

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

CR No.4937 of 2016 (O&M)
Date of decision: 23rd April, 2018

Anil Ghai

... Petitioner

Versus

Sagar Singh Dua & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. B.S. Bedi, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

The brief facts that needs to be recalled are that a civil suit No.334 dated 26.04.2008 titled as 'Sagar Singh Dua and others v. Sohan Lal Arora and others' for possession by way of specific performance of agreement was pending between the parties before the Court of learned Civil Judge (Junior Division), Chandigarh. The brief allegations are that the present revisionist, who was defendant No.2 in the suit, was owner of the residential property detailed in the pleadings alleging that an agreement between the original owner with respondent No.2 Sohan Lal Arora for sale of this property was executed on 21.08.2006 (hereinafter referred to as, 'the first agreement'), the conditions of which are not put to question. It is subsequent thereto, another agreement between Sohan Lal Arora respondent No.2 and Sagar Singh Dua respondent No.1 took place over the same very property on 22.01.2007 (hereinafter referred to

as, 'the second agreement'), regarding which a dispute arose in which the suit in question was filed. During the course of proceedings, defendant No.2 Anil Ghai (present petitioner) filed an application under Order VII Rule 11 CPC for rejection of the plaint and which application through impugned order dated 25.07.2016 of the trial Court was dismissed. The same is subject matter of challenge before this Court by the unsuccessful applicant/defendant No.2.

Heard Mr. Sanjiv Gupta, Advocate for the petitioner; Mr.B.S. Bedi, Advocate representing respondent No.1 and perused records of the case. It is admitted stand of the parties that the suit is at the stage of trial, in which substantial evidence has been led by the parties. The primary grouse of the revisionist that no cause of action has arisen to the plaintiff to file the suit and that Sohan Lal Arora had taken back the money on 10.05.2007 and the first agreement stood cancelled and that no privy of contract remains, and has sought to distinguish on the grounds of nomination and assignment of the second agreement seeking that the same was not permissible, citing **'The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee'** MANU/SC/0515/2012; **'M/s Ansal Properties and Industries Pvt. Ltd. v. Ratnu (deceased) through LRs & others'** MANU/DE/4293/2013; **'Tarigoppula Kondala Rao v. Dodda Venkateswara Reddy & others'** MANU/AP/0480/2011; **'Gladys Devavaram v. S. Subbiah'** MANU/TN/2894/2011; **'Kanwaljit**

Singh and another v. Fuljit Kumar and others’ (RSA No.3494 of 2010, decided on 10.08.2016 by Punjab & Haryana High Court); ‘Saleem Bhai and others v. State of Maharashtra and others’ MANU/SC/1185/2002; ‘Ram Prakash Gupta v. Rajiv Kumar Gupta & others’ 2007(4) RCR (Civil) 605.

On the other hand, learned counsel for respondent No.1 with all vehemence has sought to argue that clause (7) of the first agreement allows the purchaser Sohan Lal Arora to transfer his rights qua this agreement to a third party and therefore it was permissible to do so and has placed reliance on provisions of Section 13 of the Specific Relief Act, 1963 to enliven his submissions and has cited **‘Shyam Singh v. Daryao Singh (dead) by LRs and others’ 2003(12) SCC 160; ‘Mrs. Chandnee Vidya Vati madden v. Dr. C.L. Katial and others’ 1964 AIR (SC) 978; ‘Nathulal v. Phoolchand’ 1969(3) SCC 120.**

Appreciating the submissions of the two sides, the provisions of Order VII Rule 11 CPC lays down the eventualities in which rejection of the plaint could be undertaken and which are reproduced herein below to lay emphasis:

“11. *Rejection of plaint*

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to so correct the valuation within a time to be fixed by the Court, fails to do so;*

- (c) *where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) *where the suit appears from the statement in the plaint to be barred by any law;*
- (e) *where it is not filed in duplicate;*
- (f) *where the plaintiff fails to comply with the provisions of rule 9;*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

It needs to be reiterated here that in order to consider the provisions of Order VII Rule 11 CPC, the Court has to go through the plaint and the pleas raised therein and at that juncture it is settled proposition of law that the stand of the defendants taken in the written statement needs to be considered as irrelevant.

