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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2422-1993 (O&M)
Date of decision : 20.02.2018

Sat Pal

... Appellant(s)

Versus

Devki Devi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.N. Moudgil, Advocate
for the appellant.

Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.2 Satpal son of Hari Narain is aggrieved of the concurrent findings of fact, whereby the suit for possession by way of seeking specific performance of agreement to sell dated 24.12.1987, has been decreed by both the Courts below.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The plaintiff-Devki Devi instituted the suit bearing No.43 of 1988 claiming the specific performance of the agreement to sell dated 24.12.1987, whereby, Jit Ram son of Sant Ram/defendant No.1 was the owner of the property and had agreed to sell the same for a consideration of ₹30,000/- against the payment of ₹5,000/- as earnest money. As per the terms and conditions of the agreement to sell, the sale deed was to be

executed on 21.04.1988. However, on refusal, the suit aforementioned was filed claiming the alternative relief of refund of the earnest money. One Baldev Krishan also instituted a civil suit bearing No.50 of 1988 against Jit Ram claiming specific performance of agreement to sell dated 05.04.1987 executed by Jit Ram. Both the civil suits, aforementioned, were consolidated. Jit Ram contested the suit by denying the execution of the agreement to sell dated 24.12.1987 in favour of Devki Devi, much less, also refused to have received a sum of ₹5,000/- as earnest money. It was stated that he had entered into agreement to sell dated 05.04.1987 in favour of the Baldev Krishan, who was arrayed as defendant No.3 in earlier suit and plaintiff in the subsequent/second suit. It was further stated that defendant No.3 violated the agreement to sell by expressing his inability to perform his part of the agreement and as such, defendant No.1 was compelled to sell part of the suit property measuring 13x13 ft. to appellant-defendant No.2, Satpal, vide registered 08.01.1988 as he was in dire need of money. Defendant No.2-appellant filed a separate written statement challenging the agreement to be forged and fabricated, but reiterated the averments and also acknowledged to have purchased the portion measuring 13x13 ft. from defendant No.1-Jit Ram, vide registered sale deed dated 08.01.1988 for a valuable consideration of ₹5,000/-. The plea of *bona fide* purchaser was also taken. It was also stated that he was a tenant in the aforementioned shop under defendant No.1. The parties were at variance, the trial Court framed the following issues:-

“1. Whether defendant Jit Ram executed an agreement to sell the shop in dispute in favour of plaintiff Devki Devi on 24.12.1987? OPP

2. *Whether Devki Devi paid a sum of ₹ 5000/- to Jit Ram as earnest money? OPP.*
3. *Whether the plaintiff Devki Devi has been and is still ready and willing to perform her part of the contract? OPP.*
4. *Whether plaintiff Devki Devi is entitled to seek the specific performance of the contract dated 24.12.1987? OPP.*
5. *Whether in the alternative Devki Devi is entitled to claim damages? If so to what extent? OPP*
6. *Whether defendant Jit Ram executed an agreement to sell in favour of defendant No.3 Baldev Krishan on 5.4.87? OPD 3.*
7. *Whether Jit Ram received ₹ 5000/- as earnest money from Baldev Krishan? OPD 3.*
8. *Whether Baldev Krishan has remained and is still ready and willing to perform his part of the contract? OPD3.*
9. *Whether Baldev Krishan is entitled to seek specific performance of the contract dated 5-4-1987? OPD 3.*
10. *Whether in the alternative Baldev Krishan is entitled to claim damages? If so to what extent? OPD 3.*
11. *Whether Jit Ram has executed a sale deed on part of the premises in dispute in favour of defendant Satpal on 8-1-1987? OPD2.*
12. *If issue No.11 is proved whether the sale in favour of defendant Sat Pal is bona fide for valuable and without notice of the agreement in favour of Devki Devi and Baldev Krishan? OPD 2.*
13. *Whether defendant Sat Pal had taken on lease the site of the part of the premises purchased by him from defendant Jit Ram and had raised construction of the shop thereon at his own expenses? If so its effect? OPD 2.*
14. *Relief.”*

The civil suit filed by Devki Devi was decreed in toto, whereas by Baldev Krishan was dismissed. The appellant-defendant No.2, Sat Pal filed an appeal bearing No.69 of 1990, which was also dismissed.

