

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2525 of 2015 (O&M)

Date of Decision : 05.12.2016

Jagdarshan Singh Khurana and another

....Appellants

Versus

Punjab State Federation Coop. House Building Society Ltd. and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Sharma , Advocate
for appellants.

Surinder Gupta, J.

Plaintiffs filed suit seeking the relief of mandatory injunction directing the defendants to enter their names as allottees/transferees of flat no. 615-FF, Housefed Complex, Pakhowal Road, Ludhiana in the record of defendant no. 1-Punjab State Federation of Cooperative Society Ltd.

2. Case of plaintiffs, in brief, is that Housefed allotted the disputed flat to defendant no. 2-Daljit Singh vide allotment letter dated 24.02.1998, who appointed defendant no. 3-Dr. Manjit B. Singh, his wife, as general power of attorney under intimation to defendant no. 1. Defendant no. 2 through his attorney defendant no. 3 entered into an agreement to transfer this flat to defendants no. 4 and 5 and affidavit to this effect was submitted by defendants no. 2 and 3 with defendant no. 1. Defendants no. 4 and 5 were put in actual physical possession of the flat after receipt of requisite sale consideration by defendants no. 2 and 3.

3. Vide agreement dated 13.08.2005, defendants no. 4 and 5 agreed to sell the disputed flat to plaintiffs for a sum of ₹15 lacs and received ₹2 lacs as earnest money. Balance sale consideration was to be paid by 28.09.2005.

Defendants no. 4 and 5 took responsibility to get names of plaintiffs entered in

the record of defendant no. 1 as allottees of the flat and in the event of their not performing their part of contract to pay ₹4 lacs to plaintiffs. All the necessary formalities for transfer of flat in the name of plaintiffs were to be performed by defendants no. 4 and 5. Plaintiffs had been ready and willing to perform their part of the agreement and requested defendants no. 4 and 5 to do the needful and accept the balance sale consideration but they kept on putting off the matter on one pretext or the other.

4. Plaintiffs have averred that all the defendants are under legal obligation to comply with terms of agreement dated 15.06.2005 and 13.08.2005, which are legal and valid. As clear title of the flat is not available with defendant no. 2 and defendants no. 4 and 5, plaintiffs instead of filing suit seeking specific performance of agreement executed by defendants no. 4 and 5 in their favour filed the instant suit claiming the relief of mandatory injunction under Section 39 of the Specific Relief Act.

5. Defendant no. 1 in its separate written statement admitted allotment of flat to defendant no. 2 and the receipt of request from defendants no. 4 and 5 to transfer the flat in their names. However, the same was not done as defendant no. 2 denied power of attorney executed in favour of defendant no. 3.

6. Defendant no. 4 in his separate written statement dubbed agreement dated 13.08.2005 propounded by plaintiffs as forged and fabricated.

7. Suit was dismissed by learned Civil Judge (Junior Division), Ludhiana with the observations that it has not been proved on record that defendants no. 4 and 5 possessed valid title of suit property and were competent to convey the same in favour of plaintiffs. Not satisfied, plaintiffs filed appeal, which was also dismissed by learned Additional District Judge,

not duly proved. Title of defendants no. 4 and 5 over the disputed flat was also not proved, consequently, plaintiffs being transferees from defendants no. 4 and 5 could not be ordered to be recorded as allottees of disputed flat in the record of defendant no. 1.

8. I have heard learned counsel for appellants and perused the paper-book with his assistance.

9. Plaintiffs are basing their claim on agreement dated 13.08.2005 executed by defendants no. 4 and 5. Firstly, defendants no. 4 and 5 are not recorded as allottees of disputed flat in the record of defendant no. 1 because of their dispute with defendant no. 2. Secondly, no direction can be issued to defendant no.1 and defendants no. 2 and 3 to comply with terms of compromise between plaintiffs and defendants no. 4 and 5. Thirdly, the remedy available with plaintiffs is to seek specific performance of agreement and not the relief of mandatory injunction. Fourthly, plaintiffs were aware at the time of filing of suit that flat has not been transferred in favour of defendants no. 4 and 5 by defendant no. 2. Fifthly, in the suit for specific performance of agreement, plaintiffs could seek the performance of terms of agreement by defendants no. 4 and 5 or in the alternative for recovery of earnest money/damages as per terms of agreement. The suit filed by plaintiffs is not maintainable and direction as sought could not be issued against defendants no. 2 and 3.

10. For the reasons discussed above, this appeal has no merit giving rise to any substantial question of law requiring determination.

Dismissed.

December 05, 2016
jk

(SURINDER GUPTA)
JUDGE