IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.238 of 2014 (O&M)
Date of Decision.24.10.2016

Amrik Singh and others ....Appellants

Vs

Rajinder Singh ....Respondent

Present: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate
for the appellants.

Mr. Avnish Mittal, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the suit of the respondent-plaintiff seeking specific performance of agreement to sell dated 14.10.2005, has been decreed by setting aside the judgment and decree of the trial Court.

Mr. Vijay Kumar Jindal, learned senior counsel assisted by Mr. Akshay Jindal, Advocate submits that the parties to the *lis* had entered into agreement to sell dated 14.10.2005, Ex.P2, for selling of land measuring 245 kanals 12 marlas for a total consideration of ₹3,68,40,000/- against the receipt of earnest money of ₹50 lacs and subsequently on two dates i.e. 03.12.2005 ₹20 lacs and on 22.03.2006, ₹27 lacs, total ₹97 lacs respectively. The stipulated date for registration and execution of the sale deed was 10.06.2006. According to the averments in the plaint, 10th June was a holiday, thus, respondent-plaintiff had appeared before the office of Sub Registrar on 08.06.2006 instead of appearing on the next working day.

The respondent-plaintiff has not been able to prove on record any evidence regarding the equipment of balance sale consideration. The lower Appellate Court has committed illegality and perversity in not appreciating the aforementioned fact that the land was agreed to be sold @₹12 lacs per acre. The respondent-plaintiff has failed to prove the case, in essence, not able to stand on his own legs. The alleged statements of accounts, Ex.P18 and P19, are in respect of the account of one Linder Pal and Nirmal Singh. No evidence has been produced by the respondent-plaintiff in support of his case that he was having sufficient money and that money had been deposited by him in the account of aforementioned persons. The appearance of the plaintiff in the office of the Sub Registrar, Mullana on 08.06.2006 is doubtful whereas the stamp papers had been purchased by one Karam Singh.

He further submits that the respondent-plaintiff, in fact, had not been able to make out a case within the parameters of provisions of Section 16(c) of the Specific Relief Act, 1963. There was no privity of contract between Linder Pal and Nirmal Singh, much less, three persons in whose favour the the respondent-plaintiff had his intention to execute the sale deeds in pursuance of the aforementioned agreement to sell. In fact, the case was squarely falling within the provisions of Section 16(b) of the 1963 Act.

DW-2, Amarjit Singh, Nambardar appeared in the witness box to depose that the sale deed could not be executed due to paucity of funds. There is sufficient evidence on record that the appellants-defendants' earnest money had been forfeited in Uttar Pradesh because they could not execute the sale deed in their favour from Kanwar Singh, Smt. Sanjo, Suresh etc.

with whom they entered into agreements to purchase their land on 06.02.2006 and 14.02.2006 as the date of execution of sale deed was fixed as 30.06.2006 but owing to the non-payment by the respondent-plaintiff, the aforementioned act could not be performed. This fact has been proved through the testimony of DW4, Harpal Singh Advocate, being the scribe of the agreements to sell, Ex.D11 to Ex.D13. The appellants-defendants had marked their presence on 29.06.2006 vide Ex.D9 and D10. The respondent-plaintiff had failed to prove his part of the agreement and therefore, there is illegality and perversity.

In support of his contention, he relies upon the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in ***J.P. Builders and another Vs. A. Ramadas Rao and another (2011) 1 SCC 429.*** By referring to paragraph Nos.21 and 22, he would contend that the expression "ready and willing" implies that the person was prepared to carry out the terms of the contract. He submits that distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. The amount of consideration which has to be paid to the vendor must, necessarily be proved, to be available.

He also draws attention of this Court to the ratio decidendi culled out by Hon'ble Supreme Court in ***Man Kaur (dead) by LRs Vs. Hartar Singh Sangha 2010(10) SCC 512*** and referred para 14 to contend that if from the evidence, it surfaces that there were no necessary averments in the plaint about the readiness and willingness, the suit has to fail for failure to comply with Section 16(c) of the Specific Relief Act. On similar lines, he relies upon judgment of Hon'ble Supreme Court in ***Bondar Singh***

<u>and others Vs. Nihal Singh 2003(2) RCR (Civil) 222</u> that withholding the best evidence gives rise to adverse inference, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by formulating the substantial questions of law as drawn in the memorandum of appeal and judgment and decree of the trial Court be restored.

