In the High Court of Punjab and Haryana at Chandigarh

RSA No. 6219 of 2015 (O&M)
Date of Decision:.27.2.2016

Inder Singh

---Appellant

vs.

Rattan Singh and another

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. J.S.Mehndiratta, Advocate
for the appellant

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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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<u>Rekha Mittal, J.</u>

<u>CM Nos.1054 and 2436-C of 2016</u>

Allowed as prayed for.

Annexures A-1 to A-3 are taken on record subject to just exceptions.

<u>RSA No. 6219 of 2015 (O &M)</u>

The present appeal (RSA) has been directed against the judgment and decree dated 23.1.2015 passed by the Additional District Judge, Palwal whereby the appeal against the judgment and decree dated

21.12.2013 passed by the Civil Judge (Senior Division), Palwal (for brevity "the trial court") has been dismissed and the findings recorded by the trial court have been affirmed.

Some of the facts relevant for disposal of the present appeal are that Rattan Singh, respondent No. 1/plaintiff filed a suit for possession by way of specific performance of an agreement to sell dated 3.8.2010 in respect of land measuring 2 kanals 4 marlas situated within the revenue estate of village Badoli, Tehsil and District, Palwal, detailed in para 1 of the judgment passed by the learned trial court. As per allegations, respondent No. 2/defendant No. 1 agreed to sell the suit land for a sale consideration of Rs. 2,75,000/- and received an amount of Rs. 1,36,000/- towards earnest money. The sale deed was agreed to be executed on 2.8.2011 on payment of balance sale consideration. The agreement to sell dated 3.8.2010 (Ex. P1) was registered with Sub Registrar, Palwal. Respondent No. 2 alienated a part of the suit land in favour of the appellant vide sale deed dated 14.12.2010 and the sale deed has been challenged being illegal and not binding upon the rights of plaintiff/respondent No. 1.

Respondent No. 2/defendant No. 1 filed the written statement, challenged maintainability of the suit, locus standi of the plaintiff to file the suit and the suit being without any cause of action. He has denied to have entered into an agreement to sell the suit land with the averments that the plaintiff is a money lender and he was in dire need of money to meet expenses for searching his misplaced brother, therefore, he took a loan of Rs. 1,00,000/- with interest at the rate of 3% per month for one year which was paid on the condition that the answering defendant would execute the agreement qua the suit land for an amount of Rs. 1,36,000/- as security of loan. He requested the plaintiff to purchase 1 kanal 16 marlas of land out of 2 kanals 4 marlas but he refused to purchase the land and permitted him to sell the suit land to repay the loan amount. As a result, the answering defendant sold a part of the suit land to the appellant with consent of the plaintiff. After sale of land, he returned the money alongwith interest to the plaintiff in presence of witnesses and asked for return of papers but the plaintiff promised to return the papers on arrival of his son in village with whom the papers were statedly lying.

The appellant-defendant No. 2 filed a separate written statement in line with the defence taken by respondent No. 2. It is pleaded that the answering defendant contacted the plaintiff prior to purchase of land and the plaintiff assured him that he was not interested to purchase the suit land and wanted repayment of his money given to defendant No. 1.

The learned trial court after bestowing its thoughtful consideration to the rival submissions made by counsel for the parties in the light of materials on record and questions for determination, accepted claim of the plaintiff/respondent No. 1 and as a consequence, suit for possession by way of specific performance of the agreement was decreed with a direction to defendant No. 1 to execute sale deed in favour of the plaintiff on receipt of balance sale consideration within a period of two months failing which the plaintiff may get the sale deed executed through process of the Court. The sale deed dated 14.12.2010 in favour of the appellant was declared to be null and void. As has been noticed hereinbefore, the findings recorded by the trial court were affirmed in appeal as the appeal preferred by Inder Singh appellant was dismissed by the District Judge, Palwal.

Still feeling dissatisfied, the present appeal has been preferred by Inder Singh, the subsequent purchaser.

Learned counsel for the appellant has assailed the consistent findings recorded by the courts below primarily on two counts. The first submission made by counsel is that agreement to sell (Ex. P1) propounded by the plaintiff/respondent No. 1 was never intended to be a transaction for sale of immovable property and the same was executed by way of security for repayment of loan amount of Rs. 1,00,000/- taken by respondent No. 2, payable with interest at the rate of 3% per month for a period of one year and for that reason, the alleged earnest money stated to be paid at the time of agreement is an amount of Rs. 1,36,000/- equal to loan of Rs. 1,00,000/- and interest of Rs. 36,000/- at the rate of 3% per month for a period of one year. In addition, it is submitted that plea of the appellant-defendant No. 2 that the plaintiff was not interested to purchase the suit land and was only interested for repayment of loan amount alongwith interest gets substantiated from testimony of both the defendants corroborated by Mam Raj Lambardar DW2, one of the attesting witnesses to the agreement to sell (Ex. P1). Another submission made by counsel is that as the plaintiff did not agree to purchase the suit land when he was approached by Sh. Tej Pal, defendant No. 1, it negatives his plea that he always remained ready and willing to perform his part of the agreement.

