

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4047 of 2009 (O&M)
Date of Decision : 21.04.2018

Kashmir Puri

....Appellant

Versus

Peerdiya

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Avnish Mittal, Advocate
for the appellant.

Mr. Nitin Jain, Advocate
for Mr. Sushil Jain, Advocate
for the respondent.

Surinder Gupta, J.

This is appeal by Kashmir Puri against judgment and decree passed by Additional District Judge, Panchkula whereby suit of plaintiff for possession of H. No. 631 Sector 19, Panchkula was dismissed and the decree in favour of plaintiff-appellant passed by Civil Judge (Sr. Division), Panchkula was set aside.

2. Case of plaintiff, in brief, is that being original allottee he is owner of plot no. 631 Sector 19, Panchkula. He had executed general power of attorney in favour of defendant on 29.10.1987 and had also executed an affidavit in his favour. The defendant in collusion and in connivance with the petition writer and witnesses obtained signatures of plaintiff on some blank as well as written papers and using those documents he manipulated an agreement to sell in his favour. Plaintiff denied that he had ever executed any agreement to sell in favour of defendant or received earnest money as per agreement, which he termed as false, frivolous, forged, fabricated and manipulated document. He alleged that installments of plot were deposited

by him in the office of Estate Officer, HUDA, Panchkula and construction of the house was also raised over the plot by spending his personal funds. The fabrication of agreement is manifest from the fact that stamp paper of the agreement was issued by the Treasury Officer on 30.10.1987 on which agreement dated 29.10.1987 was got prepared. The defendant occupied the premises in question as general attorney, as such, his possession was permissive. After cancellation of general power of attorney he is in unauthorized possession of the same. He (defendant) had earlier filed a suit seeking the relief of injunction against plaintiff, which was decreed and the plaintiff had filed appeal against judgment and decree which at the time of filing of suit was pending before Ist Appellate Court. Plaintiff has alleged that mere agreement to sell does not confer any title in favour of vendee and he is liable to return vacant possession of the demised premises to plaintiff. A notice dated 11.10.1999 was sent to the defendant calling upon him to deliver possession of the demised premises within a period of seven days but of no avail, hence this suit.

3. In his written statement, defendant alleged that the plot in dispute was allotted to plaintiff and he expressed his desire to sell the same. Defendant agreed to purchase the aforesaid plot for valuable consideration of ₹29,000/-. The sale deed of the plot was to be executed at appropriate time. The defendant accepted the offer and paid ₹29,000/- to plaintiff on 29.10.1987. Possession of the plot was delivered to plaintiff and an agreement dated 29.10.1987 was executed by plaintiff in presence of respectable witnesses. He also received ₹29,000/- in part performance of agreement. It was agreed between parties that remaining installments of plot to HUDA will be paid by defendant and plaintiff shall execute an

irrevocable general power of attorney with intention to transfer the said plot in favour of defendant. In the year 1987, defendant raised construction over the plot and is residing there with family. He had also paid installment of ₹3250/- after execution of the agreement by depositing this amount in the office of HUDA on behalf of the plaintiff. In the year 1989, plaintiff threatened to interfere in peaceful possession of the defendant and to dispossess him from house no. 631 Sector 19, Panchkula as a result of which defendant was constrained to file suit seeking relief of permanent injunction against the plaintiff, which was decreed by the Court of Civil Judge (Junior Division), Panchkula vide judgment dated 27.07.1999. Possession of plaintiff over the house in question is under agreement dated 29.10.1987. The defendant was always ready to perform his part of the agreement and is still ready and will always be ready to perform his part of the agreement. All the averments of plaintiff were contested, controverted and denied.

4. Plaintiff reasserted his case in replication and pleadings of parties led to framing of the issues as follows:-

- (i) Whether the plaintiff is entitled for a decree for possession in respect of the house in question? OPP
- (ii) Whether the suit is not maintainable in the present form? OPD
- (iii) Whether the plaintiff has no *locus standi* to file the present suit? OPD
- (iv) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
- (v) Whether the plaint has not been signed and verified as per law? If so, to what effect? OPD

- (vi) Whether the proceedings of the suit are liable to be stayed under Section 10 Cr.P.C.? OPD
- (vii) Whether the suit is bad for non-joinder of necessary parties? OPD
- (viii) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
- (ix) Whether the plaintiff has suppressed true and material facts from the court? If so to what effect? OPD
- (x) Relief.

