

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA No.1670 of 1991 (O&M)

Date of decision: 07.03.2018

Kirpal Singh

..... Appellant

Versus

Ajmer Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Brar, Advocate
for the appellant.

Mr. G.S. Jaswal, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

In the considered opinion of this Court, following substantial question of law arise for consideration:-

“Whether after partition of the property amongst the family members, the property continues to be joint Hindu family ancestral co-parcenary property.”

FACTS

Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 23.08.1985 with respect to land measuring 7 kanals and 7 marlas. It was pleaded that the defendant is owner of the property. He had mortgaged the land in dispute with possession in favour of the plaintiff on 08.01.1982 against Rs.10,000/-. The plaintiff

claims that he is in possession and the defendant further entered into an agreement to sell with him on 23.08.1985 for a total sale consideration of Rs.40,000/- out of which Rs.9500/- was paid as earnest money. It was pleaded that as per the agreement to sell, the sale deed was to be executed on 15.06.1986 on payment of remaining sale consideration which the defendant failed to honour. Plaintiff visited the office of the Sub-Registrar on 13.06.1986 as 14.06.1986 and 15.06.1986 were holidays and again visited on 16.06.1986 i.e. the next working day but the defendant did not come present. It was further pleaded that the plaintiff got served a notice on the defendant on 30.05.1986 calling upon the defendant to come and execute the sale deed on the target date.

In the written statement, the defendant pleaded that the property is a joint Hindu family co-parcenary property and he never intended to sell the property. The agreement was only to increase the mortgage amount.

Both the Courts held that the agreement to sell is proved and the plaintiff is proved to be ready and willing to perform his part of the contract. The story put forth by the defendant was disbelieved. This finding is not under challenge. Only the plaintiff-appellant has come up in appeal.

Now the stage is set for considering the question of law.

Whether after partition of the property amongst the family members, the property continues to be joint Hindu family ancestral co-parcenary property?

The Courts below have found that after the death of Hazara Singh, the land was transferred in favour of Iqbal Singh and Ajmer Singh sons of Gurdit Singh on the basis of registered Will dated 30.10.1961. Hazara Singh died on 09.07.1971. Learned First Appellate Court has also found that Ajmer Singh, defendant filed a suit claiming that he is exclusive

owner of the property. The suit was filed against his brother Iqbal Singh and father Gurdit Singh. The plaintiff claimed that the property of his uncle Hazara Singh has been bequeathed by him on the basis of Will. A compromise was arrived at between the parties. In the compromise, it was written that there was a family settlement between Gurdit Singh and his two sons Ajmer Singh (defendant in the present suit) and Iqbal Singh. Property of Hazara Singh was given to Ajmer Singh-defendant whereas the remaining land of Gurdit Singh was given to Iqbal Singh. In view of aforesaid finding, learned Courts below committed a serious error in recording a finding that the property still continues to be joint Hindu family co-parcenary property. Once there was a family settlement and the property was divided through compromise Ex.D-1 which was recognized in a Civil Court judgment and decree Ex.D-3, no doubt was left that the property is exclusive property of Ajmer Singh. Hence, the finding of the learned Courts below are found erroneous and set aside.

In view of the discussion made above, question of law is answered in favour of the plaintiff-appellant.

Although, the learned trial Court has also refused specific performance on the ground that the attorney of the plaintiff was not authorized to enter into agreement to sell. However, learned counsel for the respondent-defendant after examining the power of attorney has admitted that the finding of the learned trial Court is erroneous and result of misreading of the power of Attorney produced on file. Even otherwise, this Court is of the considered opinion that the agreement to sell executed by a Karta of the joint Hindu family cannot be refused once the agreement to sell is proved and the payment of earnest money and the plaintiff is able to prove that he is ready and willing to prove his part of the contract. A Karta of the joint Hindu

family has a right to sell the property for legal necessity. Once a Karta enters into an agreement to sell, he cannot be allowed to avoid specific performance thereof on the ground that the property is a joint Hindu family property.

No doubt, this appeal has come for hearing after a period of 26 years and the agreement to sell was entered on 23.08.1985, however, the possession of the land has remained with the plaintiff-appellant as per the mortgage deed executed on 08.01.1982. In these circumstances, the Court is to balance the equities. Out of total sale consideration of Rs.40,000/-, Rs.9500/- has been paid as earnest money whereas Rs.10,000/- is the mortgage money, so practically half of the sale consideration has been paid. However, the remaining amount, remains to be paid by the appellant.

Taking into consideration these facts, the decree for specific performance of agreement to sell dated 23.08.1985 is passed subject to the payment of remaining sale consideration after adjustment of the mortgage money if not already paid within a period of three months from today along with interest @ 12% per annum from the date of institution of the suit till the date of deposit in the Court.

In view of the discussion made above, the judgments passed by both the Courts below are set aside.

Regular Second Appeal is allowed.

07.03.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No