IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1380 of 2014 (O&M)
Date of Decision: February 17, 2017

Arunesh Aggarwal

..Appellant(s)

Versus

Sandeep Singh and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Arun Jain, Sr. Advocate Advocate with
Mr. Arun Jindal, Advocate and
Mr. Varun Parkash, Advocate
for the appellant.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Chetan Bansal, Advocate
for the respondents.

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ANITA CHAUDHRY, J.

This is the second appeal by the defendant against the judgment of both the Courts below.

For the sake of brevity few facts are necessary.

The appellant was issued a letter of intent Ex.P3/A for allotment of a residential plot measuring 500 square yards in SAS Nagar on 30.03.2001. The defendant entered into an agreement with the plaintiff to sell his interest in the property on 08.01.2004. There is a recital in the agreement that the allotment letter was yet to be issued but the property was free from all sorts of encumbrances, litigation, claims, transfer etc. The total amount payable was Rs.4,40,000/- out of which Rs.1,87,500/-

was already paid to PUDA. A sum of Rs.1 lac was paid as earnest money. It was agreed that the last date for completion of the bargain and for final payment and execution and registration of the GPA, SPA, agreement, Will was fixed for 08.03.2004. It is not in dispute now that PUDA (the allottee) had already cancelled the letter of intent on 02.12.2003. This fact was not disclosed in the agreement by the defendant. The plaintiff along with the balance amount went to the office of the Sub-Registrar for execution of the documents and for payment of the balance amount but the defendant failed to turn up. The plaintiff filed a suit for possession seeking specific performance on 13.01.2005 and gave the details of the agreement and the amount he had paid as earnest money. It was averred that 8th March, 2004 was a non-working day but he remained present in the Office of Sub-Registrar with the requisite money but the defendant did not turn up and he got his affidavit prepared. His plea was that he came to know that the allotment/letter of intent was cancelled and defendant no.1, preferred an appeal but it was dismissed on 01.06.2004. The plaintiff claims that he sent a legal notice on 13.08.2004 calling upon him to get the plot restored and to come present in the Office of the Sub-Registrar, Mohali on 23.08.2004 to execute the necessary transfer papers and he remained present there along with the requisite balance sale consideration but defendant no.1 did not turn up and he got his presence marked by swearing an affidavit. It was pleaded that the letter of intent had been restored as the appeal filed by defendant no.1 was allowed and he was competent to transfer the property.

Notice was given to both the defendants but there was no appearance on behalf of PUDA and they were proceeded *ex parte*.

Defendant no.1 admitted the execution of the agreement. However, it was denied that 8th March, 2004 was not a non-working day. It was pleaded that the plaintiff did not attend the office of the Sub-Registrar on that day as he knew that the intent letter had been cancelled and the amount of Rs.1,87,500/- deposited by him had been forfeited. It was admitted that he had agreed to sell the intent letter for a paltry sum of Rs.4,04,000/- and it was the duty of the plaintiff to get the letter restored and it was the plaintiff who had filed an appeal before the Addl. Chief Administrator PUDA through him and it was the plaintiff who had engaged the counsel and had paid part of the professional fee to the lawyer but when the plaintiff came to know that the appeal would not be allowed he was not interested in the deal and the defendant paid the fees to the lawyer. It was pleaded that the appeal was dismissed and a revision was filed which was accepted on 23.06.2004. It was pleaded that thereafter, the plaintiff served a legal notice. It was pleaded that PUDA had demanded an exorbitant amount and he (defendant) had filed a writ petition in the High Court and there was a stay with respect to the payment of penalty and interest.

The parties went to trial on the following issues:-

1. Whether the plaintiff is owner of the intent letter no.12005 by way of specific performance of agreement as prayed? OPP

2. Whether the plaintiff is entitled to the permanent injunction as prayed for against the defendant? OPP
3. Whether the plaintiff has concealed the material facts from the court for filing the suit? OPD
4. Whether the suit of the plaintiff is bad for non-joinder of necessary parties and mis-joinder of parties? OPD
5. Whether the suit is not maintainable? OPD
6. Whether the plaintiff has not paid the valid and adequate court fee on the plaint of the suit? OPD
7. Relief.

The trial Court decreed the suit of the plaintiff.

Aggrieved by the judgment, an appeal was preferred by the defendant. The submission on behalf of the appellant was that the transferee in interest could not claim a right which was higher than the right which rested with the transferor and the plaintiff had failed to show that he was ready and willing to perform his part of the contract and could not prove that he had the necessary funds on that day. The appellate Court rejected the contention and dismissed the appeal.

