

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4267 of 2015 (O&M)

Date of Decision: 09.11.2016

Anita Sood

... Appellant

Vs.

Mangat Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. M.S. Dhami, Advocate
for the appellant.

Amol Rattan Singh, J

1. This appeal has been filed by the plaintiff in a suit seeking specific performance on the basis of an agreement of sale dated 20.02.1998. The suit having been only partly decreed in her favour, against the first respondent-defendant herein, but even that judgment and decree having been reversed by the learned first Appellate Court, also dismissing the plaintiff's own appeal, this second appeal has been filed before this Court.

2. The facts of this case, as set up by the appellant herein (hereinafter referred to as a plaintiff), as taken from the judgments of the Courts below, are that the plaintiffs' case was that an agreement of sale had been entered into by respondent-defendant no.1 (hereinafter referred to as respondent no.1) for the sale of a house bearing no.2033, Pipliwala Town, Mani Majra, Chandigarh, U.T., for a sale consideration of ₹65,000/-, on 20.02.1998. The said agreement was allegedly entered into by the first respondent on his own behalf as also on behalf of respondents-defendants

no.2 & 3 (hereinafter referred to as respondents no.2 & 3) who are sisters of

respondent no.1 and joint owners of the suit property with him.

3. ₹10,000/- was said to have been paid to respondent no.1 as earnest money, with the balance to be paid at the time of registration of the sale deed. The date for execution and registration of the “sale deed / GPA/SPA, affidavit and will etc.” (as depicted in the impugned judgments, from the plaint), was fixed as 20.08.1998, or any date prior thereto.

It was further stipulated in the agreement that in case the seller backs out from the agreement he would refund double the earnest money and the purchaser would have an option either to accept such liquidated damages or to get the sale effected through a Court of law.

If the purchaser backed out, the earnest money was to be forfeited to the seller.

4. It was contended that the plaintiff had always been ready and willing to perform her part of the contract and on 20.08.1998 she reached the office of Sub Registrar, but despite waiting there from 10 AM to 5 PM, the respondent did not turn up and consequently the plaintiff got her presence in the office “marked” by executing an affidavit attested by the Oath Commissioner.

Thereafter, she sent a notice on 03.09.1998, asking the respondents-defendants to come to the office of the Sub Registrar within a period of 15 days and to execute the sale deed after receiving the balance sale consideration.

On completion of 10 days, the plaintiff is stated to have again gone to the office of the Sub Registrar, with the balance money in the shape of a bank draft, and yet again remained present in that office, but when the respondent again did not turn up, she again got an affidavit attested before

the Sub Registrar with regard to her presence.

Thereafter it was contended that the defendants not having fulfilled their part of the agreement, the suit was instituted on 23.03.1999.

5. Notice having been issued to the respondent-defendant, respondent no.1 herein filed a separate written statement taking preliminary objections on maintainability, cause of action, estoppel etc.

On merits it was contended that the house in question belongs to three co-owners, with the first defendant being only one of them. The other co-owners not having entered into any agreement, it could not be sold on their behalf by the first respondent and as such the agreement was void.

It was further alleged that in fact the earnest money was returned to the plaintiff in terms of an oral agreement to the effect that if respondents no.2 & 3 did not sign the agreement, the said money would be returned. It was further contended that one Sh.Ram Murti was present at that time and for all these reasons, the suit was required to be dismissed.

6. The third respondent herein filed a separate written statement, also generally making the same averments and further stating that there is no privity of contract between her and the plaintiff as she had never authorised the first defendant to enter into any agreement on her behalf.

7. Upon the aforesaid pleadings the following issues were framed by the learned Civil Judge (Jr. Div.), Chandigarh:-

“1. Whether defendant executed agreement to sell dated 20.2.1998?OPP

2. Whether the plaintiff has been ready and willing to perform his part of the contract?OPP

3. Whether plaintiff is entitled to decree of specific performance?OPP

4. Whether defendant received ₹10000/- as earnest

money?OPP

5. *Whether plaintiff is entitled to alternative decree of ₹65,000/- with interest as claimed?OPP*

6. *Whether agreement in question is not lawful agreement?OPD*

7. *Whether the petition is without cause of action?OPD*

8. *Whether the plaintiff is estopped by his own act and conduct in filing the present petition?OPD*

9. *Whether amount of ₹10000/- was returned to the plaintiff?OPD*

10. *Whether the petition is not maintainable?OPD*

11. *Whether there is no privity of contract between the parties?OPD*

12. *Relief.”*

8. The plaintiff examined herself and one Surinder Kumar as PWs1 & 2 respectively, whereas the respondents examined respondent-defendant no.1 Mangat Ram, respondent-defendant no.2 Rekha Rani, one Neelam and the aforementioned Ram Murti, as DWs1 to 4 respectively.

Documentary evidence was also tendered by the plaintiff.

9. The learned Civil Judge, on appraising the evidence and pleadings, found that PW2 was a marginal witness to the agreement, in respect of which he duly testified, along with the plaintiff. On the other hand, defendants no.1 & 3 having testified in terms of their respective written statements, DW3, Neelam, also deposed to the effect that she was a neighbour of the defendants and that the house in question belonged to 4 co-owners and when respondent-defendant no.1 entered into the agreement, the plaintiff had actually assured him that she herself would convince his sisters, i.e. the other co-sharers, into the selling the house but she could not

do so. This witness further testified that when the sisters did not come

forward to sign the agreement, the earnest money of ₹10,000/- was returned to the plaintiff in the presence of this witness, and DW4 Ram Murti.

