

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1745 of 2017 (O&M)
Date of Decision: 20.07.2017**

Jaswant Singh and another

... Appellants

Versus

Bachan Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rakesh Gupta, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

CM No.4187-C of 2017

For the reasons mentioned in the application, the same is allowed and the delay of 18 days in filing the appeal is condoned.

CM No.4188-C of 2017

For the reasons mentioned in the application, the same is allowed and the delay of 255 days in re-filing the appeal is condoned.

Main Case

1. Of the many reasons which appeal to me for sealing the fate of this appeal that is deserves to be dismissed are recorded below.

2. The suit by the appellant was for possession by way of specific performance of an agreement to sell dated February 14, 2004 in respect of agricultural suit land measuring 166 bighas 15 biswas at ₹1.8 lakh per acre comprised in Khewat/khata numbers as fully described in the head note to the plaint. The suit has been dismissed qua specific performance and orders

have been passed for refund of earnest money of ₹20 lakh out of the total sale consideration as a result of the lower courts denying a decree of specific performance.

3. The defendants No.1 to 10 are members of the Harijan Scheduled Caste Cooperative Society while defendants No.11 and 12 held their special power of attorneys on behalf of the allottees. It was the defendants No.11 and 12, representing the interests of defendants No.1 to 10 executing general power of attorneys on behalf of the said defendants who agreed to sell the suit land to the plaintiff-appellants and signed papers on behalf of them.

4. It is not a disputed fact that the suit land was allotted to the Society by the Government of Punjab under the Punjab Nazool Land Rules, 1956. The State of Punjab was not impleaded as party even though it was necessary since the Nazool Land Rules prohibited transfer of such land except with the express permission in writing of the State Government as amended vide notification dated October 28, 1970. Rule 7 (1) after amendment reads as hereafter quoted:-

“Rule 7 (1) (after amendment)

Bar of alienation: (1) *No co-operative Society or the individual member of Scheduled Castes, as the case may be, shall except with the express permission in writing to the State Government, alienate, whether permanently or temporarily, the Nazool land transferred to it/him for a period of ten years from the date the said Co-operative Society or the individual member of Scheduled Castes gets all rights, title and interest in the said Nazool land. Thereafter, its alienation shall be strictly restricted to the members of the Scheduled Castes only.*

Provided that in granting permission the State Govt.

shall have regard to the general interests of the Co-operative Society or individual member, as the case may be.”

5. There is a prohibition of transfer of Nazool land by an individual member or by the Cooperative Society whether permanently or temporarily for a period of ten years from the date the Cooperative Society or the individual member of Scheduled Castes gets all rights, title or interest in the Nazool land. Thereafter, its alienation shall be strictly restricted to the members of the Scheduled Castes only. It is plain common sense of Rule 7 that there could be no sale of land to any outsider except to such as are members of the Scheduled Castes. To cover the proposition the First Appellate Court relied on the decision of this Court in Scheduled Castes Co-operative Society v. State of Punjab and another, 2005 (1) RCR (Civil) 92 and copy of the judgment was exhibited by the plaintiffs as Ex.P-5. The Court noticed glaring lacuna in the plaint that defendants No.1 to 10 were sued in their individual capacity while the Harijan Scheduled Caste Cooperative Society of which they were members was not sued not being arrayed as parties.

6. Three of the defendants, viz., No.8 to 10 were dead when the suit was brought against them. As far as they are concerned with the death of the principals, the power of attorney executed by them comes to an end with death and, therefore, defendants No.11 and 12 had no authority to sign the deal as power of attorney holders of 8 to 10 who were no longer competent to execute a sale agreement by reason of death and therefore the SPA holder misused the special power of attorney of dead persons and that would not bind their heirs and LR's.

7. The Court found from the evidence that the sale agreement dated February 14, 2004 though proved on record does not bear any date of its inscription. The sale agreement has been scribed on a simple piece of paper bearing two adhesive stamps of ₹3.