Per contra, Mr. Avnish Mittal, learned counsel appearing for the respondents, during the course of the hearing draws attention of this Court to the specific averments made in paragraph 5 of the preliminary objection and paragraphs 9 and 10 on merits. He submits that as per the averments made in the aforementioned paragraphs, the stand taken therein had been, that the defendant remained present on 12.06.2006 as the case set out by the plaintiff was that on the next working day he had also gone but the defendants did not put in appearance. In this regard, marking of the presence on 12.06.2006 has been proved on record vide Ex.P7 and the legal notice dated 13.06.2006 (Ex.P9) has also been proved on record, whereby the appellants-defendants were called upon to appear before the office of Sub Registrar on 29.06.2006. However, the appellants-defendants failed to place on record any document to show that they were present in the office of the Sub Registrar on 29.06.2006.

He further submits that the alleged marking of presence is nothing but an afterthought being only attested by the Oath Commissioner. The averment of interpolation in the register of Oath Commissioner cannot be ruled out as specific stand taken was that they had gone to the office to mark the presence but the Sub Registrar refused. No witness from the concerned office has been examined in support of aforementioned averment.

On the contrary, he also draws attention of this Court to Ex.P20, the sale deed dated 29.06.2006, executed by the appellant-defendant in favour of certain other persons and the sale deed was executed between 4 PM to 5 PM, in essence, the appellants-defendants were not present before the office of concerned Sub Registrar, Mullana, as they were present in Saharanpur, for the aforementioned purposes.

He further submits that the lower Appellate Court being the last court of fact and law had examined the evidence threadbare and found that the terms of the agreement to sell, envisage, that the vendee can execute the sale deed in favour of any person, he wanted to. It is in this aspect of the matter, it was clearly mentioned in the legal notice Ex.P9, that the sale deed would be executed in favour of other persons namely Linder Singh and Nirmal Singh etc. It was also specifically mentioned in the legal notice dated 29.06.2006 that four draft sale deeds were prepared in the name of the choice persons of the plaintiff with the consent of the appellants-defendants. The aforementioned legal notice has been admitted in the written statement, thus, has gone unrefuted, therefore, urges this Court for confirming the finding rendered by the lower Appellate Court.

In support of this contention, he relies upon judgments of Rajasthan High Court and this Court in ***Lakhvir Singh and another Vs. Chanan Masih and others 2010(7) RCR (Civil) 1310; Smt. Shakuntla Devi Vs. M/s Mohanlal Amrit Raj Jain Market, Pali AIR 1994 Rajasthan 25((1); Bhola Singh Vs. Kulwant Singh 2013(2) CivCC 100; Satya Pal Sharma and another Vs. Jagjit Rai Verma 2012(4) RCR (Civil) 216; Ram Singh Vs. Satbir and others 2009(4) RCR (Civil) 166; Uma Rani and another Vs. Balwinder Singh and another 2013(5) RCR (Civil) 202*** and

<u>Baldev Singh Vs. Chhota Singh 2001(2) RCR (Civil) 316</u> to contend that ready cash at the time of sale consideration cannot be a ground for non-declining or declining the relief.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Jindal, learned Senior Counsel. For the sake of brevity, para 5 of the preliminary objection and paras 9 and 10 of the written statement on merits reads as under:-

> *"5. That the plaintiff had entered into an agreement to sell the land in dispute with Kuldeep Singh son of Hoshiar Singh resident of village Mouli, Tehsil Barwala, Distt. Panchkula at the rate of Rs.14,40,000/- per acre and has thus tried to pay a fraud upon the defendants."*
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> *9. That para No.9 of the plaint is not correct and hence denied. However, as the privy of contract between the plaintiff and the defendants regarding the sale of the land in dispute was fixed on or before 10.6.06 and the time was the essence of the contract, therefore, the defendants were ready and willing to perform their part of contract to execute and register the sale deed regarding the land in dispute in favour of the plaintiff on or before 10.06.2006. Even thereafter the defendants remained present on 12.06.2006 before the sub-registrar Mullana for getting the sale deed executed and registered in favour of the plaintiff but the plaintiff was not ready with the balance sale consideration, so he could not get the sale deed executed and registered in his favour on 12.6.2006 after making the payment of balance sale consideration to the defendants.*
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> *10. That in para No.10 of the plaint, it is submitted that the plaintiff had served the defendants with a false and baseless notice for getting the sale deed executed and registered in his favour on 29.6.2006 even then the defendants after receiving the said notice remained present in the office of sub registrar Mullana up to 5 PM on 29.6.2006 but the plaintiff was not ready with the balance sale consideration as well as the expenses of the stamp papers and registration charges to be incurred by the plaintiff for the purchase*

