

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA No.2077 of 1991 (O&M)

Date of decision: 02.05.2018

Jitender Kumar and others

..... Appellants

Versus

Mohinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.L. Sarin, Sr. Advocate with
Ms. Himani Sarin, Advocate
for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Ashish Pannu, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants are in the regular second appeal against the judgment passed by the learned First Appellate Court decreeing the suit for possession by way of specific performance of the agreement to sell while reversing the judgment and decree passed by the learned trial Court.

Learned senior counsel for the appellants has proposed the following substantial questions of law which are extracted as under:-

“(i) Whether the Lower Appellate Court could reverse the well considered judgment and decree of the Trial Court without dealing with or coming to terms with all the reasons given by the Trial Court in dismissing the suit of the plaintiff-respondents?

(ii) Whether the Trial Court having declined to exercise discretion and having refused to decree specific performance for valid reasons, the Lower Appellate Court could interfere and reverse the said exercise of discretion without holding it to be

perverse?

(iii) Whether a photocopy of the alleged agreement could be produced as secondary evidence without proof of the original and loss thereof?

(iv) Whether specific performance could be decreed when the plaintiff-respondents have failed to prove that they were ready and willing to perform their part of the contract and had the sale consideration ready with them at all the relevant times?

(v) Whether specific performance in the present case should be decreed in 2018 after the expiry of over 33 years of the alleged agreement to sell?

(vi) Whether the alleged agreement, Ex.P1, could be specifically enforced at the instance of the plaintiff-respondents when they are not even signatories to the agreement?

(vii) Whether the Lower Appellate Court was right in setting aside a consent decree dated 29.08.1984 to which the plaintiff-respondents were not parties?

(viii) Whether the Lower Appellate Court was right to go into the correctness of the judgment and decree dated 25.9.1980 when the same had already been set aside by decree dated 28.09.1984?

(ix) Whether the validity of a consent decree can be challenged in a subsequent suit for specific performance on merits of the decree and at the instance of a third party?

(x) Whether the Lower Appellate Court was right in decreeing specific performance at a throwaway price which is a fraction of the prevailing price of the property in dispute?

(xi) Whether the judgment and decree of the Lower Appellate Court are perverse and suffer from errors patent on the face of the record?

(xii) Whether the suit could be decreed in favour of plaintiffs who have not even signed the plaint and not even appeared as witnesses in the present suit for specific performance?"

Before dealing with the aforesaid questions, it would be

appropriate to notice certain facts.

Late Sh. Jorawar Singh had entered into an agreement to sell with respect to land measuring 173 kanals and 4 marlas for a total sale consideration of Rs.3,38,450/- and received Rs.1,08,450/- as earnest money. As per the agreement, sale deed was to be executed and registered on 15.06.1982. The plaintiff visited the office of Sub Registrar but Jorawar Singh did not come present on the target date. On 13.02.1982, Jorawar Singh submitted an application on form 34(A) to the Income Tax Authorities for grant of a certificate under Section 230(A)(1) of the Income Tax Act, 1961. The application was supported by an affidavit sworn by him dated 16.02.1982 attested by the Oath Commissioner. The certificate was granted by the income tax authorities on 19.02.1982.

The plaintiff after serving a prior notice dated 12.04.1983 filed the present suit. The defendant No.1, Jorawar Singh denied execution of the agreement to sell and pleaded that the agreement to sell is forged and fabricated. He further pleaded that he was served liquor by Richhpal Singh and his signatures were obtained on blank papers.

In order to prove the agreement to sell, both the attesting witnesses i.e. Nafe Singh and Nihal Singh, scribe Dalip Singh and stamp vendor Satbir Singh have been examined. The Oath Commissioner who attested the affidavit dated 16.02.1982 submitted before the Income Tax Authorities has also been examined.

Learned trial Court dismissed the suit on the ground that the attesting witness Niah Singh and the scribe had stated that the earnest money was not paid in their presence. Certain other reasons were also given by the learned trial Court. Hence, the suit was dismissed.

In appeal, the learned First Appellate Court framed two

additional issues and sought the report of the learned trial Court. The report was sent against the defendants-appellants on the aforesaid issues. Learned First Appellate Court after re-appreciating the evidence available on the file has accepted the appeal and decreed the suit.

Learned First Appellate Court has noted the following reasons to accept the appeal:-

1. Jorawar Singh submitted an application before the Income Tax Authorities for getting the certificate along with affidavit and the aforesaid permission was granted on 19.02.1982 which proves that there was an agreement to sell between the parties.
2. Jorawar Singh when appeared in the witness box denied his signatures on Vakalatnama and on the written statement filed by him.