5. Learned Civil Judge (Sr. Division), Panchkula while dismissing suit of the plaintiff observed that in earlier suit filed by defendant seeking relief of injunction, plaintiff had denied execution of agreement and general power of attorney dated 29.10.1987. However, he did not produce any evidence to prove that agreement was got executed by the defendant by fraud. In this case he has admitted execution of general power of attorney in favour of defendant, which was later revoked vide deed of revocation (Ex. D-7). The plea of plaintiff that defendant is a contractor and he had given the plot in question for the purpose of raising construction, was rejected keeping in view the fact that plaintiff had also executed general power of attorney and affidavit in favour of defendant and this plea was not taken in the written statement filed in earlier suit. Learned Civil Judge (Sr. Division), Panchkula observed that contract for raising construction does not require a general power of attorney in his favour. The plea of plaintiff that he had raised construction of the house was also discarded as plaintiff has sought possession of the plot after removal of construction and fixtures, which reflect that construction was raised by the defendant from his own

funds. With regard to agreement dated 29.10.1987 (Ex. P-6), learned Civil Judge (Sr. Division) observed that plaintiff has nowhere disputed his signatures over this document. His version that his signatures were obtained fraudulently was discarded with the observation that plaintiff has not been able to prove manipulation by fraud in earlier suit and even in this case he has not led any evidence regarding forgery and fabrication of the document. The plea raised by plaintiff that agreement dated 29.10.1987 was executed on the stamp paper purchased on 30.10.1987 was also discarded with the observations as follows:-

“.....The aspect also taken by the plaintiff that the stamp paper was purchased on 30.10.1987 for execution of this document and the document was executed on 29.10.1987, this aspect has also been dealt in the previous litigation and there is a finding of the trial Court that Peerdiya, the present defendant has well explained the reason why it was so. Not only this, the scribe as well as the attesting witnesses to the document have also been examined and they have also proved this document.”

6. Learned Civil Judge (Sr. Division) has also observed that defendant-respondent has also deposited installment of ₹3250/- of the plot as per agreement with HUDA. Though, this amount was deposited on behalf of plaintiff-appellant but it is the version of plaintiff-appellant that defendant deposited the said amount as his attorney. After discarding all the pleas as raised by plaintiff-appellant, learned Civil Judge (Sr. Division) decreed the suit with sole observation in favour of plaintiff that the defendant has not deposited the amount of remaining installments with HUDA as per agreement, as such, agreement to sell dated 29.10.1987 has come to an end and the plaintiff being legal owner of the suit property is

entitled to its possession.

7. On appeal, Ist Appellate Court reversed the finding of learned Civil Judge with observations in para 11 of the judgment as follows:-

“11. In this case, the learned trial Court accepted execution of agreement of sale between the plaintiff and the defendant but held that the defendant could not continue in possession for indefinite time without getting sale deed registered in his favour. That balance sale consideration has been deposited with the HUDA has not been disputed by either of the parties. What however has been disputed by the parties is as to by whom the remaining installments of sale price were deposited. Rival contentions have been put forth by the parties. The plea of the plaintiff that receipts of installments of sale price deposited by him were taken from his wife by the defendant is incomprehensible. The plea of the plaintiff that he provided funds to the defendant for raising construction is shot down by his own pleadings. The plaintiff sought relief of 'vacant possession after removal of construction and fixtures'. Had the plaintiff paid the costs of construction, he would not have prayed for 'vacant possession of plot after removal of construction and fixtures'. The plaintiff had denied execution of the General Power of Attorney in the previous suit but in the present suit, he played a somersault and admitted execution of the said General Power of Attorney. Similarly the plaintiff had denied execution of the agreement of sale in the previous suit but he had not produced any substantial evidence to prove his plea during the previous suit. All these circumstances show that conduct of the plaintiff was inconsistent with his honesty. Escalation of price of property in and around Panchkula city has made the plaintiff go back upon of the agreement. If the defendant

was in unauthorized possession of the suit property right from 1987, the date of cancellation of the General Power of Attorney, then why he waited till 1999 to file a suit for possession. Inaction of the plaintiff supports the plea that he had agreed to sell the suit property to the defendant. Though the defendant could file a suit for specific performance of the agreement of sale yet his not doing so would not in any way take away his right unto the suit property as a prospective vendee because he had come into possession of the suit property after making part payment of sale consideration. The plaintiff had to execute the sale deed in favour of the defendant after having a conveyance deed executed in his favour from the HUDA.”