Mr. R.N. Moudgil, learned counsel appearing on behalf of the appellant-defendant No.2 submits that both the Courts below have committed illegality and perversity in decreeing the suit by calling upon the appellant to execute the sale deed in favour of Devki and other portion in favour of Jit Ram, which is not permissible in law. The appellant was a *bona fide* purchaser for a valuable consideration of ₹5,000/-, being a tenant and did not have the knowledge of the agreement to sell and the same has erroneously been belied that where the landlord-owner attempted to sell the land as there was always murmuring in the society, which cannot be denied in the manner and mode as sought to be projected by his client, even if this Court finds that the appellant was not able to prove ingredients of Section 41 of the Transfer of Property Act. His status of tenancy cannot be changed on the premise that once a tenant, always tenant, in essence, the appellant-defendant No.2 cannot be dispossessed in the manner and mode as has been indicated by the trial court and the remedy for the landlord is to take appropriate remedy in accordance with law, if permissible.

Mr. Atul Lakhanpal, learned Senior Counsel assisted by Mr. R.S. Chahal, learned counsel appearing on behalf of the respondent submits that the concurrent findings of fact cannot be interfered as the appellant has not been able to prove the ingredients of Section 41 of Transfer of Property Act, who was a sitting tenant in the shop and had purchased the shop measuring 13x13 ft. on 08.01.1988, during the subsistence of the agreement to sell dated 24.12.1987. It cannot be presumed that he did not have the knowledge of the agreement to sell. Both the Courts below have discarded his plea and no fresh evidence or argument preferred before this Court to arrive at a different findings than the one arrived at by the Courts below,

thus, urges this Court for upholding the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

As regards the contention/plea of Mr. R.N. Moudgil, representing the appellant-defendant No.2-Sat Pal that he was a *bona fide* purchaser for a valuable sale consideration of ₹5,000/-, I am of the view that as per finding of fact arrived at by the Courts below, no evidence had been led to prove that he was a *bona fide* purchaser. He was a sitting tenant and was carrying on the business for the last 13-14 years and therefore, it cannot be believed the existence of the agreement to sell was not known, rather Mr. Jit Ram came out with a plea that he had entered into agreement to sell with one Baldev Krishan, who showed his inability to sell the part of the property to the appellant as he was in dire need to money. It cannot be believed that the appellant was not apprised of the existence of the agreement to sell, rather he took the risk for purchasing the property.

However, the direction of the trial Court to the appellant to join with the defendant No.1 to execute the sale deed in pursuance to the agreement to sell dated 24.12.1987, which in my view, is not correct appreciation of law as there was no privity of contract between the appellant and vendee i.e. plaintiff-Devki Devi. The trial Court ought to have set aside the sale deed as it was executed during the subsistence of the agreement to sell. Resultantly, the judgment and decree of the trial Court is modified to the fact that the sale deed dated 08.01.1988 is set aside and the plaintiff is entitled to specific performance of the agreement to sell in respect of the suit property on deposit of the sale consideration, if not deposited, within a period of two months from the date of the receipt of the certified copy of

this order and defendant No.1-Jit Ram is directed to execute and register the sale deed, in case, he does not come forward, respondent-plaintiff shall be entitled to get the execution and registration of the sale deed through the assistance of the Court. The suit of the plaintiff is decreed in toto. The status of tenant, if in possession, would continue.

With the aforesaid observations, the appeal stands disposed of.

20.02.2018	(AMIT RAWAL)
Yogesh Sharma	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No