This Court has examined the agreement to sell which is Ex.P-1 on the trial Court file. The agreement to sell runs into three pages. On each page, Jorawar has put his signatures. Jorawar has signed on first two pages in left hand margin. Jorawar Singh has also signed when he purchased the stamp paper. Jorawar Singh has also signed the last page where the agreement comes to an end and with his own hand, it has been written by Jorawar Singh that he has received Rs.1,08,450/-.

Now the stage is set for considering the proposed questions of law.

With regard to first question, it will be noted that the learned First Appellate Court has given cogent reasons to reverse the judgment passed by the learned trial Court. Learned First Appellate Court has re-

appreciated the evidence and have dealt with all the reasons which have been assigned by the learned trial Court. Hence, question No.1 is answered against the appellants.

With regard to question No.2, it is suffice to mention here that Section 20 of the Specific Relief Act enables the learned First Appellate Court to reverse the discretion exercised. In the present case, the learned trial Court had not exercised any jurisdiction and rather dismissed the suit filed by the plaintiff doubting its genuineness. Hence, question No.2 is also answered accordingly.

Qua question No.3, it may be noted that no doubt original agreement to sell has not been produced on file, however, the application for secondary evidence was filed which was allowed and thereafter, photocopy of the agreement to sell was produced. The plaintiffs have asserted that the original agreement to sell was lost during travelling. The existence of the agreement to sell is further proved from the application filed by Jorawar Singh before the Income Tax Authorities. Hence, question No.3 is also answered accordingly.

With regard to question No.4, it will be noted that the learned First Appellate Court has appreciated the evidence and found that the plaintiffs were always ready and willing. The evidence available on the file support the aforesaid finding. The agreement to sell was entered into on 05.10.1981. On the target date, the plaintiffs visited the office of the Sub-Registrar but the defendants did not come forward. Thereafter, notice was issued and the suit was filed. The suit was filed within limitation and the learned counsel for the appellants could not point out that there was any undue delay. Hence, question No.4 is also answered accordingly.

With regard to question No.5, it will be noted that the decree for specific performance of the agreement to sell was granted by the learned First Appellate Court on 17.08.1991. It is the defendants who have filed the appeal and delayed specific performance of the agreement to sell. The plaintiffs are not at fault. The defendants cannot be permitted to capitalize on their own act. Hence, question No.5 is also answered accordingly.

Question No.6 is also without any substance as Richhpal Singh had signed the agreement to sell on behalf of purchasers. The purchasers are not required to sign the agreement to sell. Most of the purchasers were minor. Minor son of Richhpal Singh is also one of the purchaser. Once the agreement to sell is only required to be signed or thumb marked by the intended seller(s), hence, question No.6 is answered accordingly.

With regard to question No.7, 8 and 9, it will be noted that the decree passed on 29.08.1984 is a compromise decree. Jorawar Singh during the pendency of this suit had entered into a compromise with his own children. Such decree was hit by the rule of lis pendence. Jorawar Singh was declared owner of the suit property as per the judgment and decree dated 25.09.1980. Jorawar Singh got the aforesaid judgment and decree nullified by entering into a compromise after having entered into an agreement to sell and that also, during the pendency of the present suit for specific performance of the agreement to sell. Hence, the learned First Appellate Court was correct in ignoring the aforesaid compromise decree which was entered into only to defeat the rights of the plaintiffs. The Court has only held that such compromise decree, cannot be used to defeat the rights of the plaintiffs.

With regard to question No.10, it will be noted that there is no

evidence available on the file to prove that the price of the land agreed to be sold by the defendant was lower than the market price.

Question No.11 as proposed by the counsel does not arise as this Court is of the considered view that the judgment passed by the learned First Appellate Court is based upon cogent reasons.

Question No.12 is not a question of law but the question itself is against the record. The copy of the plaint is available on the file. It has been signed by five persons. The plaintiffs No.4, 5, 6, 7, 8, 9, 10, 11 and 12 were minors and they filed the suit through their next friend and thus, the plaint was thumb marked or signed by each of the plaintiff. Still further, Richhpal Singh against whom the allegations have been made by the defendants-appellants has appeared in the evidence. Richhpal Singh is the signatory of the agreement to sell on behalf of the purchasers. Richhpal Singh was also next friend of Rajesh, plaintiff No.6. Thus, it cannot be said that none of the plaintiff has appeared in the evidence. Rajesh Kumar through his next friend and guardian Richhpal Singh has appeared in the witness box.

In view of the aforesaid, this Court does not find any substance in the present appeal.

Hence, the appeal is dismissed.

02.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No