement to sell by the appellant, their readiness and willingness to perform their part of the agreement while claim of the appellant that the agreement to sell dated 1.9.2005 is the result of forgery, fabrication or fraud, has been rejected. As a consequence, suit filed by the contesting respondents was decreed for specific performance of the agreement and the defendants were directed to join hands to execute the sale deed in favour of the plaintiffs within three months, on receipt of balance sale consideration.

The judgment and decree passed by the trial court was assailed in two separate appeals, one preferred by Gurdev Singh and the other by Jaswant Singh and Mohan Singh. The Additional District Judge, Ferozepur disposed of the appeals by a common judgment dated 27.9.2013 and the findings recorded by the trial court were affirmed and the appeals were ordered to be dismissed.

Still feeling dissatisfied, two separate appeals have been preferred, one by Gurdev Singh, (RSA No. 2301 of 2015) and the other by Jaswant Singh and Mohan Singh, appellants (RSA No. 2381 of 2015).

Counsel for the appellant in RSA No. 2301 of 2015 has

submitted that the courts below rejected plea of the appellant that the agreement dated 1.9.2005 is the result of fraud and forgery by misreading and misconstruing the evidence on record. It is argued that FIR was registered at the instance of the appellant on the allegation that the agreement is the result of fraud played upon the appellant by the beneficiaries in connivance with Manga, Clerk of Sh. M.S.Rai, Advocate, the scribe and attesting witnesses of the agreement. On completion of investigation, report under Section 173 of the Code of Criminal Procedure has been submitted and the matter is pending in the Court. Another submission made by counsel is that the suit was filed by the plaintiffs/respondents in January 2008 immediately after execution of the sale deed dated 8.1.2008 by the appellant in favour of proforma respondents and that is sufficient to negate their plea that they always remained ready and willing to perform their part of the agreement. In addition, it is submitted that had the respondents been ready and willing, there was no reason for them to wait for more than two years for instituting the suit seeking specific performance of the agreement. Counsel has prayed that the judgments and decrees passed by the courts below may be set aside and the contesting respondents may be allowed alternative relief of recovery as the appellant is ready to pay double the amount allegedly paid by the respondents, along with interest to be determined by the Court.

Counsel for the appellants in RSA No. 2381 of 2015 has submitted that as the appellants are bona fide purchasers for consideration without notice of the alleged agreement to sell propounded by Manjinder Singh and Gurmeet Singh, the plaintiffs are not entitled to relief of specific

performance of the agreement as any such relief would cause a serious prejudice to rights of the appellants in the suit property on the basis of sale deed dated 8.1.2008, admittedly executed by Gurdev Singh, erstwhile owner, in their favour.

I have heard counsel for the appellants and perused the records.

RSA NO. 2301 of 2015

Before advertng to the submissions made by counsel representing two sets of appellants, it is appropriate to recapitulate the enunciation of law laid down by Hon'ble the Supreme Court of India in **M.M.S. Investments, Madurai and others vs. V.V. Veerappan and others 2007(2)RCR(Civil) 816**, wherein the Court has held in para 06, quoted thus:-

“Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the Specific Relief Act, 1963 (in short the “Act”) is not applicable. It is to be noted that the decision in Ram Awadh's case (supra) relates to a case where there was only an agreement. After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice. In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence. In Ram Awadh's case (supra)

the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation.”

In view of the above, contention raised by appellant Gurdev Singh that the plaintiffs/respondents were not ready and willing to perform their part of the agreement loses its relevance for the reason that the suit property stands alienated in favour of Jaswant Singh and another vide sale deed dated 8.1.2008.

This brings the Court to the two fold submissions made by counsel for appellant to assail the judgments and decrees impugned. The plea with regard to the agreement being the result of fraud or forgery does not get substantiated from the materials on record. The mere fact that the FIR was got registered by the appellant or challan has been presented in the Court is not at all sufficient to hold in favour of the appellant that the agreement is the result of fraud or forgery. I would hasten to add that what to talk of registration of an FIR or presentation of challan in the Court, even judgment passed by a criminal court accepting plea of the appellants would not be binding upon the civil court as the civil court has to record its independent finding on the plea of fraud or forgery in the light of materials on record. Counsel is not in a position to point out any such evidence which has either been ignored or misinterpreted by the court much less the evidence being sufficient to substantiate the plea of fraud, required to be proved beyond shadow of doubt. One thing more to be added here is that

plea of the appellant that the respondents prepared the agreement as he demanded loan obtained by Palwinder Singh, father of plaintiff No. 1, it is an undisputed position that the appellant filed a suit for recovery of the amount against Palwinder Singh but later withdrew the same for the reasons best known. The very fact that the appellant withdrew the suit for recovery goes a long way to reject his contention that the agreement in question was prepared by the plaintiffs to put pressure upon the appellant in regard to his claim against Palwinder Singh. In this view of the matter, I do not find any merit in the contention of the appellants that consistent findings recorded by the courts below rejecting plea of the appellant in regard to fraud and forgery, warrant intervention.

As the agreement dated 1.9.2005 has been proved by the contesting respondents and plea of the appellant that the said agreement is the result of fraud or forgery has been rejected throughout, the appellant otherwise is not entitled to raise an issue with regard to readiness and willingness of the proposed vendees under the agreement, more particularly in the circumstances that the suit property has already been alienated by the appellant in favour of performas respondents namely Jaswant Singh and Mohan Singh.

Ordinarily, in contract for sale of immovable property, time is not essence of the contract. There is nothing on record suggestive of the fact that there was increase in price of the property with effect from 13.10.2005 to January 2008 in order to doubt plea of the contesting respondents that they always remained ready and willing to perform their part of the contract. On the contrary, it is an admitted case of the appellant

that the suit land has been sold to perform respondents for a sale consideration of Rs. 10,00,000/- whereas in the agreement executed in favour of the contesting respondents, the price was settled at Rs. 10,62,187.50/-. The respondents had already paid a substantial amount of Rs. 9,00,000/- towards earnest money, therefore, there can be no reason for them to be not willing and ready to perform their part of the agreement. Taken from any angle, contention of the appellant that filing of suit after two years of the agreement negatives claim of the respondents with regard to readiness and willingness is devoid of merit and is accordingly rejected.

RSA No. 2381 of 2015

The appellants filed the written statement supporting claim of Gurdev Singh appellant, owner of the suit land. They raised the plea of bona fide purchasers for consideration without notice. They, for the reasons best known, absented from the proceedings and were proceeded against ex parte. Admittedly, they did not adduce any evidence to discharge the onus to prove the plea of bona fide purchasers for consideration without notice. It appears that they preferred an appeal against the judgment and decree passed by the trial court without any effort to get the ex parte proceedings set aside, against them. An adverse inference is to be drawn against them for their failure to appear in the witness box and provide an opportunity to the contesting respondents to challenge correctness of their plea of bona fide purchasers, for value, without notice. In absence of any evidence by the appellants, they have no case worth consideration when otherwise findings have been recorded by the courts below without any variance. In this view of the matter, neither any substantial question of law arises for

adjudication nor there is any error much less illegality in the findings recorded by the courts.

For the foregoing reasons, finding no merit, the appeals are dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

8.2.2016
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