

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 7050 of 2017

Date of Decision:11.10.2017

AAA Landmark Private Limited

---Petitioner

vs.

Rakesh Sarin and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.S. Bhatia, Advocate
for the petitioner

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 14.9.2017(Annexure P-1) passed by the Civil Judge (Junior Division), Gurgaon whereby application filed under Order VII Rule 10 of the Code of Civil Procedure (in short “the Code”) has been dismissed.

Counsel for the petitioner has submitted that respondent Nos. 1 and 2/plaintiffs have filed a suit for declaration to the effect that agreement to sell dated 25.10.2012 entered into inter se the defendants alongwith side letter dated 25.10.2012 are null and void, oppressive and/or in infringement of rights of the plaintiffs. The present petitioner has been impleaded as defendant No. 2 in whose favour defendant No. 1 has executed the agreement in question dated 25.10.2012.

The petitioner filed the instant application on the premise that no cause of action has arisen within the territorial jurisdiction of the Court

at Gurgaon, therefore, the plaint is liable to be returned for its presentation to the Court of competent jurisdiction at Delhi. It is argued that the learned trial Court without adverting to the averments raised in paras 3 to 5 of the application and Sections 16 and 20 of the Code, has dismissed the application with costs by passing a cryptic and non-speaking order. It has further been argued that as the respondents/plaintiffs have challenged agreement to sell dated 25.10.2012 and side letter of the same date executed at Delhi, the court at Gurgaon lacks territorial jurisdiction to entertain and try the present suit. In support of his contention, he has referred to Division Bench judgment of the Delhi High Court **Parkash Kaur vs. K.G. Ringshia and Everest Construction Company vs. Smt. Parkash Kaur FOA (OS) Nos. 213 of 1990 and 4 of 1998 decided on 20.7.2007** wherein the Delhi High Court on consideration of provisions of Sections 16 and 20 of the Code has held in para 15, quoted thus:-

“In the present cases Ms. Prakash Kaur has not prayed for decree of specific performance or decree of possession. The suit as framed is for declaration that there exists a binding and a valid contract between the parties. A declaration to the said affect is sought for and prayed. The Court is not required to go into the question of right or interest in any immovable property. The only question is whether there exists a contract as per dictum and requirements of the Contract Act, whether a concluded and a binding agreement exists and whether there was any termination/repudiation of contract as pleaded in FAO (OS) No. 4/1998 by the respondent. The Court in both the suits

is not required to go into the question of title in any immovable property or right or interest of the parties in any immovable property.”

I have heard counsel for the petitioner, perused the paper book particularly the averments raised in the plaint.

The plaintiffs have assailed the agreement to sell dated 25.10.2012 entered into inter se the defendants alongwith side letter dated 25.10.2012 primarily on the ground that the plaintiffs are the buyers of one apartment each in the project of defendant No. 1 namely Akme Raaga Limited at village Lakhnaula Tehsil Manesar District Gurgaon. It is further averred that plaintiff No. 1 had been allotted flat No. A-1202 by defendant No. 1 on 29.8.2012 and possession was to be handed over by June 2015. Flat to plaintiff No. 2 was also allotted before the agreement to sell dated 25.10.2012 inter se the defendants was executed. It has further been pleaded that both the plaintiffs have already paid a substantial amount of allotment money in favour of defendant No. 1. Similarly, allotments have been made to other buyers prior to 25.10.2012, detailed in para 18 of the plaint. It has further been averred that the defendants with a ulterior motive to defeat interests of the plaintiffs entered into a sham and bogus agreement in collusion and connivance with each other and thereafter created a facade of bona fide disputes and deliberately got themselves entangled in sham legal proceedings in order to wriggle out of their legal obligation of handing over possession of the flats to the plaintiffs and other buyers. Plaintiff No. 1 is stated to have paid an amount of Rs. 69,14,956/- out of total amount of Rs. 79,83,852/- whereas plaintiff No. 2

has paid an amount of Rs. 69,47,714/- out of Rs. 1,03,47,092/-.

A Division Bench of the Delhi High Court in the referred authority particularly in para 15, reproduced hereinabove, has held that the Court is not required to go into the question of right or interest in any immovable property. However, in the case in hand, to determine the controversy raised by the respondents/plaintiffs, the Court is required to go into the question of right and interest of the plaintiffs in immovable property situated at Gurgaon on the basis of alleged allotment made in favour of the plaintiffs by defendant No. 1. This apart, property that is subject matter of the impugned agreement is also situated at Gurgaon. In this view of the matter, I find myself unable to accept submissions made by counsel for the petitioner that the Court at Gurgaon lacks territorial jurisdiction to entertain and try the present suit or the plaint is liable to be returned for presentation to a competent Court. In this view of the matter, I do not find any reason to interfere.

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

(Rekha Mittal)
Judge

11.10.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No