In the High Court of Punjab and Haryana at Chandigarh

CR No. 6482 of 2017(O&M)
Date of Decision: 29.9.2017

Sukhbir and others

---Petitioners

versus

M/s Iris Plaza Private Limited

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Adarsh Jain, Advocate
for the petitioners

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Rekha Mittal, J.

C.M. No. 20817-CII of 2017

Heard.

Allowed as prayed for. Annexure P-4 is taken on record.

C.R.No. 6482 of 2017

The present petition directs challenge against order dated 8.9.2017 passed by the trial court whereby application filed by the respondent-defendant under Order 7 Rule 11 (c) of the Code of Civil Procedure (in short “the Code”) requiring the plaintiffs to pay ad valorem court fee has been allowed and the plaintiffs have been directed to pay court fee accordingly.

Counsel for the petitioners-plaintiffs would argue that they being owners of 21 kanals 16 marlas of land detailed in para 1 of the petition sold the said land vide sale deed dated 10.6.2010 in favour of defendant for a sale consideration of Rs. 4,77,96,875/- paid through 72 cheques. The defendant failed to pay an amount of Rs. 23,00,500/- qua cheque Nos. 561659 and 561660 both dated 30.6.2010 in the sum of Rs. 11,50,250/- each drawn on Canara Bank, Faridabad. The plaintiffs filed suit for declaration that the aforesaid sale deed qua share of plaintiffs No. 3 and 4 is null and void. It was clearly mentioned in the sale deed that the sale would be void if payment of the cheques was not made. It is argued with vehemence that keeping in view the aforesaid stipulation in the sale deed, the petitioners are not liable to pay ad valorem court fee on the sale consideration, therefore, the Court below has committed a serious error apparent on the face of record by accepting plea of the respondent/defendant and directing the petitioners/plaintiffs to affix proper court fee within the stipulated period of 30 days. In support of his contention, he has referred to judgment of this Court **Surinder Pal vs. M/s Rainbow Promoters Private Limited 2011(2) RCR (Civil) 762** wherein this Court has relied upon judgment of Hon'ble the Supreme court of India **Kaliaperumal vs. Rajagopal, 2009(2) RCR (Civil) 471**.

I have heard counsel for the petitioners, perused the paper book and the judgments cited at Bar.

Before adverting to the submissions made by counsel for the petitioners, it is pertinent to deal with the judgment passed by the Apex Court and the judgment of this Court. In **Kaliaperumal's case (supra),** Hon'ble the Apex Court dealt with the provisions of Section 54 of the Transfer of Property Act, 1882 (in short “the Act”). A relevant extract from para 8, germane to the controversy, reads as follows:-

> “Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable

rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed."

In para 9, it has been held that title did not pass either on execution or registration of the sale deed.

The Court took into consideration a recital in the operative portion of the sale deed that the vendors have agreed to receive Rs. 40,000/- in presence of the Sub Registrar on the date of registration of the sale deed and that in consideration of payment to be so made, the property was being conveyed to the purchaser. Another circumstance taken note of is that the sale deed recites that the purchaser is entitled to hold possession and enjoy the scheduled properties from the date of sale, neither possession of the properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter. It is admitted that possession of the suit properties purported to have been sold under the sale deed was never delivered to the appellant and continued to be with the respondents. In fact, the appellant, therefore, sought a decree for possession of the suit properties from the respondents with mesne profits. If really the intention of the parties was that the title to the properties should pass to the appellant on execution of the deed and its registration, the possession of the suit properties would have been delivered to the appellant.

This Court in **Surinder Pal's case (supra)** by relying upon observations in **Kaliaperumal's case (supra)** in para 8, reproduced in para 15 of the judgment, has held in para 17, reads thus:-

> "Now question comes if sale is final and complete, as to whether any declaration can be sought merely because part of the sale consideration is not paid ? In the opinion of this Court, if sale is complete and vendee by playing fraud or with intent to cheat the plaintiff – vendor, has handed over the cheques towards sale consideration with intention not to get them encashed in future, then plaintiff has to get sale deed annulled on the ground of fraud and misrepresentation and sale deed shall not be void. However, if sale deed contains the recital as observed hereinbefore, then sale would be void in terms of the recital in the sale deed, hence suit simpliciter for declaration would lie and in that event, plaintiff would not be required to pay ad valorem Court fee."

Reverting to the case at hand, much stress has been laid by the petitioners on a recital in the concluding para of the sale deed (translated from Hindi to English), reads as follows:-

> "In the event of amount of cheque is not paid due to mistake of the purchaser, registry would not be valid.
>
> (*Kisi surat mein kreta ki galti ke karan cheque ki rakam hamein ada na hone par registry manya nahin hogi*)."

The sale deed runs into 11 pages. From page 4 till page 13, there is a detailed reference to 72 cheques given by the purchaser to discharge its liability to pay sale consideration of Rs. 4,77,96,875/-. At page 3 of the sale deed, it has been stated to the following effect:-

> "Possession of land measuring 21 kanals 17 marlas has been handed over to the vendee company and hereinafter the purchaser company shall be the absolute owner. Neither we nor our successors shall have any concern with the said sold land. The land is free from all encumbrances. It has not been mortgaged, sold, gifted, leased or exchanged in favour of third person nor an agreement has been made in favour of any person and it is free from any decree, attachment, court case, bank loan or any other kind of encumbrance. In case of any encumbrance or any defect in title and any loss is suffered by the vendee, we shall make good the loss. The expenses of the sale deed have been borne by the vendee who has been handed over documents of title. We shall get necessary mutation incorporated and have no objection if the vendee gets the same incorporated himself and may use the land in any manner he likes. We, the vendors in the above khewat khata No. 150/170 have alienated our entire share of 21 kanals 17 marlas in favour of the vendee company."

The question for consideration is whether in view of the recitals at page 3 extracted hereinbefore, can the petitioners be heard to say that the parties did not intend that transfer of ownership would take place merely by execution and registration of the sale deed or they intended that transfer shall take place only after receipt of entire consideration in the light of recital in the concluding para of the sale deed, reproduced in the earlier part of the judgment.

A conjoint reading of the recitals at page 3 and recital in the concluding para of the sale deed highlighted by counsel for the petitioners when examined in the light of enunciation laid down in **Kaliaperumal's case (supra),** I have no hesitation to hold that the vendors/petitioners transferred all rights of ownership and possession in favour of the vendee by execution and registration of the sale deed even though in the concluding para, it was mentioned that in case cheque amount is not paid to the vendor (s) on account of fault of the vendee, the sale deed would not be valid. Keeping in view that parties intended to transfer ownership of the suit property by way of execution and registration of the sale deed on receipt of 72 cheques representing sale consideration of Rs. 4,77,96,875/, the petitioners cannot be heard to say that suit for declaring the sale deed to be null and void can be allowed to proceed without payment of ad valorem court fee. That being so, I do not find any patent error in the impugned order warranting intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

29.9.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No