

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4626 of 2015 (O&M)

Date of Order: 06.09.2017

Indira Malhotra and others

..Appellants

Versus

Subhash Chander Sabharwal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hemant Bassi, Advocate,
for the appellants.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Vijay Kajla, Advocate,
for the respondent

ANIL KSHETARPAL, J.

Defendants-appellants are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for specific performance of agreement to sell dated 26.12.2002 with respect to a house situated in Chandigarh and also prayed for a decree of permanent injunction. It was pleaded that as per the agreement to sell, out of sale consideration of Rs.26,50,000/-, Rs.7 lacs was paid as earnest money. The sale deed was to be executed and registered on 30.06.2003.

Plaintiff had pleaded that the parties are closely related as sister of defendants-appellants is married to the plaintiff. Plaintiff further asserted that he is in possession of the ground floor of the premises.

On the other hand, defendants admitted the execution of the agreement, however, pleaded that the agreement is result of undue

influence. He further pleaded that the plaintiff is not entitled to discretionary relief as material facts have been concealed. Defendants further pleaded that the plaintiff was not ready and willing to perform his part of the contract.

Learned trial Court as well as first appellate Court after independently appreciating the evidence available on the file, recorded a concurrent findings of fact that the agreement was executed by the parties with free will and volition and not on account of undue influence. The Courts further noticed that the facts which have not been disclosed by the plaintiff are not material. The Courts further found that the plaintiff has proved his readiness and willingness to perform his part of the contract.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants has submitted as under:-

- (i) the Courts below have failed to exercise its discretion as available under Section 20 of the Specific Relief Act, 1963.
- (ii) The Courts below have over looked that the agreement was on account of undue influence and was not result of free will and volition. The Courts have further overlooked the fact that the defendants did not disclose their possession in the property as a tenant and, therefore, the plaintiff is not entitled to discretionary relief.
- (iii) It has been further submitted that the plaintiff was not ready and willing to perform his part of the contract.
- (iv) That the property could not be alienated on account of

restriction in the allotment letter as the property was lease hold property.

(v) The suit is barred under Order 2 Rule 2 of the CPC.

On the other hand, respondent-plaintiff has supported the judgment passed by the Courts below. He has submitted that before the target date for execution and registration of the sale deed, defendants had sent a notice Ex.P3 dated 09.03.2003, calling upon the plaintiff to come and execute the sale deed.

Plaintiff replied to the aforesaid notice vide reply dated 28.06.2003, calling upon the defendants to take necessary permissions so that sale deed could be executed and registered.

Learned counsel for the respondent-plaintiff has further submitted that the plaintiff had attended the office of Sub Registrar on the target date i.e., 30.06.2003 and had brought with him the balance sale consideration by way of demand drafts/cheques, which are exhibited on the file as Ex.D7, Ex.D8 and Ex.D9. He further submitted that son of the plaintiff has admitted in the cross-examination that the defendants had failed to get the necessary permissions from the authorities.

I have considered the submissions of learned counsel. However, I do not find any force in the submission of learned counsel for the appellant.

It is not in dispute that the target date for execution and registration of the sale deed was 30.06.2003. Plaintiff filed a suit for specific performance of agreement to sell on 02.09.2003 i.e., after a period of two months. It is also proved on the file that the plaintiff did attend the office of Sub Registrar and he was carrying the balance sale consideration

in the shape of demand drafts/cheques.

The submission of learned counsel that the Courts have failed to exercise its discretion under Section 20 of the Specific Relief Act, is not correct. The Courts below have noticed all the facts in detail and after discussing the evidence have arrived at a conclusion that the agreement was not result of undue influence.

It is not in dispute that the defendants themselves sent a notice on 09.06.2003 calling upon the plaintiff to perform his part of the contract. Once the defendants issued a notice there is no question of any undue influence.

Next argument of learned counsel for the appellants is that the plaintiff could not be granted discretionary relief as he concealed the material facts.

I have examined the plea. However, I do not find any force in the same.

Plaintiff had pleaded in his reply that he is in possession of the ground floor of the premises. The suit is only for specific performance of the agreement. Plaintiff had disclosed necessary facts which were required to be disclosed for adjudication of the suit for specific performance. Even if the plaintiff has not disclosed that previously he was a tenant on the ground floor that would not be such a material fact for the denial of relief of specific performance.

Next argument of learned counsel is that the plaintiff has failed to prove his readiness and willingness.

Both the Courts below have examined this issue. The Courts have noticed that the plaintiff appeared in the witness box and stated that he

attended the office of Sub Registrar, he also brought the balance sale consideration by way of demand drafts and cheques on the date fixed for execution and registration of the sale deed, therefore, there is hardly any substance in the argument of learned counsel in this respect.

Next argument of counsel is that the property could not be alienated, it was lease hold property.

It is not in dispute that the defendants themselves got it converted into a free hold property on 13.05.2003 i.e. before the target date. Once it was free hold property, it could be alienated. There is no restriction on the sale.

Last submission of counsel for the appellants is that the suit is barred under Order 2 Rule 2 CPC.

Counsel submits that the plaintiff had filed an earlier suit for permanent injunction on 21.07.2003 and therefore, the subsequent suit for specific performance was barred under Order 2 Rule 2 CPC. It is not in dispute that the plaint of the earlier suit is not on the file. In the absence of the pleadings, it is not possible to record a finding that the present suit is barred under Order 2 Rule 2 CPC. For examining the issue whether the suit is barred under Order 2 Rule 2 CPC or not, the parties are required to at least bring on record the pleadings of the parties.

In view of the discussion made hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed.

However taking into consideration the fact that the agreement to sell was entered into in the year 2002 and the balance sale consideration has remained with the plaintiff for almost 14½ years, the decree passed by

the Courts below is modified and plaintiff is made liable to pay the balance sale consideration along with interest @ 9% per annum from the date of filing of the suit.

September 06, 2017
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(ANIL KSHETARPAL)
JUDGE

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