8. It does not appear that it was scribed by a regular deed writer or that it was entered in some deed register. Moreover, the Special Power of Attorney dated June 24, 2006 Ex.P-3 was found not to reflect as if the Harijan Cooperative Society might have resolved to permit its members to attorn defendants No.11 and 12 as their special power of attorneys with the specific permission to sell the suit land measuring 166-B/15B. A Society being a body corporate can act only by resolutions passed in favour of its members. No such resolution was passed by the society to part with land to third parties who are admittedly non Scheduled Castes.

9. The Lower Appellate Court was of the view that patent collusion with the defendants and SPA holders cannot be ruled out and the attending circumstances lean in favour of such an inference while dealing with Nazool land. Interestingly, plaintiff did not seek the alternative relief of refund of earnest money of ₹20 lakh and sought the entire relief of possession by way of specific performance. But the trial Court in its judgment and decree granted this relief of return of earnest money which the learned Additional District Judge, SAS Nagar, Mohali aptly traced the mind of the trial Court to the doctrine of unjust enrichment as the factor to square the deal.

10. The Lower Appellate Court was conscious of the law that alternative relief can only be granted if it has been prayed and if has not

been prayed, the prayer has to be incorporated in the plaint by seeking amendment. Defendants No.11 and 12 have not assailed relief of refund of money to the plaintiffs since they have not filed an appeal or even cross objections. Neither of them came to get their deposition recorded before the trial Court and shied away from entering the witness box to face cross-examination.

11. The Lower Appellate Court did well in not disturbing the findings of the Lower Court granting alternative relief. This is in consonance with the principles of equity, justice and good conscience that earnest money should be returned especially when there is no forfeiture clause in the agreement to sell property. The cumulative effect of all the facts would together lead to the irresistible conclusion that discretionary relief of possession by way of specific performance could not be handed down to the plaintiffs as a matter of right.

12. I have heard Mr. Rakesh Gupta, learned counsel at length on the issues pressed before me and I am not impressed by any of them. In the grounds of appeal the appellants have tried to seek the benefit of notification dated December 22, 2006 where the State of Punjab has modified the Nazool Rules, 1956 whereby permission was granted to members of the Society to transfer individually their membership property and no permission is required to be obtained from the Society.

13. To my mind this notification would not save illegal transactions struck prior to the notification and if those transactions were legally bad the notification would not add colour to the rights of the defendants. Merely because part of the sale consideration was paid to the defendants would not

give rise to a right of specific performance of an agreement to sell.

14. For the many reasons recorded in the judgment of the trial Court and that of the First Appellate Court, this appeal must fail as there are far too many unfilled chinks in the armour of the plaintiffs, who are the appellants who have brought up this appeal.

15. No question of law, much less substantial arises in this appeal and the findings of fact recorded by the Courts below based on proper appreciation of evidence is not open to interference on the second appeal side of this Court only to enforce specific performance which plea has not been established by direct evidence. Nothing has been placed on record to show that the plaintiffs and defendants were members of the Scheduled Caste. It would be playing a fraud on the 1956 Rules to permit title to pass from the defendants to the plaintiffs through a Special Power of Attorney which instrument also suffers severe restrictions caused by death of at least three of the defendants casting a serious doubt on the whole dubious deal at the time the disputed agreement to sell was signed by the parties to hoodwink the State and the Society and the scheme of allotment of land to Harijans.

16. Accordingly, the Appellate Court was justified in dismissing the counter claim of defendants No.1 to 7 and they could have no case better than the plaintiffs when both were apparently mixed up to strike an illegal deal of valuable land. The judgment in appeal is affirmed as sound in law and fact.

17. As a result, the appeal is dismissed at the threshold as no question of law arises for admission of the appeal for regular hearing, much

less substantial.

(RAJIV NARAIN RAINA)
JUDGE

20.07.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*