As is there in the arguments of the two sides, it is admitted stand that the first agreement was executed between Anil Ghai, the original owner, and Sohan Lal Arora respondent No.2, and that

subsequently respondent No.2 entered into second agreement after more than 5 months of the first agreement, with respondent No.1 Sagar Singh Dua. To the specific query of the Court, contentions of learned counsel for the petitioner Mr.Sanjiv Gupta that Sohan Lal Arora has taken back his money of first agreement and cancelled the same on 10.05.2007 could not be supported by any document. The first agreement between the parties which binds Anil Ghai and subsequent persons who have stepped into the shoes of Sohan Lal Arora (Annexure P3) by way of clause (7) lays down as follows:

“7. That the purchaser has right to get the sale effected in his own name or in the name of his nominee/s or any other person or persons whomsoever he like and the said seller shall have no objection for the same at any later stage.”

A plain reading of the same shows that the purchaser has right to get the sale effected in his own name or in the name of his nominee or any person whomsoever he likes and the seller shall have no objection to the same at any later stage. Thus, even by the principle of estoppel, the present revisionist is stopped from raking up such a plea that Sohan Lal Arora could not confer his rights upon Sagar Singh Dua by the second agreement and how there is no cause of action to the plaintiff and none of the eventualities provided in Order VII Rule 11 CPC could prima facie be satisfied in the submissions of learned counsel for the petitioner to support his stand.

The factual scenario in the cited ratios is at much variance, as in **The Church of Christ Charitable Trust and Educational Charitable Society's case (ibid)**, a question had arisen whereby the Court has held that without there being anything to show as to on which date the plaintiff was so nominated, it was not clear as to when the plaintiff, even if believed, had to approach the defendant or start doing so. Thus, there was ambiguity as to the nomination which is not so in the present case. Mr.Bedi has placed reliance on **Shyam Singh v. Daryao Singh (dead) by LRs and others (ibid)** of the Hon'ble Supreme Court where there is no express prohibition on transfer or assignment of right by the original contracting parties to a third party. The applicant cannot take any such benefit at this juncture. Since trial is underway, it was incumbent upon the parties to have led evidence and thereafter to enable the Court to comment upon the evidence to this effect on merits and to come to a conclusion if the plaintiff was a representative in interest of the principal or any one thereof in terms of Section 15(b) of the Specific Relief Act, 1963 or not, when it clearly underlines the fact that specific performance of contract can be obtained by any party thereto or their representative in interest.

It is not denied by Mr. Gupta during the course of his arguments, as to the second agreement between respondent No.1 and 2 and therefore merely on the application of the applicant/revisionist, it would have been too preposterous to comment at that very juncture. Even subsequent views sought to be relied upon by learned counsel for the

petitioner do not come to his aid, as it was the findings of Court on regular appeal in an application in such an eventuality and thus, factually at much variance from the situation before this Court at this stage. Learned Court below while passing the impugned order culminating into this revision, had held that it is only upon conclusion of evidence, a decision could be given to such a relief being sought by the applicant and without recording of evidence it would be quite difficult for the courts to give import to the rights that invest in a party consequent upon the second agreement and thus, has rightly drawn conclusion that hair splitting technicalities of being an assignment clause or a nomination clause can be delved into only after the conclusion of oral as well as documentary evidence. Moreover, question of there being no privy of contract which is sought to be raised by learned counsel for the petitioner cannot prima facie be supported in the light of written contract to the contrary.

In the light of what has been detailed and discussed above, there is no illegality or perversity in the impugned order on the face of records and thus, the present revision being devoid of any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 23, 2018
rps

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