

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3796 of 2015 (O&M)

Date of decision: 13.07.2017

Inderpal Singh

... Appellant

Vs.

Jugal Kishore and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. V.K. Sandhir, Advocate
for the appellant.

Mr. H.S. Gharuan, Advocate
for the caveator-respondent No.1.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby his suit for possession by way of specific performance of agreement to sell dated 28.11.2007 was dismissed by the learned trial Court vide its impugned judgment and decree dated 26.11.2013 and his first appeal was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 23.02.2015, upholding the judgment passed by the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff/appellant had filed suit for possession by way of specific performance of the agreement to sell dated

28.11.2007 executed by defendant regarding the suit property along with consequential relief of permanent injunction restraining the defendant from alienating the suit property in any manner. The plaintiff had alleged that Sh. Balwant Singh represented him as general attorney of defendant Jugal Kishore vide general power of attorney dated 02.07.2004 and Balwant Singh being attorney entered into an agreement to sell the suit property vide agreement dated 28.11.2007 for a consideration of Rs.9.50 lacs. Balwant Singh received Rs.60,000/- at the time of execution of the agreement to sell and further received amount of Rs.1.00 lac vide writing dated 02.01.2008 and hence received total sum of Rs.1.60 lacs as advance sale price. He further alleged that it was agreed between the parties that the sale deed will be executed on or before 28.03.2008. There was one condition in the agreement to sell dated 28.11.2007 that the property had been allotted by Improvement Trust in the name of defendant and sale deed has not been executed till date in the name of defendant Jugal Kishore and attorney of defendant Jugal Kishore undertook to get the sale deed executed in his name and after that defendant would execute the sale deed in favour of the plaintiff within two months. The limitation was to start from the date defendant gets the sale deed executed from Amritsar Improvement Trust. He submitted that as per the conditions of the agreement, the defendant was required to get the sale deed executed from Improvement Trust and therefore, necessary directions be issued to defendant to get the sale deed executed from Improvement Trust. He further alleged that he was always ready and willing to perform his part of the contract, but the defendant/respondent had been dilly dallying the matter on one pretext or the other. As plaintiff came to know that defendant was hobnobbing with certain

persons to sell the property in dispute as the prices of property had shot up and defendant had not made it clear as to whether he got the sale deed executed from Improvement Trust in his favour or not. He had approached him many a times but he had flatly refused and as the defendant/respondent was bent upon to dispose of the suit property, hence he preferred the suit.

Defendants were put to notice by the learned trial Court. Defendant No.1 filed his contesting written statement, raising more than one preliminary objections. Similarly, defendant No.2 filed its contesting written statement. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to the possession by way of specific performance of agreement to sell dated 28.11.2007? OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff has no locus-standi to file the present suit? OPD
5. Whether the suit is barred on account of mis-joinder and non-joinder of necessary parties? OPD
6. Whether plaintiff has not come to the Court with clean hands? OPD.
7. Relief.

With a view to substantiate their respective stands taken in their

pleadings, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff was not entitled for a decree of specific performance. Accordingly, suit of the plaintiff was partly decreed, granting him the alternative relief of refund of amount of earnest money vide impugned judgment and decree dated 26.11.2013. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by learned first appellate Court, vide its impugned judgment and decree dated 23.02.2015. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that when defendant No.1 entered into an agreement to sell with the plaintiff-appellant, he was not the absolute owner of the suit property because the Improvement Trust-defendant No.2 was yet to execute the conveyance deed in favour of defendant No.1. At the time of agreement to sell dated 28.11.2007, for an area of 133 square yards bearing plot No.159, for consideration of Rs.9.50 lacs, the owner of the suit property was defendant No.2-Improvement Trust. Defendant No.1 received Rs.60,000/- as earnest money and further, plaintiff paid another amount of Rs.1.00 lacs to defendant No.1 vide writing dated 02.01.2008.

It was also agreed between the parties that plaintiff shall bear the expenses for getting the conveyance deed executed in favour of defendant No.1 from the Improvement Trust-defendant No.2. The target date for execution of sale deed was 28.03.2008. Plaintiff-appellant never made any effort even to know how much was the requisite amount for getting the conveyance deed

executed between defendants No.1 and 2.

This material and undisputed fact would go a long way to show that plaintiff was no more interested in purchasing the suit property because he did not show his readiness and willingness at the relevant point of time. It is also not in dispute that there was no allotment letter on record to substantiate that there was an allotment in favour of defendant No.1-prospective vendor. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

From the abovesaid narration of facts, it has also come on record that title of the prospective vendor-defendant No.1 was a defective one, as it stood at the time of agreement to sell. In such a situation, agreement to sell was not enforceable against defendant No.1. It is so said because unless defendant No.1 himself was an owner, he could not have passed any better title in favour of the plaintiff. Further, as per the provisions of law contained in Section 16 of the Specific Relief Act, 1961, it was a condition precedent that plaintiff must always be prepared to carry out the terms of contract expressing his readiness and willingness.

However, in the instant case, plaintiff failed to establish that he was ready and willing to perform his part of the contract. In such a situation, plaintiff-appellant was bound to fail. That is what has been held by both the learned Courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 14 and 15 of the impugned judgment, which deserve to be noticed here, read as under: -

“.....It was agreed that plaintiff will pay all the expenses for getting the sale deed registered from Improvement Trust in favour of vendor i.e. defendant no.1 but nothing has been brought on record to show that he had made any efforts for the same whereas defendant no.1 had categorically stated before the trial court that he requested the plaintiff to pay the expenses for getting the sale deed executed but he failed to do so. The plaintiff never made any effort to know that how much expenses he has to bear to get the sale deed executed. He had not brought on record any evidence that he had sale consideration ready with him. Even otherwise, before the defendant no.1 get the sale deed in his favour from Improvement Trust, he has no right to agree to sell the same as he has no title to the same. Even nothing has been brought on record to substantiate that there was an allotment in favour of defendant no. 1. Even though the plaintiff and defendant no.1 had admitted this fact of allotment but defendant no.2 had denied this fact who is the real owner of the suit property. There is no allotment letter on the record to substantiate that there was an allotment in favour of defendant no.1.

The relief of specific performance is discretionary and to

exercise it, the court has to see whether there is valid and legal agreement in favour of the purchaser/plaintiff and that there is passing of consideration in pursuance to the agreement and readiness and willingness of the vendee to perform his part of the contract but in the present case there is no legal and valid agreement between the parties as defendant no.1 is not owner of the suit property and as allotment has not been duly proved on record hence there is no question of imperfect title in favour of the defendant. Even otherwise as per section 13 of the Specific Relief Act only the purchaser has a right against that vendor who has no title at the time of agreement but he acquires the same subsequently and as per section 13 (b) where concurrence of other person is necessary for validating the title and that other person is bound to concur at the requests of the vendor therefore, purchaser can compel the vendor to procure such concurrence but here in the present case, there is no such concurrence required from Improvement Trust, Amritsar as it has not been duly proved that there is legal and valid allotment in favour of defendant no.1 and that nothing is brought on record that Improvement Trust, Amritsar is bound to concurrence to the requests of the vendor, therefore, the case of the plaintiff do not fall u/s 13 of the Specific Relief Act. Rather it is u/s 17 of the Specific Relief Act where the vendor has no title at all and hence contract with him cannot be specifically imposed. Even the plaintiff had failed to prove his readiness and willingness to perform his part of the contract as he had not

brought on record that he was ready to bear the expenses to get the sale deed executed from the Improvement Trust in favour of defendant no.1, hence no discretion u/s 20 of the Specific Relief Act can be exercised in favour of the plaintiff.....”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

13.07.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No