In the High Court of Punjab and Haryana at Chandigarh

RSA No. 224 of 2014
Date of Decision: 26.2.2016

Vinod Kumar and others

---Appellants

versus

Des Bandhu and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Longia, Advocate
for the appellants

Mr. Pritam Saini, Advocate
for the respondents

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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?

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Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 26.8.2013 passed by the Additional District Judge, Kurukshetra, dismissing the appeal against the judgment and decree dated 12.8.2011 passed by the trial court whereby the suit filed by Bharat Bhushan plaintiff now represented by his legal representatives, has been decreed.

The facts, in brief, are that Om Parkash @ Ruldu (predecessor-in-interest of the appellants) agreed to sell the suit land to Sh. Bharat Bhushan for a sale consideration of Rs. 5,50,000/- vide agreement to sell dated 27.11.2006 registered on 28.11.2006 and received a sum of Rs. 4,00,000/- as earnest money on 28.11.2006 before Joint Registrar, Pehowa and agreed to execute and register the sale deed on payment of balance sale consideration of Rs. 1,50,000/- before 5.11.2007. Om Parkash @ Ruldu passed away and the appellants had inherited the property of Om Parkash @ Ruldu being his legal heirs and thus liable to execute and register the sale deed on the basis of aforesaid agreement to sell. On 5.11.2007, the plaintiff went to the office of Sub Registrar, Pehowa alongwith balance sale consideration and expenses for stamp and registration but the appellants had not appeared there. He (plaintiff) approached the appellants many a times but they postponed the matter on one pretext or the other. The plaintiff always remained ready and willing to perform his part of the contract. On 13.12.2008, plaintiff served a legal notice upon the appellants through registered AD/UPC through his counsel but the appellants refused to receive notice sent through registered AD but failed to file reply or comply with the notice despite receipt of notice sent through UPC. Plaintiff thereafter requested the appellants a number of times to get the sale deed executed but they failed to do so.

The appellants filed the written statement, contested claim of the plaintiff by raising preliminary objections regarding locus standi, maintainability, cause of action, estoppel, non-joinder and mis-joinder of parties, limitation, court fee and concealment of true and material facts. On merits, it has been pleaded that the plaintiff was running a commission agency in food grains at Pehowa and the appellants used to sell their crops at that shop. Whenever, sale consideration was received by them (appellants) and their father before his death, the plaintiff used to take their signatures in ledger book (*Bahi*) on the pretext that the same are required for income tax purpose. Om Parkash @ Ruldu never entered into any agreement to sell nor received earnest money. After death of Om Parkash, the appellants used to sell their food grains at the shop of plaintiff but he did not pay the sale price of food grains and the suit has been filed to grab property of the appellants. All other material facts of the plaint have been denied with a prayer for dismissal of the suit.

The learned trial court, on consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and rival submissions made by respective counsel, accepted claim of Bharat Bhushan plaintiff. The appeal preferred by Vinod Kumar and others against Bharat Bhushan through his legal representatives Des Bandhu and others did not find favour with the first appellate court and as a result, the findings recorded by the learned trial court were affirmed.

Still feeling dissatisfied, the matter has been carried in appeal before this Court.

The sole submission made by counsel for the appellants is that as the plaintiff has failed to prove one of the pre-requisites for staking claim to specific performance of the agreement to sell envisaged in Section 16(c)of the Specific Relief Act, 1963 (in short "the Act"), the courts below have committed a gross error rather illegality in allowing specific performance of the agreement instead of alternative relief of recovery of the alleged payment made to Sh. Om Parkash @ Ruldu.

To bring home his contention, counsel has submitted that as per agreement dated 27.11.2006, the sale deed was agreed to be executed on or before 5.11.2007. Sh. Om Parkash @ Ruldu (erstwhile owner) passed away on 18.2.2007. The cause of action to file the suit accrued to the plaintiff immediately after death of Sh. Om Parkash @ Ruldu. Admittedly, the appellants did not appear in the office of the Sub Registrar to execute and register the sale deed on 5.11.2007. There is no explanation as to why the plaintiff allowed one year to elapse in issuing alleged notice dated 13.12.2008 to the appellants (successors in interest of Om Parkash @ Ruldu). The suit was instituted by the plaintiff on 4.6.2009 after about six months from the issuance of the alleged notice and 2½ years after the date stipulated for registration of the sale deed, more than sufficient to show that the plaintiff was not ready and willing to perform his part of the agreement. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court of India **K.S.Vidyanandam vs. Vairavan 1997 AIR (SC) 1751**. He has further referred to judgment of the Madhya Pradesh High Court (Jabalpur Bench) **Mohini vs. Vidhyawati Rathore 2004(4)RCR (Civil) 30** and judgment of this Court in **Civil Revision No. 2169 of 2010 titled "Manoj son of Shri Mange Ram vs. Umesh and others"** decided on 24.7.2015.

Counsel for the respondents, on the contrary, has supported the consistent findings recorded by the courts below with the submissions that the plaintiff (now represented by his legal representative) always remained ready and willing to perform his part of the agreement. It is argued that subsequent to death of Sh. Om Parkash @ Ruldu and prior to arrival of the stipulated date for execution and registration of the sale deed i.e. 5.11.2007, the plaintiff approached the legal heirs of Om Parkash @ Ruldu for execution of the sale deed and they agreed to honour the commitment made by their father but failed to turn up to get the sale deed executed and registered. On 5.11.2007, the plaintiff remained present in the office of the Sub Registrar alongwith balance sale consideration and miscellaneous expenses to prove his bonafide. Subsequent to 5.11.2007, the plaintiff approached the appellants many a times for execution and registration of the sale deed but they postponed the matter on one pretext or the other. Even after issuance of notice dated 13.12.2008, the plaintiff approached the appellants to do the needful but a day before filing of the suit, they refused to perform their part of the contract and rather threatened to alienate the suit property in favour of someone else. It is vehemently argued that there is no specific denial to the averments raised in paras 3 to 7 of the plaint in regard to the plaintiff having repeatedly approached the appellants for execution and registration of the sale deed and that amounts to an admission on their part.

