HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.6220 of 2016
Date of decision:8.8.2017

Sushil Kumar and another

...Appellants

Versus

Rambir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ashwani Gaur, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiffs are in the regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, dismissing their suit for declaration and mandatory injunction, vide impugned judgment and decree dated 20.9.2013 passed by the learned trial court and their first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 23.8.2016.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that defendant No.1 was owner in possession of the land detailed in para no.1 of the plaint which he agreed to sell to the plaintiffs for a total sale consideration of Rs.4,00,000/- vide agreement to sell dated 10.04.2006. A sum of Rs. 1,00,000/- was paid at the time of execution of agreement and the balance was settled to be paid at the time of execution and registration of sale deed to be done on or before 10.10.2006. However, possession of the suit land was delivered by defendant No.1 to the plaintiffs at the time of agreement to sell itself. It was further agreed that in case seller fails to execute the sale deed in favour of purchasers within the stipulated period, the same shall be got executed through process of law and the seller shall be responsible for all costs and expense. There was also a condition of forfeiture of earnest money in case of failure on the part of purchasers to perform their part of the contract and the possession was to be restored to the defendant No.1.

On 10.10.2006, the parties mutually extended the date as 10.01.2007 and further amount of Rs.50,000/- was paid by the plaintiffs to defendant No.1 vide endorsement on the agreement to sell itself. Again on 10.01.2007, the date was extended to 09.03.2007 with further payment of Rs.50,000/-.It was further the case of plaintiffs that they came to know that even before expiry of date as 09.03.2007, defendant No.1 had already executed and registered the sale deed in favour of defendants No.2 and 3 in the month of May, 2006 in respect of the suit land illegality and fraudulently in order to cause wrongful loss to the plaintiffs.

Having been served in the suit, defendant No.1 appeared and filed his written statement, whereas defendants No.2 and 3 filed their separate written statement, raising more than one preliminary objections. From the conduct of defendant No.1 and the nature of written statement filed by him, it was clear that he was trying to help the plaintiffs. Defendants No.2 and 3 claimed that they were bonafide purchasers, without any notice. Plaintiffs filed their replication.

On completion of pleadings of the parties, the learned trial court framed the following issues:-

i. Whether the defendants no.1 executed an agreement to sell dated 10.04.2006 in favour of the plaintiffs to sell the suit land detailed in para no.1 of the plaint for total sale consideration of Rs.4,00,000/- and received an amount of Rs.1,00,000/- as earnest money?OPP

ii. Whether the plaintiffs have always been ready and willing and are still ready and willing to perform their part of the agreement dated 10.04.2006? OPP

iii. Whether the impugned sale deed bearing vasika number 626 dated 24.05.2006 executed in favour of defendants no.2 and 3 by defendant no.1 is collusive, unlawful and illegal?OPP

iv. Whether the plaintiffs are entitled to a decree for possession by way of specific performance of agreement to sell dated 19.04.2006 and declaration as prayed for?OPD

v. Whether the suit of the plaintiffs is totally fraudulent?OPD

vi. Whether the plaintiffs have no locus standi to file the present suit?OPD

vii. Whether the present suit is not maintainable in the present form?OPD

viii. Whether the plaintiffs are estopped from filling the present suit and cannot seek any relief?OPD

ix. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have failed to prove their case. Accordingly, their suit for declaration and mandatory injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 20.9.2013. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 23.8.2016. Hence, this regular second appeal, at the hands of the unsuccessful plaintiffs.

Heard learned counsel for the appellants.

The case set up and proved by defendants No.2 and 3 was that they were bonafide purchasers without any notice from defendant No.1. Sale-deed No.626 was executed in their favour on 24.5.2006. Thereafter, plaintiffs in collusion with defendant No.1 got executed alleged agreement to sell dated 10.4.2006, which was ante dated and only to harass the bonafide purchasers. In this regard, conduct of PW-2 Dalpat, Lambardar, who was witness to the sale-deed in question, was surprising and unwarranted.

PW-2 tried to help the plaintiffs. If the agreement to sell dated 10.4.2016 was a genuine document and PW-2 Dalpat, Lambardar was signatory to the agreement to sell in question, he would have certainly disclosed the said facts to defendants No.2 and 3 before becoming witness to the sale-deed dated 24.5.2006. However, he kept silent in this regard, which speaks volumes about his serious misconduct. In such a situation, it can be safely concluded that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Similarly, it seems that the plaintiffs won over not only PW-2 Dalpat Singh but also defendant No.1, who tried to help the plaintiffs. Further, plaintiffs have miserably failed to prove their pleaded case by leading cogent and convincing evidence. It goes without saying that appellants being the plaintiffs, onus was on them to prove their pleaded case. Their case could not have been decreed simply on the basis of their pleadings. Since the plaintiffs-appellants failed to discharge their onus, they were rightly non-suited by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

Conduct of the parties to the litigation is also one of the relevant considerations to arrive at a judicious conclusion. In this regard, relevant observations made by the Hon'ble Supreme Court in **Kishore Samrite Versus State of U.P. and others, 2013(2) SCC 398,** which aptly apply to the facts of the present case and can be gainfully followed, read as under:-

> *"With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role*

in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : ***Tilokchand H.B. Motichand & Ors. v. Munshi & Anr., [1969(1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr., 2012(3)***

R.C.R.(Civil) 1 : 2012(3) Recent Apex Judgments (R.A.J.) 56 : (2012)6 SCC 430; Chandra Shashi v. Anil Kumar Verma, 1995(1) R.C.R.(Criminal) 210 : (1995) SCC (1) 421; Abhyudya Sanstha v. Union of India & Ors., 2012(1) S.C.T. 641 : (2011)6 SCC 145; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr., 2011(5) R.C.R.(Civil) 397 : (2011) 7 SCC 639; Kalyaneshwari v. Union of India & Anr., 2012(2) R.C.R.(Civil) 626 : 2012(2) Recent Apex Judgments (R.A.J.) 242 : 2012 (2) S.C.T. 551 : (2011)3 SCC 287).

The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi- fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. ***{K.D. Sharma v. Steel Authority of India Ltd. & Ors., [(2008)12 SCC 481].”***

Under the circumstances of the case in hand noticed hereinabove, agreement to sell between the plaintiffs and defendant No.1 was surrounded by suspicious circumstances and it was not a genuine document, as rightly held by both the learned courts below. Once the entire case of the plaintiffs-appellants was based on the false and fabricated document, they were bound to fail. They have no case either in law or in equity. So far as the sale-deed in favour of defendants No.2 and 3 was concerned, it was a genuine sale transaction.

Thus, defendants No.2 and 3 were rightly held to be bonafide purchasers without any notice. In case the plaintiffs were misguided and misled by defendant No.1, it was for them to proceed against defendant No.1, in accordance with law. However, defendants No.2 and 3 could not have been made to suffer for none of their fault. That is what has been held by both the learned courts below, because of which the impugned judgments and decrees deserve to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **Joseph Johan Peter Sandy Vs. Veronica Thomas Rajkumar and another, 2013 AIR (SC)2028, Garre Mallikharjuna Rao (D) by LRs and others Vs. Nalabothu Punniah, 2013 (4) SCC 546, Nirmal Singh Vs. Mangal Singh, 2002 (1) RCR (Civil) 745 (P&H), Richhpal Singh Vs. Sandhura Singh, 2013 (3)(CivCC 242, Mangat Singh Vs. Rakesh Kumar Gupta and another, 2014 (4) RCR (Civil) 387** and **RSA No.1539 of 2017 (Shamsher Singh Vs. Naresh Pal).**

Learned Additional District Judge, before arriving at his judicious conclusion, re-considered the facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in paras 16 to 18 of its impugned judgment, which deserve to be noticed here, read as under:-

> *"The learned trial court has rightly observed that PW2 Dalpat Singh, Lamberdar was not a reliable witness and his act and conduct shows that he was not a credible witness. It is not disputed that PW2 Dalpat Singh Lamberdar is also witness to the sale deed in question. He also put his signatures on the agreement to sell in question. He neither enclosed regarding the agreement to sell to defendants no.2 and 3 for the reasons best known to him. If we examine the list of witnesses in this case to find out which of the witnesses is most un-reliable, there would be no hesitation to observe that it is PW2 Dalpat Singh who comes in this category. He is the Lamberdar but he forgot his legal duties as to what a Lamberdar is to do. Lamberdar is treated as most respectful person in the locality and to assist the General Public as well as Administration and other organs of the State but he has played a notorious role in this case by not disclosing the necessary facts to either of the parties for the reasons best known to him.*
>
> *The contention of learned counsel for respondents no.2 and 3 that the agreement to sell in question was prepared subsequently after the sale deed, finds force. If we examine the case of the plaintiff as pleaded, then preponderance of probabilities tilts in favour of defendants no.2 and 3. Agreement to sell in question is dated 10.10.2006 and sale deed was to be executed on 10.10.2006 which was extended to 10.01.2007 and then to 09.03.2007 whereas the sale deed is dated 24.05.2006. It appears that they extended the date of*

execution of sale deed after the sale deed dated 24.05.2006 so that they may allege that before appearing for execution of the sale deed before the Registering Authority, they came to know that sale deed had already been executed in favour of defendants no.2 and 3 due to which they did not appear before the Sub Registrar. Had it been fixed before 24.05.2006, then certainly plaintiffs would have to prove by cogent and reliable evidence that they appeared before the Sub Registrar where there were no chances of fabrication of document particularly regarding the affidavit to be sworn for marking their presence before the Sub Registrar.

The contention of learned counsel for the plaintiffs that the sale deed was fictitious as it was procured under pressure because defendant No.1 was in need of money and he took only loan from defendants no.2 and 3. This contention is without any merit. First of all, for the sake of repetition, defendant no.1 Rambir has not appeared in witness box and it was he who could have explained the reasons as to what where compulsive circumstances to execute the sale deed although it was a loan transaction and evidence of the plaintiffs in this regard is only hearsay and cannot be believed particularly when it is found that defendant Rambir was having connivance with the plaintiffs. Moreover, as rightly observed by the learned trial court that there is nothing on the file as to what was the amount of loan; what were its terms and conditions and when it was to be returned. Only vague pleadings were taken by the defendant which are meaningless and purposeless".

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is sine qua non for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned Courts below and the same deserve to be upheld, for this reason also. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

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 appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

8.8.2017 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No