of the same. The defendants had filed an application along with their affidavits before the sub-registrar Mullana for making their presence, but the sub registrar Mullana returned the same to the defendants without marking their presence. The plaintiff was not ready and willing to perform his part of contract upto 29.6.2006 as he was not ready with the balance sale consideration. The plaintiff is a property dealer and a chronic litigant and might have purchased the stamp etc for getting the sale deed executed and registered in his favour from the defendants on his sweet will, in order to play a fraud upon the defendants. All the terms and conditions of the agreement to sell dt. 14.10.2005 have not been complied with by the plaintiff, therefore, the alleged contract stands cancelled and the defendants are not bound by the agreement to sell dated 14.10.2005."

Similarly contents of the legal notice Ex.P9 also read as under:-

"*To*

1. Sh. Amrik Singh - sons of Sh. Gurnam Singh.
2. Sh. Harmit Singh

3. Sh. Gurnam Singh son of Sh. Hazura Singh
residents of vill. Nahawani, Sub Teh Mullana,
Distt. Ambala.

Sir,

Under instructions and on behalf of my client Sh. Rajinder Singh son of Sh. Labh Singh, resident of Ishapur-Roni, Teh.Dera Bassi, Distt. Patiala, I hereby serve you with the following registered AD notice:-

1 That you the aforesaid addressees are the owners of the land measuring 245 kanals 12 marlas; situated in village Nawahani, H.B. No.92, Teh. Mullana, Distt. Ambala; and you agreed to sell the said land in favour of my client and an agreement dated 14.10.2005 was duly executed between you and my client and according to that agreement, it was agreed that the land is to be sold for Rs.12,00,000/- per acre (8 kanals); and you all also received a sum of Rs.50,00,000/- as earnest money from my client in presence of the *marginal witnesses. It was also agreed that a sum of Rs.20,00,000/- shall also be paid on or before 5.12.2005; and the said amount was also paid on or before 5.12.2005; and you the addressees received the same in presence of the witnesses on 3.12.2005. The last date for execution and registration of the sale deed was also fixed as 10.6.2005. On 22.3.06, a sum of Rs.27,00,000/- was also paid to you all in presence of the witnesses; and in this way a sum of Rs.97,00,000/- (Rs.97 lacs) was paid as earnest money; and you all acknowledged the same, on the back of the agreement dated 14.10.2005. You all were bound to perform the agreement in letters and spirit.*

2. That at the time of execution of the agreement, you all the addressees were agreed to get the sale deed registered in the name of my client or any other person with the consent of my client. My client was always ready and willing to perform his part of the contract.

3. That since the last date for execution and registration of sale deed was fixed as 10.6.06; and since in the Mullana SR Office, there are two days fixed for registration of the sale deeds; i.e. on Monday and Thursday and accordingly, my client requested you all either to get the sale deed registered on 8.6.06, after receiving the balance sale consideration on 8.6.06. As per oral consent given by you the addressees and in presence of you all addressees, my client purchased the stamp papers for getting the sale deed registered in the office of SR Mullana on 8.6.06. Further as per your directions on 8.6.06, four sale deeds were prepared in the names of choiced persons of my client with the consent of you all the addressees. You also requested my client; that balance amount of sale is to be *deposited in Lacal Bank Mullana; and accordingly, my client deposited the balance sale consideration in the Local Bank, i.e. Pb and Sind Bank, Mullana. On 8.6.06, you all put off the matter and informed that on 12.6.06, the sale deed shall be executed. However, my client got his presence marked in the office of SR Mullana.*

4. That again on 12.6.06, my client visited the office of SR Mullana for getting the sale deed executed but the addressees did not come forward for executing the sale deed; and accordingly my client got his presence marked in the office of SR Mullana on 12.6.06. My client was ready and is still now ready to perform his part of the agreement. My client had also spent a sum of Rs.22,02,100/- for purchase of the stamp papers; and also spent a huge amount for other expenses.

