

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

**RSA No. 1381 of 1991 (O & M)
Date of Decision:-21.2.2018**

Gurinder Singh

...Appellant

Versus

Krishan Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.C. Chanan, Advocate for
Mr. R.P.S. Cheema, Advocate
for the appellant.

Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for the respondents.

AMIT RAWAL J.(Oral)

The appellant-defendant is aggrieved against the concurrent findings of fact whereby the suit of the respondent-plaintiff seeking possession by way of specific performance of agreement of land measuring 13 Marlas 3 Sarsahies out of land measuring 13 Kanal 9 Marlas bearing Khasra No.251/361 Khasra No.64//4/2 (3-9) 5(8-0) 6/1 (2-0) situated at Barnala Kalan, Tehsil Nawanshahr with alternative prayer for possession of land measuring 4 Kanals 15 Marlas out of land measuring 13 Kanals 9 Marlas, as detailed above, on payment of Rs.1,33,000/-, has been decreed to the extent of 4 Kanal 2-½ Marlas by the trial Court and modified by the lower Appellate Court to the extent of 3 Kanals 1 Marla and 3 sarsahies.

The respondent-plaintiff instituted the suit for claiming the

aforementioned relief on the ground that an agreement to sell dated 30.12.1980 in respect of the land 5 Kanals 13 Marlas 3 Sarsahies out of the land measuring 13 Kanals 9 Marlas, fully detailed in the headnote of the plaint was executed for a total sale consideration of Rs.1,58,667/- against the earnest money of Rs.10,000/-. The stipulated date for execution of agreement to sell was 30.6.1981 but the defendant did not come forward necessitating to file the suit on 21.7.1981.

The aforementioned suit was contested by defendant No.1 by taking preliminary objections qua estoppel, the execution of the agreement was though admitted but it was stated that the agreement was vague. In fact the plaintiff was not ready and willing to perform his part of agreement. The defendant had also appeared before the office of the Sub Registrar for performing the part of agreement but the plaintiff refused to do so. Defendant No.2 filed separate written statement on the same lines as of defendant No.1 wherein it was stated that agreement to sell was not binding upon her as defendant No.1 could not sell the specific portion out of the suit land. Defendants No.3,4 and 5 also filed separate written statements claiming the plea of bona fide purchasers in respect of the land measuring 12 Marlas out of the suit land without notice.

The trial Court on the basis of pleadings of the parties, framed the following issues :-

- “1. Whether defendant No.1 agreed to sell a specific portion measuring 5K-13M-3 Sarsahies out of land measuring 13 Kanals 9 Marlas as fully detailed in the headnote of the plaint ? OPP

2. If issue No.1 is not proved whether in the alternative plaintiff is entitled to the possession of 4K-15M of land out of 13K-9M-3 Sarsahies of land ? OPP
3. Whether defendant No.1 was exclusive owner of 5K-13M-3 Sarsahies of land agreed to be sold ? OPP
4. Whether the plaintiff is entitled to recover the earnest money and damages from defendant No.1 ? If so to what extent ? OPP
5. Whether defendant No.3 to 5 are bona fide purchasers for value without notice of the previous agreement between plaintiff and defendant No.1 ? OPP 3 to 5.
6. Whether defendants No.3 to 5 have made constructions and improvements on the portion purchased by them ? If so to what extent and with what effect ? OPD 3 to 5
7. If issue No.1 is proved whether defendant No.2 is bound by the agreement between the plaintiff and defendant No.1? OPP
8. Whether the plaintiff is estopped from suing by his act and conduct ? OPD
- 8A. Whether the agreement of sale in dispute is void being vague and indefinite ? If so its effect ? OPD
- 8B. Whether the agreement of sale in dispute is not enforceable and the suit is not maintainable in the present form ? OPD
- 8C. Whether the plaintiff has been and is still ready and willing to perform his part of the contract ? OPP
9. Relief.”

On the preponderance of the evidence, the suit was decreed to the extent of 4K-2½M. The appeal was taken by the appellant before the lower Appellate Court and same was partly allowed whereby the area of the land was reduced to 3K-1M-3Sarsahies.

Learned counsel appearing on behalf of the appellant submitted that the agreement to sell was vague as appellant-defendant No.1 was not the owner of the entire property. Defendant No.2 had not appended his signatures. The Court below had erroneously relied upon the ruling noted by the trial Court. In fact the terms and conditions of the agreement were so vague that specific performance could not be ordered. The evidence brought on record elicited that respondent-plaintiff was not ready and willing to perform his part of the agreement, therefore, the discretionary relief under Section 20 of the Specific Relief Act could not be granted.

Per contra, Mr. G.S. Punia, Sr. Advocate assisted by Ms. Harveen Kaur, Advocate appearing on behalf of respondent submitted that once the agreement to sell had been admitted, the only question to be determined by the Court was whether in such circumstances the discretionary relief could have been granted. The plaintiff proved the readiness and willingness from the time of the agreement till filing of the suit, during the pendency of the suit. Defendant No.1 had sold the land to defendants No.3,4 and 5, who claimed to be bona fide purchaser, for that the plaintiff did not press the suit for specific performance. It is in that background the specific performance sought for 4K-2½M ultimately was decreased to 3K-1M-3Sarsahies.

I have heard learned counsel for the parties and appraised the paper book and records of the Courts below.

The aforementioned facts are not controverted. The only point is to be seen is whether the doctrine of severability could be applied on the

agreement to sell in respect of the land for which the defendant was not owner. The aforementioned proposition of law has been pondered by the Hon'ble Supreme Court holding that if one of co-owner had agreed to sell on behalf of other co-owners, who did not append signatures, the specific performance could be granted only in respect of the land belonging to signatory i.e. co-owner. The aforementioned view of mine is drawn from **A. Abdul Rashid Khan (Dead) and others vs. P.A.K.A. Shahul Hamid and others (2000) 10 SCC 636** . The finding of the trial Court granting discretionary relief in respect of land measuring 4K-2½M is wholly justified in law. During the subsistence of the agreement to sell, defendants No.3 and 4 sold the property, therefore, the lower Appellate Court reduced the area to 3K-1M-3Sarsahies.

I am of the view that the appellant-defendant failed to prove the fact that they were ready and willing to perform the part of the agreement. If it all they had gone to the office of the Registrar and nothing prevented them to come forward for execution of the sale deed. The suit was preceeded by a telegram sent to defendant No.1 to come forward for execution but was not adhered to, rightly so the Court below granted the discretionary relief.

I do not find that any interference in the well reasoned judgment and decree of the lower Appellate Court is made out. Resultantly, the appeal stands dismissed.

February 21, 2018

Vijay Asija

Whether speaking/reasoned

Whether Reportable

(**AMIT RAWAL**)
JUDGE

Yes / No

Yes / No