The counsel for the appellant while referring to ***Dresser Rand S.A. Vs. Bindal Agro Chem Ltd. and another (2006) 1 SCC 751, Speech and Software Technologies (India) Pvt. Ltd. Vs. Neos Interactive (2009) 1 SCC 475 and Saradamani Kandappan Vs. S. Rajalakshmi and others 2011(4) RCR (Civil) 130*** has urged with eloquence that the letter of intent was not a document of title which could be traded and no final allotment had been issued in favour of the appellant on the day the agreement to sell had been executed and the question would be whether the letter of intent could be transferred. The counsel had read in extenso and laid stress on the observations made in para no.39 & 40 of ***Dresser Rand's*** case (supra). The counsel had also referred to para no.22 of the ***Speech and Software Technologies's*** case (supra) to urge that the agreement to sell was not enforceable and did not confer any rights as the letter of intent had been cancelled. It was submitted that though in the agreement the cut off date was 8th March, 2004 but no document was to be executed by the Sub-Registrar as the plot was owned by PUDA. It was urged that there was no evidence that the plaintiff had the funds and he had not produced his statement of account and the readiness and willingness was not there and at the most the plaintiff was entitled to double the amount and they were ready to pay that amount.

The submission on behalf of the respondent is that the letter of intent is a transferable document and there is no bar to the transfer and it was a fit case in which an FIR should have been registered against the defendant as he had not disclosed that the letter of intent had been cancelled. It was urged that the doctrine of feeding the estoppel envisages that where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee, or as it is usually expressed, feeds the estoppel. It was contended that when an unauthorized person subsequently acquires interest in the property transferred then the benefit would accrue to the transferee and in this case the letter of intent was restored and the plaintiff had deposited the penalty and the balance consideration with the authorities. It was urged that a legal notice was sent and a demand draft had been prepared and they have the copy of the demand draft even today. It was urged that in the affidavit Ex.PD there is a reference to cheque no.110256 of 23.08.2004 but in fact it was a demand draft and the plaintiff had explained that he had a O.D. account and finances were not an issue. It was urged that the defendant had cheated him when he had mentioned in the agreement that the property was free from encumbrances and Section 43 of the Transfer of Property Act demolishes the case of the defendant and the provision will come into play and plea of estoppel would apply.

There is no dispute between the parties that an agreement to sell had been entered into on 08.01.2004. It is clear from the evidence and the documents available on record that PUDA had cancelled the letter of intent on 02.12.2003. An appeal was filed by the defendant, which was dismissed. The revision was allowed on 30.09.2004 and the letter of intent was restored. The plaintiff gave a notice and appeared in the office of the Sub-Registrar where the document referred to in para no.4 of the agreement Ex.PA were to be executed. A fact is recorded that 8th March was a holiday and therefore, the plaintiff appeared in the office of the Sub-Registrar also the next day. A legal notice Ex.PE was sent by the plaintiff calling upon the defendant to appear in the office of Sub-Registrar on 23.08.2004. The plaintiff again appeared before the office of the Sub-Registrar and executed an affidavit Ex.PD and there is a reference to the fact that he was present there with the balance payment. The affidavit is attested by the Executive Magistrate. The defendant failed to appear before the Sub-Registrar either on 08/09.03.2004 or 23.08.2004, which clearly proves that the defendant had backed out of the agreement. Both the Courts below had rightly given a finding that the plaintiff had succeeded in proving his readiness and willingness and I do not find any infirmity therein.

The submission made on behalf of the appellant that the letter of intent could not be transferred has to be rejected. PUDA allows transfer of the property on payment of some fees. The plaintiff had a transferable interest in the property. He cannot take benefit of his own mis-chief or raise the plea that he did not possess the title which he represented to be his. There is no evidence from the defendant side that the plaintiff knew that the letter of intent had been cancelled. Though, the defendant had taken this plea but had led no evidence. He did not even respond to the notices and was avoiding it. The notice was sent at the address which was indicated in the records. A finding has to be recorded that the transaction entered into between the parties was not void. It was not contrary to any provision or law. The defendant has subsequently acquired the property and it was the plaintiff who was entitled to it. The principles contained in Section 43 of the Transfer of Property Act would be fully applicable and it would be apt to quote Section 43 of the Transfer of Property Act, which is as follows:-

> *"43. Transfer by unauthorized person who subsequently acquires interest in property transferred.- Where a person (fraudulently or) erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operates on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option".*

In ***Rajapakse v. Fernando, AIR 1920 PC 216*** and ***Tilakdhari Lal, v. Khedan Lal, AIR 1921 PC 112***, the Privy Council held as follows : -

> *"Where a grantor had purported to grant an interest in land which he did not at the time possess but subsequently obtained, the benefit of his subsequent acquisition goes automatically to the earlier grantee, that is, it feeds the estoppel".*
>
> *"If a man who has no title whatever to property grants it by a conveyance which in form would carry the legal estate, and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. In such a case there is nothing on which the second,grant could operate in prejudice to the, first".*

A reading of the agreement to sell clearly indicates the intention of the parties. The intention is evident from the terms and Section 43 of the Transfer of Property Act would come into play. The appellant has no case in equity or in law.

The appeal is dismissed.

February 17, 2017 **(ANITA CHAUDHRY)**
sunil **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes