

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

RSA No.6791 of 2016 (O&M)
Date of decision : 8th Sept. 2017

Jasbir Singh

...Appellant

Versus

M/s Chappel Projects Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Amit Jain, Advocate for the appellant.

ANIL KSHETARPAL, J.

Defendant-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts while passing a decree for specific performance of the agreement to sell with respect to land measuring 5 kanals 3 marlas.

Plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 08.03.2006 in relation to the property/land measuring 13 kanals 8 marlas in Khewats/Khataunis No.827/1197, 841/1221, 927/1522, Rectangle No.147, Khasra Nos.15/2, 14/2, 13/2 and 8. It was the case of the plaintiff that the defendant had entered into an agreement to sell with the plaintiff-company on 08.03.2006 for himself as well as attorney for his sister namely Arminder Kaur @ Arvinder Kaur at the rate of ₹72,00,000/- per killa and had received ₹15,00,000/- as earnest money. It was agreed that the sale deed shall be

executed on 15.05.2006.

Plaintiff-company further asserted that the defendant thereafter got the date for execution of the sale deed extended vide writings dated 15.05.2006, 16.06.2006, 24.08.2006, 28.09.2006 and 27.11.2006. The last date for execution and registration of the sale deed was fixed as 31.01.2007. Plaintiff-company further pleaded that the plaintiff remained always ready and willing to perform its part of the contract and in order to fulfill the aforesaid obligation, the plaintiff even sold his prime property situated in the heart of the city i.e. SCO No.41, Ranjit Avenue, Amritsar for a sum of ₹1,40,00,000/-. The plaintiff further asserted that the defendant informed a representative of the plaintiff that he will be coming to Amritsar on 27.11.2006 in connection with some case pending in the Court and defendant asked the official of the plaintiff to come and execute the sale deed on 27.11.2006. Official of the plaintiff-company was made to stand outside the Court Complex till evening but defendant went away while promising to come back on 30.11.2006 for execution and registration of the sale deed.

On 27.11.2006, although a writing was executed that the sale deed would be executed on 31.01.2007, however, since defendant was putting off the matter on one pretext or the other, the plaintiff sent a registered notice to the defendant calling upon him to reach Amritsar on 30.11.2006 and execute the sale deed. The plaintiff remained present in the office of the Sub-Registrar on 30.11.2006 at 10:00 AM and made all preparation for execution of the sale deed. Plaintiff even deposited the charges for stamp duty but defendant did not come present for execution of

the sale deed. Plaintiff got his presence marked.

Plaintiff filed a suit on 01.12.2006.

On notice, defendant appeared and stated that he has not signed the agreement to sell, although, there was some oral negotiation which had taken place and it was agreed that the defendant alongwith his sister shall transfer their share of land measuring 5 kanals 12 marlas at the rate of ₹72,00,000/- per killa and had received a sum of ₹15,00,000/- as earnest money. Defendant further submitted that the last date for execution of the sale deed was fixed as 15.05.2006. However, defendant does not know the Gurmukhi (Punjabi Script), therefore, he did not know what is written in the agreement to sell. Defendant took a stand that he is ready and willing to execute the sale deed qua 5 kanals 12 marlas of land belonging to him and his sister.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff with respect to the land measuring 5 kanals 3 marlas. The learned trial Court held that the defendant shall execute the sale deed out of Khewats/Khataunis No.827/1197, 841/1221/, 927/1522, Rectangle No.147, Khasra Nos.8, 13, 14, 15 and 17/2 on payment of sale consideration at the rate of ₹72,00,000/- per acre.

First appeal preferred by the defendant has been ordered to be dismissed by the learned Additional District Judge, after re-appreciating the evidence available on the file.

Defendant has filed the present Regular Second Appeal. Learned counsel for the appellant has raised following contentions:-

i) The decree for specific performance passed by the Courts below is

with respect to the land which is beyond the land agreed to be sold particularly khasra No.17, which could not be ordered.

- ii) Plaintiff had no financial capacity and, therefore, the plaintiff was not ready and willing to perform its part of the contract.
- iii) Defendant was not the owner of the entire property qua which the suit has been decreed on the day the agreement to sell was entered into and a dispute is pending with the brother and sister with respect to land inherited from the mother. Hence, the suit could not be decreed with respect to the property which was not owned by the defendant on the day the agreement to sell was executed.