8. Learned counsel for the appellant has argued that the defendant has alleged his possession over the suit property under agreement dated 29.10.1987 while plaintiff-appellant was issued letter of allotment and possession on 11.08.1989. It is proved on file that the stamp paper on which agreement was written was purchased on 30.10.1987, which shows that the agreement in question is a false and fabricated document. The defendant-respondent is seeking protection as per provisions of Section 53-A of the Transfer of Property Act (later referred to as 'the T.P. Act') but has failed to prove ingredients of Section 53-A of T.P. Act so as to seek its protection.

9. Learned counsel for the defendant-respondent has argued that controversy regarding purchase of stamp paper was resolved in earlier litigation. PW-2 Smt. Satya, Assistant Treasurer, Sub Treasury, Kalka has stated that the stamp paper was issued on 29.10.1987 in the name of plaintiff-appellant and entry in the record was made to this effect. In para 5

plaintiff got the house constructed on the said plot out of his own funds. This shows that he has admitted the delivery of possession to defendant. The agreement to sell is duly proved. The entire sale consideration was paid. He had been seeing the defendant raising construction and never objected. He remained silent after execution of general power of attorney and agreement till filing of this suit. The plea of forgery of agreement is not proved. As the plaintiff-appellant denied the agreement, defendant-respondent was not required to prove his readiness and willingness to perform his part of the contract.

10. It is not disputed that the appellant has executed a general power of attorney in favour of respondent-Peerdiya, copy of which has been placed on file as Ex. P-4. It is also proved that he had executed agreement (Ex. P-6) in favour of defendant-respondent to sell this plot for sale consideration of ₹29000/-. As per this agreement, he has received the entire sale consideration and handed over possession of the plot to the vendee. It was also agreed that remaining installments of the plot will be paid by vendee. In the agreement this fact also finds mentioned that if the appellant cancels the power of attorney or the agreement executed by him thereby causing damage to interest of vendee, the vendor will be liable to pay six times of the sale consideration to the vendee. General power of attorney in favour of defendant was cancelled on 11.04.1989.

11. In the earlier litigation between the parties, appellant had filed written statement copy of which has been placed on file as Ex. D-1, wherein he denied possession of respondent over the disputed plot. He also denied that the respondent has raised any construction over this plot. Execution of agreement dated 29.10.1987 and the power of attorney in favour of

respondent was denied. He had taken additional plea in his written statement, which reads as follows:-

“1. That the suit is false and frivolous. The plot in question was allotted to the answering defendant and the possession was delivered to him and he is in possession of it since then. The plaintiff has wrongly given his address showing his residence in the plot no. 631. He does not live there. The plot in question and the construction on it does not belong to the plaintiff. The answering defendant never agreed to sell the plot to the plaintiff nor entered into any such agreement. Moreover, the answering defendant was not competent at all to enter into any such agreement regarding the plot in question as he was not the owner of the same till that time and was not competent at all in any manner. The alleged sale or agreement of sale (which are denied even if proved by the plaintiff) are illegal, void, ineffective, against law and cannot be acted upon. The alleged transaction if any is illegal and ineffective. The suit is liable to be dismissed with special costs.”

12. In the present suit, the appellant took somersault and alleged that he has executed general power of attorney and sworn an affidavit dated 29.10.1987 in favour of respondent and under the garb of registration of general power of attorney, his signatures were obtained on some blank and written papers. The above plea shows conduct of appellant that instead of coming up with a plea regarding execution of the agreement he has been changing his stance at different point of time. More stress has been put on the fact that the stamp paper on which agreement dated 29.10.1987 was scribed was purchased on 30.10.1987. This plea was also raised in earlier civil suit filed by respondent (Civil Suit No. 674 of 1989 decided on