Another submission made by counsel is that as the appellants have denied the agreement to sell with the plea that the same is a fake and forged document and they are not bound by the same, they are otherwise not entitled to be heard in the matter with regard to readiness and willingness of the plaintiff to perform his part of the agreement.

I have heard counsel for the parties, perused the paper book and the records received from the courts below.

Counsel for the appellants has not challenged the findings recorded by the courts below that Sh. Om Parkash @ Ruldu executed agreement to sell dated 27.11.2006, registered on 28.11.2016 whereby he received an amount of Rs. 4,00,000/- as earnest money out of total sale consideration of Rs. 5,50,000/-. The appellants in the written statement have raised a plea that earlier Sh. Om Parkash @ Ruldu was a customer at the commission agency of the plaintiff and after death of Sh. Om Parkash @ Ruldu, the appellants happened to be customer at the said shop. Counsel has fairly conceded that there is no evidence on record to establish plea of the appellants in regard to Sh. Om Parkash @ Ruldu being a customer at the commission agency of the plaintiff. As soon as the appellants failed to adduce any evidence much less cogent and convincing to establish their plea in this regard, the entire line of defence adopted by them in para 8 of the preliminary objections fall to the ground like a pack of cards.

Counsel for the respondent is right in his submission that as the appellants have denied execution of the agreement to sell with a plea that the same is fake and forged, it is not open for them to raise an issue that the proposed vendee is either not ready and willing to perform his part of the agreement or he cannot seek specific performance of the agreement, even if proved.

Plaintiff has proved that on the stipulated date i.e. 5.11.2007, he was present in the office of the Sub Registrar for getting the sale deed executed and registered. In paras 3 to 7 of the plaint, the plaintiff has pleaded that he approached the appellants prior to 5.11.2007, subsequent to 5.11.2007 and even after service of notice dated 13.12.2008 to execute and register the sale deed but they postponed the matter on one pretext or the other. In para 7, he has raised a specific plea that he approached the appellants a day before yesterday and they flatly refused to perform their part of the contract and further threatened to alienate the suit property. In the written statement filed by the appellants in response to paras 3 to 7, there is no specific denial in regard to the plaintiff having approached them for execution of the sale deed as alleged. On the contrary, the appellants averred that they are not bound by the fake agreement and the plaintiff has no right to approach them or make any request or to file a suit.

This apart, as Sh. Om Parkash @ Ruldu unfortunately passed away in February 2007 and the plaintiff approached the appellants to execute the sale deed and they assured to perform their part of the agreement, the plaintiff was well within his right to wait for some reasonable time. On 5.11.2007, the plaintiff appeared before the Sub Registrar to perform his part of the agreement but the appellants failed to discharge their obligation. The plaintiff again approached the appellants for execution and registration of the sale deed but they postponed the matter. He served notice dated 13.12.2008 but the same did not yield any result.

There is nothing on record to suggest that there was escalation of price of the suit property between 27.11.2006 to 4.6.2009 to create a doubt in bona fides of the plaintiff to seek specific performance of the agreement. The plaintiff has already paid an amount of Rs. 4,00,000/- towards earnest money and the payment was made at the time of registration of the agreement on 28.11.2006. After payment of Rs. 4,00,000/- out of total sale consideration of Rs. 5,50,000/-, the plaintiff was required to pay less than 1/3rd of the total sale consideration besides incurring miscellaneous expenses for registration and stamp etc. As per plea of the appellants, the plaintiff is running the business of commission agency at Pehowa. There is no evidence that the plaintiff was not equipped with remaining sale consideration and other expenses to prove that he was not ready to perform his part of the agreement. In view of averments made in paras 3 to 7 of the plaint that remain specifically uncontroverted by the appellants and in absence of any evidence much less a plea substantiated by materials in regard to rising market trend of real estate coupled with the fact that ordinarily time is not essence of contract in transactions of immovable property, I find myself unable to accept submissions of the appellants that the courts below have committed any error much less illegality in exercising their judicial discretion in favour of the respondents allowing specific performance of the agreement. The judgments relied upon by counsel for the appellants have been rendered in peculiar facts and circumstances involved therein, therefore, cannot have any bearing on the facts of the case in hand.

In **K.S.Vidyanandam's case (supra)**, the Hon'ble Apex Court in para 14 has dealt with delay of 2½ years in filing the suit having brought about a situation where it was thought inequitable to give the relief of specific performance to the plaintiff for the reasons that there was total inaction on part of the plaintiff for 2½ years in clear violation of the terms of the agreement which required him to pay the balance, charges of stamp paper and then ask for execution of the sale deed within six months. Further, the delay was coupled with substantial rise in prices three times between the date of agreement and the date of suit notice. However, in the case at hand, the vendee has failed to prove any such circumstances that entitles the appellants to avoid execution and registration of the sale deed in view of an obligation created by their father (since deceased).

Taking commutative view of the facts and circumstances obtaining in the present case, neither any substantial question of law arises for adjudication nor there is any justifiable reason to interfere in the judicial discretion exercised by the courts below in favour of the respondents.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

26.2.2016
PARAMJIT