I have heard counsel for the appellant and perused the records particularly the judgments passed by the courts below.

There is no denial that the agreement to sell is a registered document executed between the respondents in regard to suit land owned by respondent No. 2. The plea of respondent No. 2 that it was not intention of the parties to transfer the land in question or the agreement was meant to create a security for loan of Rs. 1,00,000/- raised by him was rejected by the trial court. Tej Pal, respondent No. 2 did not prefer an appeal against the findings recorded by the learned trial court on Issues No. 1 to 3, therefore, the findings on these issues qua Tej Pal have attained finality. The appellant being a subsequent purchaser is not entitled to challenge correctness and validity of the agreement to sell more particularly in the circumstances that it is none of the plea of the appellant that the agreement to sell dated 3.8.2010 is the result of collusion with an intent to defeat rights of the appellant as he has purchased a part of the suit land. This apart, as the agreement to sell is a registered document, there is no possibility of its having been ante dated. The plea of the appellant that respondent No. 1 was either not interested to purchase the land or interested for refund of loan taken by respondent No. 2 is incidental and relevant in the context of the agreement to sell. As the appellant cannot challenge findings of the trial court qua the agreement to sell, no such plea of the appellant can be entertained much less accepted.

The appellant is a purchaser of a part of the suit land subsequent to the agreement to sell dated 3.8.2010 (Ex. P1). He admittedly had knowledge of the agreement when the sale deed dated 14.12.2010 in respect of land measuring 1 kanal 16 marlas out of the suit land was executed in his favour. That being so, his plea of bona fide purchaser without notice of the agreement has been rightly rejected by the courts below.

The subsequent vendee can be allowed to raise a plea against readiness and willingness of the plaintiff in a suit for specific performance, as laid down in **Ram Awadh (Dead) by Lrs. and others vs. Achhaibar Dubey and another (2000) 2 SCC 428.** Similar view was taken by Hon'ble the Supreme Court in **Azhar Sultana vs. B. Rajamani and others 2009(2) RCR (Civil) 123.** However, Hon'ble the Supreme Court in **MMS Investments, Madhurai and others vs. V.V. Veerappan and others 2007 (2) RCR(Civil) 816** distinguished the ratio laid down in **Ram Awadh's case (supra)** and held that after conveyance, the plea to challenge readiness and willingness of the plaintiff to perform his part of the agreement is not available to the subsequent vendee and thereafter the only question to be adjudicated is whether the purchaser was bona fide purchaser for value without notice. The judgment passed in **MMS Investments, Madhurai and others's case (supra)** was not noticed in **Azhar Sultana's case (supra).** Nevertheless, the judgment in **Ram Awadh's case (supra)** was rendered by a Larger Bench than the Bench that passed the judgments in latter two cases.

In the case at hand, the agreement was executed on 3.8.2010 and the target date was 2.8.2011. Respondent No. 2 executed sale deed in regard to a part of the suit land in favour of the appellant on 14.12.2010. The suit for possession by way of specific performance of the agreement was instituted on 2.2.2011, within two months from the date, the sale deed in favour of the appellant was executed. Keeping in view conduct of the appellant/respondent No. 1 that he instituted a suit for possession by way of specific performance without loss of time within a short span of two months from the date of execution of sale deed in favour of the appellant and the suit was filed six months prior to the target date, it is difficult to accept contention of the appellant that the plaintiff was not ready and willing to perform his part of the agreement. Conversely, the very fact that the plaintiff filed the suit within two months of registration of sale deed in favour of the appellant goes a long way to falsify and belie the defence plea that either the plaintiff refused to purchase the land or he permitted respondent No. 2 to sell the land in order to enable him to arrange funds for repayment of an amount of Rs. 1,36,000/-. I would hasten to add that the story propounded by respondent No. 2 that he had returned an amount of Rs. 1,36,000/- to the plaintiff after execution of the sale deed dated 14.12.2010, has no legs to stand because even if the plaintiff did not return the agreement to sell on the pretext of the same being in possession of his son, there was no reason for respondent No. 2 not to insist for issuance of a receipt as an evidence of return of money more particularly in the circumstances that the agreement to sell is a registered document. Analyzed from any angle, I am unable to find any fault in the concurrent findings recorded by the courts below when otherwise factual findings cannot be intervened in exercise of jurisdiction under Section 100 of the Code of Civil Procedure unless the findings are held to be perverse i.e. based on misreading of evidence or based on no evidence.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. In view of dismissal of the appeal, the application for condonation of delay (CM No. 15670-C of 2015) is of academic relevance only.

(Rekha Mittal)
Judge

27.2.2016
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