which has been placed on file Ex. D-8. This controversy has also been resolved by PW-2 Satya, Assistant Treasurer, who has stated that the stamp paper at serial no. 4182 of ₹3/- was sold to appellant for execution of agreement on 29.10.1987. He had purchased another stamp paper on the same day as per entry in the register at serial no. 4260 of ₹2.25 ps. The agreement (Ex. D-3) is scribed on stamp paper purchased vide serial no. 4260. In cross-examination, he has admitted that on 29.10.1987, stamp paper was issued in favour of plaintiff-Kashmir Puri as per entry at serial no. 4182 and this entry bear his signatures. He has further explained that on this stamp paper date as 30.10.1987 has been mentioned. Testimony of this witness that stamp paper on which agreement has been scribed was issued to the appellant under his signatures on 29.10.1987, on which date the agreement was scribed, clears the controversy regarding date of execution of agreement. In order to prove execution of the agreement by appellant, respondent has examined DW-2 Hari Om Goyal, Advocate, Kalka, who has stated that power of attorney as well as agreement dated 29.10.1987 was scribed by him on asking of the appellant. Vide this agreement, the appellant had sold his plot in favour of respondent for a sum of ₹29,000/- and received the entire sale consideration. The agreement was attested by Surjan Singh and Banta Ram, witnesses. This agreement was read over and explained to appellant, who had signed the same after admitting its contents. The agreement was also signed by him as scribe of the same. He has also proved Will dated 29.10.1987 executed by the appellant in favour of respondent. The entry about execution of power of attorney, agreement and Will was also made in his register at serial no. 1906, 1907 and 1908, which were made on 29.10.1987. The appellant could not shatter testimony of this

witness and that of Banta Ram, marginal witness of the agreement, who appeared as DW-3. In appeal against judgment and decree passed in Civil Suit No. 674 of 1988, the appellant admitted possession of respondent and that appeal was withdrawn by him. A joint statement of counsel for appellant and counsel for respondent was recorded in that appeal, admitting possession of the respondent over the disputed plot. No case was ever set up that possession was not delivered under the agreement or that respondent has taken possession on subsequent date. Admittedly, the house exists on the disputed plot, which certainly could not be constructed by him in case possession had been delivered to the appellant on 11.08.1989 as per possession certificate (Ex. P-2). Civil suit was filed on 21.09.1989. The construction of house over the plot at the time of filing of that suit was not disputed, rather the same was alleged to be illegal. The plea of appellant that possession was delivered at some later point of time, cannot be believed as usually possession certificate is taken by the party as per its convenience after applying for the same. From above evidence, it is evident that possession was delivered to the respondent under agreement dated 29.10.1987.

13. The next question, which arises for consideration in this appeal is as to whether possession of the respondent is protected as per provisions of Section 53-A of T.P. Act?

14. Section 53-A was inserted in Transfer of Property Act by way of Act No.20 of 1929 on the recommendation of the Special Committee constituted by then Government of India to make recommendation whether the British equitable doctrine of 'part performance' be extended in India also. The Special Committee was of the view that an illiterate or ignorant

buyer who had partly performed his part of contract required statutory protection. The Committee was of the further view that where a transferee in good faith that lawful instrument i.e. a written contract would be executed by the transferor takes possession over the property, the equity demanded that the transferee should not be treated as trespasser by the transferor or subsequently evicted through process of law in the absence of lawful transfer instrument. The Special Committee also considered the question whether protection under the proposed Section 53-A to a transferee would also be available even if the period of limitation for bringing an action for specific performance of an agreement to sell has expired. On the said question, the Committee was of the view that even after expiry of period of limitation, the relationship between the transferor and transferee remains the same as it was within the period of limitation and, therefore, the possession over the property taken in part performance of an agreement is required to be protected even if the period of limitation for bringing an action for specific performance has expired.

15. The object of introduction of the above provision in the Transfer of Property Act was to overcome the difficulty faced by the transferee in possession if his claim of seeking specific performance of agreement has become barred by limitation.