DW4 also testified on similar lines.

10. The learned Civil Judge found that the agreement in question had been duly entered into by respondent no.1 herein with the plaintiff, but that there was no authorisation at any time by respondents no.2 & 3, to sell the property on their behalf also.

It was further found that no oral agreement could be proved by any of the documents, i.e. either the agreement itself or even the reply to the legal notice dated 25.08.1998, in which again no oral agreement was referred to.

Hence, as regards the return of the earnest money, that was disbelieved by the learned Court, holding that there was also no receipt to that effect and no prudent person would return the money without obtaining a receipt and getting the original agreement back.

11. Having recorded the aforesaid finding, it was held that with the agreement entered into by respondent no.1 herein duly proved, he was bound by it and consequently a suit for specific performance was decreed to the extent of his share in the suit property, further holding that the plaintiff was therefore required to pay only 1/3rd of the total consideration sum of ₹65,000/-, i.e. ₹21,667/-, of which ₹10,000/- already stood paid.

Hence, the first respondent herein was directed to get the sale deed executed qua his 1/3rd share, on the plaintiff depositing the balance sale consideration of ₹11,667/- in the Court within a period of two months.

12. The respondents herein, as also the plaintiff, both filed appeals against the aforesaid judgment and decree of the learned Civil Judge, before

the first appellate Court.

That Court also, as regards the facts, came to the conclusion on the basis of the evidence led, that the agreement stood duly proved to have been executed, with ₹10,000/- paid by the plaintiff to respondent no.1.

That Court also disbelieved the testimony of DW3, Neelam, to the effect that ₹10,000/- had been returned upon the plaintiff not having been able to convince respondents no.2 & 3 to sell their share of the property also.

13. The lower appellate Court further held that there being no privity of contract between the plaintiff and respondents no.2 & 3, the question of reversal of the decree of the Civil Judge in that respect, did not arise. However, as regards the decreeing of the suit in favor of the plaintiff even qua the first respondent herein, it was held that the agreement to sell being with regard to the sale of the entire house and the plaintiff having sought specific relief qua the entire property and not just qua the extent of the share of respondent no.1, the agreement in fact could not be given affect to, it having been entered into only by respondent no.1, with him having only a 1/3rd share therein.

14. Essentially on the aforesaid reasoning, the appeal of the present respondents-defendants was accepted to the extent of reversing the decree of specific performance issued by the learned Civil Judge, but entitling the plaintiff nevertheless, to the alternative relief of recovery of double the amount of earnest money, along with interest @ 12% per annum, from the “due date till the date of the decree and @ 6% per annum from the date of the decree till realisation of the amount of ₹20,000/-”.

Consequently, the appeal of the plaintiff, seeking the relief of

specific performance qua the whole house, i.e. qua the shares of respondents-defendants no.2 & 3 also, was dismissed qua that relief, but was allowed to the extent of the alternative relief, as hereinabove.

15. In this 2nd appeal, learned counsel for the appellant submitted that respondents-defendants no.2 and 3, when examined, had testified that they knew of the agreement entered into by respondent no.1 with the appellant-plaintiff and as such, the contention is that with knowledge of the agreement, it would be taken to be with their consent. However, upon query by the Court, it is very fairly admitted by the learned counsel that it was not stated in the cross-examination of the aforesaid defendants also, that they had consented to the agreement.

Thus, simply because they came to know of the agreement at some time, but had never authorized respondent-defendant no.1 to actually enter into the agreement qua the suit property, which is a residential house, I see no reason to interfere with the judgment of the learned lower appellate Court, reversing the judgment of the learned Civil Judge (Jr. Divn.), Chandigarh, and decreeing the suit of the appellant only to the extent of the alternative relief of refund of double the amount of the earnest money paid by the appellant-plaintiff, along with interest thereupon.

The suit property being a house which remained un-partitioned, in which all three respondents-defendants had an equal share, refusal to grant a decree of specific performance qua the 1/3rd share of respondent no.1, is not seen to be either illogical or arbitrary in any manner.

Had the suit property been agricultural land etc., the contention of the plaintiff may have been acceptable. However, that not being the case, I see no error in the judgment of the first appellate Court.

16. Learned counsel further submitted that in fact the first respondent-defendant had admitted to the agreement and had further stated that the suit property initially belonged to their father, who had married off his sisters, i.e. respondents no.2 and 3, and that as he was looking after his sisters, he was entitled to dispose of the property even on their behalf. That argument also cannot hold good in any manner, the sisters, i.e. respondents no.2 & 3, admittedly having an equal share in the property and no family settlement etc. even having been pleaded by the plaintiff, inter-se the respondents-defendants, by which it could be inferred that respondents no.2 & 3 had given up their shares in the suit property in favour of their brother, i.e. respondent no.1, either for consideration of love and affection or being looked after by him.

Hence, that argument is also to be wholly rejected.

16. Consequently, the appeal is found to be without merit and is dismissed in limine, but with no orders as to costs.

November 09, 2016
davinder/vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether order reportable? Yes

Whether order speaking/reasoned? Yes