

In the High Court of Punjab & Haryana at Chandigarh.

CRM-M-6850-2016

Date of decision: 21.02.2018

Amrik Singh and another

..... Petitioners.

VS.

State of Punjab and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S.Saini, Advocate
for the petitioners.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Ms. Navneet Kaur Sran, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this petition is for quashing of the complaint No. 15 dated 06.05.2013 titled as “Mangat Ram Vs. Amrik Singh and others” (Annexure P6) as well as the impugned order dated 09.09.2015 (Annexure P7) passed by the trial Court and order dated 20.01.2016 (Annexure P9) passed by the Revisional Court vide which the revision petition filed by the petitioners was dismissed.

Brief facts of the case are that the petitioners/accused entered into an agreement to purchase the land measuring 5 Bigha 2 Biswa vide, agreement dated 23.09.2005 executed by one Jasbir Singh, who was owner of the said land. As per the terms and conditions of the agreement (Annexure P1), the petitioners, being proposed owners, were entitled to enter into further agreement to sell as Jasbir Singh has given authority that subsequent purchaser from the petitioners will be entitled to get the sale

deed/GPA registered and he/his legal heirs will have no objection.

In pursuance to this agreement, the petitioners entered into an agreement to sell in favour of complainant-respondent No.2 on 18.10.2005 and received the earnest money of Rs. 19 lakhs. As per this agreement, which is attached as Annexure P2, stipulated date fixed for execution of the sale deed was 20.07.2006. It is further submitted that on 20.07.2006, the petitioners alongwith the original owner i.e. Jasbir Singh were present before the Sub-Registrar, Dera Bassi and got their presence marked but the complainant did not come present to get the sale deed executed.

It is further submitted that Jasbir Singh got an endorsement made that he has entered into an agreement to sell in favour of the petitioners on 23.09.2005 and the petitioners have further entered into an agreement to sell the land with complainant/respondent No.2-Mangat Ram.

It is further submitted that since the complainant failed to get the sale deed executed, the petitioners issued a legal notice on 24.07.2006, however, no reply was given by the complainant.

The petitioners, thereafter, filed a suit for mandatory injunction in which the petitioners alongwith original owner Jasbir Singh were plaintiffs and respondent No.2 was defendant. This suit was instituted on 25.08.2006 and it was prayed that a decree of mandatory injunction be granted thereby directing defendant-Mangat Ram to get the sale deed executed on behalf of plaintiff no.1 i.e. Jasbir Singh.

It is further submitted on behalf of the petitioners that in the said suit Mangat Ram was duly served and he appeared before the Civil Court on 03.10.2006 and the case was adjourned for 17.11.2006 and, thereafter, on 12.01.2007, the complainant (defendant) was proceeded

against *ex-parte*.

It is further submitted that the suit remained pending for considerable long time till 09.03.2011 and on 26.03.2011, respondent No.2 filed an application for setting aside the *ex-parte* order and, thereafter, petitioners alongwith Jasbir Singh had withdrawn the civil suit on 26.05.2011 and as the period of 3 years limitation for getting the sale deed executed, by way of filing a suit for specific performance had already expired. Admittedly respondent No.2 has never filed any suit praying for decree of specific performance or alternatively recovery of earnest money.

It is further submitted that in the meantime, respondent No.2 has filed a complaint with the police on 09.03.2011 in which enquiry was done and it was found that the matter is of civil nature.

Counsel for the petitioners submits that in the complaint (Annexure P6), there is, no explanation with regard to the period from 20.07.2006 when the stipulated date was fixed for execution of the sale deed, till filing of the complaint in the Court on 26.05.2013. It is also submitted on behalf of the petitioners that respondent No.2 in preliminary evidence examined himself as CW-1 and tendered documents Ex. C1 to C5. Thereafter, the petitioners were summoned to face the trial under Sections 406 and 420 IPC, vide order dated 21.03.2014.

In pre-charge evidence, the complainant examined himself as CW-1, one Harbhajan Singh as CW-2 and Charanjit Singh Patwari as CW3. Thereafter, vide impugned order dated 09.09.2015, charges were framed against the petitioners. Petitioners preferred a revision before the Revisional Court which was dismissed on 20.01.2016 and the present petition has been filed challenging the aforesaid two orders.

Counsel for the petitioners has submitted that, infact, it is a civil dispute which has been given colour of criminal litigation as it is admitted case of the parties that vide agreement to sell dated 23.09.2005, Jasbir Singh has agreed to sell 5 Bigha 2 Biswa of land in favour of the petitioners with a rider in the agreement to sell that the petitioners shall have right to further enter into an agreement with third party and execute the sale deed. It is further submitted that in pursuance to the right given in this agreement to sell dated 23.09.2005, the petitioners further agreed to sell the land in favour of the complainant on 18.10.2005 and the date for execution of the sale deed was fixed as 20.07.2006, on which date the petitioners and Jasbir Singh were present before the Sub-Registrar. However, the complainant failed to get the sale deed executed.

It is further argued that all the three persons i.e. the petitioners as well as the original owner Jasbir Singh filed a suit for mandatory injunction praying for a decree that the complainant be directed to get the sale deed executed and after receiving the summon, the complainant appeared and later on was proceeded *ex-parte* on 12.01.2007 and after a period of 4 years, filed an application for setting aside the *ex-parte* order. However, since 3 years of limitation for execution of the sale deed in pursuance to the agreement to sell dated 18.10.2005 had already lapsed, the said suit was withdrawn by the petitioners on 26.05.2011.