16. While discussing the import of Section 53-A of Transfer of Property Act, a Division Bench of this Court (Circuit Bench at Delhi) in case of **Sardari Lal and others vs. Shrimati Shakuntla Devi, 1961 PLR 362** had observed as follows:-

“17. The above section has imported the English doctrine of part performance with certain distinctive features. In England the phrase “part performance” is commonly

used as a short and convenient statement of the general ground upon which verbal agreements regarding real estate are reenforced. The doctrine rests upon the principle of fraud, and proceeds upon the idea that the party has so changed his situation on the faith of the oral agreement that it would be a fraud upon him to permit the other party to defeat the agreement by setting up the statute. The English equitable doctrine of part performance is a partial importation into India, and it is applied not generally, but within the confinement of the statute. The important limitation is, that the right conferred by section 53A is only available to a defendant to protect his possession and does not furnish a basis for cause of action. This right is restrictive in character in so far as it operates as a bar to the plaintiff asserting his title. This section contemplates that the transfer having taken place, the transferor is debarred from enforcing a right other than what is expressly provided by the contract. By applying the provisions of section 53A a person can protect his possession against a challenge contrary to the terms of the contract.”

17. In case of **State Bank of Bikaner and Jaipur vs. Vijay Kumar, 1999 (2) Civil Court Cases 671 (P&H)**, a Co-ordinate Bench of this Court has observed as follows:-

“If all the conditions are satisfied, then lessee (or the transferee) is entitled to continue in possession, irrespective that the lease has not been registered. Section 53-A is principally for the protection of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. The effect of the section is to relax the strict provisions of the Transfer of Property Act and the Registration Act in favour of the transferees in order to allow the defence of part performance

to be established. It can be used not for an attack but only in defence and that too in defence only against the transferor or any person claiming under him. The right conferred is one available to the defendant to protect his possession.”

18. In order to take shelter of protection provided under Section 53-A of T.P. Act, it is required to prove that:-

- (i) There was a contract to transfer for consideration any immovable property;
- (ii) The contract was in writing, signed by the transferor, or by someone on his behalf.
- (iii) Such writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- (iv) The transferee had in part performance of the contract taken possession of the property, or of any part thereof;
- (v) The transferee had done some act in furtherance of the contract; and,
- (vi) The transferee had performed or be willing to perform his part of the contract.

19. Section 53-A of the Transfer of Property Act is attracted only where a person contracts to transfer immovable property for consideration by a writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has in part performance of the contract, taken possession of the property or any part thereof or being already in possession, continues in possession and has done some act in furtherance of the contract and the transferee has performed or is willing to perform his part of the contract. Only then he is entitled to his possession in respect of the property of which he was put in possession.

20. Taking note of ingredients required to be proved to take the

defence as per provisions of Section 53-A of T.P. Act and the law settled by Hon'ble Apex Court and this Court, learned Ist Appellate Court observed in para 17 of the judgment as follows:-

“17. In the case on hand, all the essential conditions noticed above have been fully satisfied. There is an agreement of sale of immovable property. The agreement is in writing signed by both the parties. The writing is unambiguous and intention of the parties is clearly ascertainable. The defendant has taken possession in part performance of the agreement of sale and has made part payment of the sale price. He has also raised construction over the plot in question. Though the plaintiff had claimed in the previous suit that construction was raised by him through the defendant yet this plea has been shot down by phraseology used by him in the relief clause of the present suit. At the cost of repetition, it is recorded again that the plaintiff has sought vacant possession by removal of construction and fixtures raised by the defendant on the disputed plot. The sale deed could not be executed as the plaintiff had not got conveyance deed executed in his favour from the HUDA.”

21. In this case allotment letter was issued in favour of appellant in August 1989, as such, till then there was no question of getting the sale deed executed. Thereafter, parties got involved in the litigation, which is continuing till date. Appellant is declining execution of agreement in favour of respondent. The respondent in his written statement has specifically pleaded that he was always ready and willing to perform his part of the contract and is still and will always be ready to perform his part of the contract. Appellant never controverted the above plea taken by respondent in para 11 of preliminary objections in written statement, rather denied

execution of the agreement and asserted his right to take back the

possession. The payment of installments under the agreement reflects that defendant-respondent had performed his obligation in furtherance of the agreement. It is proved on record that defendant-respondent has always been ready and willing to get the sale deed as per the agreement executed and it is the plaintiff-appellant, who is not ready to honour his commitment.

22. Keeping in view above facts and circumstances, I am of the considered opinion that Ist Appellate Court has committed no error while holding and protecting as per provisions of Section 53-A of T.P. Act possession of defendant-respondent over the disputed plot under agreement dated 29.10.1987.

23. As a sequel of my above discussion, I find no legal or factual infirmity in the judgment passed by Ist Appellate Court.

24. This appeal has no merit and the same is dismissed.

April 21, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No