5 My client is still ready and willing to perform his part of the agreement.

I, therefore, call upon you through this notice to attend the office of SR Mullana on 29.6.06; and to execute the sale deed; and my client shall also be present on the day; and in case of non-compliance of the notice, my client shall be constrained to take appropriate legal action against you all i.e. criminal and civil. You are also liable to be punished u/s 406, 420, 120-B of IPC.

Hence, this notice, copy retained.

Yours sincerely
-sd-
Ashok Mehta, Adv. 13.6.06

On juxtaposition of the notice and the stand taken in the written statement, it is revealed that the appellants-defendants were aware of the factum of the sale deeds to be executed in favour of the aforementioned persons. In this regard, the respondent-plaintiff examined PW6, Sukhwinder Singh, Manager, Punjab and Sind Bank to prove on record the statement of accounts Ex.P1 to Ex.P23 where there was sufficient amount on the date of execution of the sale deed dated 30.06.2006. The respondent-plaintiff has also proved his presence Ex.P7 on 12.06.2006.

On the contrary, the appellants-defendants have not been able to place on record any evidence or material to show that they were ready and willing or present in the office of Sub Registrar on the next opening day. As regards the intention of the appellants-defendants to execute/perform their part of the agreement on the date fixed as indicated in the legal notice, Ex.P9 and the application, Ex.P10, alleged to have been prepared in the name of Sub Registrar, Mullana by the appellants-defendants but the same is not attested from such office but by Oath Commissioner. On the contrary, Ex.P20 is the sale deed dated 29.06.2006 at page 740 of the record of the trial Court and page 747 revealed that it was executed before the Sub Registrar, Saharanpur between 4PM to 5 PM. It is unbelievable that same very person i.e. vendor, herein, could be present at both places which is quite far off. The preparation of the application above-said alleged to have been attested by the Oath Commissioner is an afterthought/procured.

In my view, the lower Appellate Court has rightly reversed the finding of fact rendered by the trial court being the last court of fact and law on the premise that respondent-plaintiff has proved to hilt the readiness and willingness as enshrined under Section 16(c) of the 1963 Act inasmuch as there is no dispute to the execution of the agreement. PW5, Sushil Kumar, Assistant in the office of Treasury Branch, Ambala stated that against entries No.962 to 965 one Karam Singh purchased the stamp papers for four registries on 07.06.2006 for an amount of ₹22,00,100/-. He also proved on record his entries in the register.

Similar is statement of PW6, Sukhwinder Singh, Manager of Punjab and Sind Bank who proved that sum of Rs.1,84,30,000/- had been deposited in the account No.8759 whereas on same date an amount of ₹1,84,50,000/- had been deposited in account No.8760. The lower Appellate court has rightly rejected Ex.D9 and D10 to be unbelievable.

As per Ex.P18 and P19, Nirmal Singh was having ₹1,84,50,000/- in his account bearing No.8760 and a sum of ₹1,84,30,000/- in the account of Linder Pal i.e. account bearing No.8759 on 08.06.2006, even earlier to the date fixed i.e. 08.06.2006, 10.06.2006, 12.06.2006 and 29.06.2006. All these facts lead to irresistible conclusion that the respondent-plaintiff had proved the readiness and willingness as the suit was filed on 26.07.2006 immediately, on the next month from the stipulated dated i.e. 29.06.2006.

There is no dispute to the ratio decidendi culled out in the judgments cited supra by Mr. Jindal, learned Senior Counsel but each fact of the case has to be looked into. The receipt of ₹97 lacs as earnest money has not been denied, much less, of the execution of the agreement to sell. The trial Court has heavily relied upon the presence of the respondent-plaintiff on 08.06.2006 i.e. prior to the stipulated date but has completely ignored the subsequent dates i.e. 12.06.2006 and 29.06.2006. There was no occasion for the trial Court to ponder upon the said date as the parties had already agreed to appear before the Registrar on 29.06.2006, as sought to be proved vide Ex.D9 and D10, though the same have been held to be unbelievable, keeping in view the fact that the appellants-defendants were present in

Saharanpur for execution of the sale deed Ex.P20. Mere inadequacy of the consideration cannot be a ground for rejecting the plea. The intention of the respondent-plaintiff is writ large from the filing of the suit in July, 2006. All these facts have been looked into by the lower Appellate Court while reversing the finding rendered by the trial Court.

For the foregoing reasons, I do not find any reason to interfere with the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for consideration in the second appeal. The finding of the lower Appellate Court is upheld and the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 24, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No