Counsel for the petitioners has further submitted that the prosecution of the petitioners, on the face of it, on the basis of impugned complaint, is misuse of the process of law and no explanation for the delay of intervening period is given specially in view of the fact that neither any suit for specific performance nor in alternative for recovery of amount was

ever filed by the complainant.

Counsel for the petitioners has relied upon the judgments titled as *Vesa Holdings P.Ltd and another vs. State of Kerala and others, 2015 (2) RCR (Criminal) 442, Ankur Gupta vs. State of U.P. and another, 2017 (4) RCR (Crl.), 1024* and *Devendri and others vs. State of U.P. and others, 2017 (All SCR (Crl.), 411*, to submit that it has been held by Hon'ble Supreme Court of India that in case an agreement to sell where the purchaser has failed to get the sale deed executed and has launched criminal prosecution against the seller, the same is nothing, but misuse of process of law.

In reply, learned counsel for respondent No.2. has submitted that on 09.03.2011, a complaint was given to the police and during investigation of said complaint, the complainant came to know about the pendency of the aforesaid civil suit and, thereafter, he has moved an application for setting aside the *ex-parte* order, on 26.03.2011. However, the suit was withdrawn on 26.05.2011. It is further submitted that both the Courts below on appreciation of the complainant's evidence, have found prima facie that offence under Sections 406 and 420 IPC is made out as Jasbir Singh, the original owner, has made a statement to the police that accused No. 1 and 2 i.e. petitioners neither his GPA nor are attorney holder rather, they themselves entered into an agreement to sell with the complainant and, thus, they have prima facie committed the offence punishable under Sections 406 and 420 IPC.

After hearing counsel for the parties, I find merit in the present petition for the following reasons:-

a). At the very outset, it may be noticed that findings recorded

by the Courts below that Jasbir Singh has given a statement to the police that he has not given GPA in favour of the petitioners and only executed agreement to sell, is not based on the correct appreciation. In the agreement to sell dated 23.09.2005, the following rights were given to the petitioners:-

“ Now, the purchasers are entitled to receive the earnest money by entering into further agreement. The purchasers will be entitled to get registry or General Power of Attorney, whatever willing, there will be no objection by me or my legal heirs. I shall be personally responsible for any old outstanding due on the above land, dispute, amount of the purchasers or compensation.”

It is thus apparent that it is not the case that Jasbir Singh has given GPA, rather he has given rights of sale in favor of the petitioners on the basis of said agreement to sell, in favour of a third person.

b). Both the Courts below have further ignored the fact that in the civil suit, not only the petitioners were plaintiffs but said Jasbir Singh original owner was also plaintiff No.1 and the prayer in the suit was that a decree of mandatory injunction be granted directing the defendant i.e. Mangat Ram/complainant to get the sale deed executed and registered in his favour on behalf of plaintiff No.1 i.e. Jasbir Singh regarding land measuring 5 Bigha 2 Biswa. Therefore, it is apparent that the original owner Jasbir Singh himself has approached the civil Court for obtaining decree of mandatory injunction regarding execution of the sale deed in favour of Mangat Ram. It is, therefore, not disputed that the original owner Jasbir Singh himself was interested in executing the sale deed in favour of the complainant.

c). There is absolutely no explanation by the complainant in the impugned complaint (Annexure P6) with regard to the delay of 7 years for the intervening period when the limitation period of filing a suit for specific

performance or alternatively recovery of earnest money expired.

d). It is admitted case of the parties that complainant Mangat Ram had never filed any suit for specific performance or in the alternative for recovery of earnest money of Rs. 19 lakhs within the period of 3 years i.e. limitation prescribed for filing of such suit, rather when the suit for mandatory injunction was filed, he appeared and opted to be proceeded against *ex-parte*. Again from the date when he was proceeded *ex-parte* on 12.01.2007 till 26.03.2011, when the application for setting aside was filed, there was no explanation given by the complainant for the intervening period.

e). The allegation in complaint that the petitioners were not competent to execute sale deed in favour of complainant are apparently against the right given to them by original owner Jasbir Singh who himself was interested in getting sale deed executed.

f). Despite availing time, no reply is filed by complainant to submit the contention of petitioners that when a complaint was filed by respondent No.2 before the police, an enquiry was conducted at it was found that matter of civil nature.

g). The petitioners are well within their rights to take the benefit of the fact that the period of limitation has expired for filing the suit for specific performance and they have withdrawn the suit fled by them and, thereafter, again, after expiry period of about 2 years, the present complaint was filed on 26.05.2013. All these facts have not been noticed by both the Courts below while passing the impugned orders.

In view of the judgments of Hon'ble Supreme Court in **Vesa Holdings P.Ltd and another's case, Ankur Gupta'case and Devendri and**

others' case (Supra), the present petition is allowed. The impugned order dated 09.09.2015 (Annexure P7) passed by the trial Court and order dated 20.01.2016 (Annexure P9) passed by the Revisional Court, are set aside and matter is remitted back to the trial Court to pass a afresh order in accordance with law.

21.02.2018
smriti

(ARVIND SINGH SANGWAN)
JUDGE

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