I have considered the submission of learned counsel and with his able assistance gone through the documents produced at the time of arguments and the judgments passed by the Courts below.

i) The decree for specific performance passed by the Courts below is with respect to the land which is beyond the land agreed to be sold particularly khasra No.17, which could not be ordered:-

With respect to the first contention of learned counsel, it is suffice to say that no additional land has been added by the Court while ordering specific performance of the agreement to sell. A bare look at the jamabandi for the year 2001-2002, which is Ex.DX on the file, specifically referred to in the agreement to sell, would show that the agreement to sell is with respect to three khewats/khataunis. Khewat No.841/1221 consists of Rectangle No.147/8/13, khewat/khatauni Nos.927/1522 consists of Rectangle No.147, Khasra Nos.17/2 whereas land comprised in Khewat/Khatauni Nos.827/1197 consists of Rectangle No.147, Khasra

Nos.14 and 15. Learned counsel wanted to take the benefit of the fact that Khasra No.17 has not been mentioned in the agreement to sell. Khasra No.17 is part of the Khewat/Khatauni No.927/1522. In fact, Khasra No.17/2 is the only khasra number which is in Khewat/Khatauni No.927/1522.

Still further, it is not in dispute that during the pendency of the suit, mother of the defendant namely Joginder Kaur died and on the basis of the Will executed by Late Smt. Joginder Kaur, 1/3rd share of the land owned by Late Smt. Joginder Kaur was mutated in favour of the defendant. As per the revenue record (*farad hakikat*), defendant is now owner of 11 kanals and 16 marlas of land.

Therefore, the arguments of learned counsel that the Court has decreed the suit by adding a piece of land which was not part of the agreement is factually incorrect. Once the khewat/khatauni number has been specifically mentioned in the agreement to sell, the land comprised in aforesaid khewat/khatauni is part of the agreement. Merely because a particular khasra number which is a small constituent of khewat has not been specifically mentioned, the defendant cannot take the benefit of the same particularly when as per the jamabandi, Khasra No.17/2 is the only khasra number comprised in Khewat No.927, Khatauni No.1522. The agreement to sell is proved on the file. Agreement to sell is with respect to the land measuring 13 kanals 8 marlas whereas the Court has decreed the suit only with respect to 5 kanals 3 marlas which is owned by the defendant.

ii) Plaintiff had no financial capacity and, therefore, the plaintiff was not ready and willing to perform its part of the contract:-

I have considered the submission of learned counsel. It has

been concurrently found by the Courts that the plaintiff was ready and willing to perform its part of the contract. It is not in dispute that the plaintiff served a notice calling upon the defendant to come and execute the sale deed. It is also proved on the file that the official of the plaintiff-company appeared before the Sub-Registrar and deposited the amount of stamp duty payable for execution and registration of the sale deed. Plaintiff has further proved on record that the plaintiff-company had agreed to sell a showroom for a sum of ₹1,40,00,000/-. Apart from the Director of the company, even attesting witness of the aforesaid agreement to sell has been examined. Learned counsel for the appellant has referred to the income tax record to show that the plaintiff-company had suffered losses. Plaintiff-company is dealing in Real Estate. Once the plaintiff had even purchased the stamp duty for execution of the sale deed on 30.11.2006, it is not possible to accept the contention of the learned counsel for the appellant.

Both the Courts have concurrently found that the plaintiff-company had a financial capacity and plaintiff-company was always ready and willing to perform its part of the contract.

Hence, I do not find any force in the submission of the learned counsel.

iii) Defendant was not the owner of the entire property qua which the suit has been decreed on the day the agreement to sell was entered into and a dispute is pending with the brother and sister with respect to land inherited from the mother. Hence, the suit could not be decreed with respect to the property which was not owned by the defendant on the day the agreement to sell was executed:-

In this respect, it must be recapitulated that originally the plaintiff had entered into an agreement to sell for himself and on behalf of her sister claiming to be attorney of the sister with respect to the land measuring 13 kanals 8 marlas. During the pendency of the suit, the mother of the defendant died. On the basis of the Will, 1/3rd share of the land owned by the mother was entered into the revenue record in the name of the defendant. Even if the defendant was not owner of the entire land on the day of agreement, however, in view of Section 13 of the Specific Relief Act, once the defendant had become owner of some land, subsequently, the Courts below were correct in passing a decree by including the subsequent acquired land also. Section 13 of the Specific Relief Act, 1963 is extracted as under:-

“13. Rights of purchaser or lessee against person with no title or imperfect title

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely,-

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to

procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.”

On reading of the aforesaid provision, it is clear that if the Vendor subsequently acquires any interest in the property, the purchaser may compel him to make good the contract out of such interest. In these circumstances, I do not find any force in the submission of the learned counsel.

For the reasons recorded above, there is no good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

08.092017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No