

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

FAO No.8499 of 2015 (O&M)
Date of Decision : 23.05.2018

Jagdish and others

..... Appellants

Versus

Om Parkash and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ajay Jain, Advocate
for the appellants.

Mr. Rajesh Sethi, Advocate
for respondent No.1.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment and order of the appellate Court dismissing an application under Order 41 Rule 21 and Order 9 Rule 13 CPC.

The brief facts are that respondent No.1 had filed a suit for specific performance against respondent No.2 and the appellants in respect of an agreement to sell. The appellants were impleaded since they had in the meantime purchased some part of the property in dispute. It is not disputed that during the pendency of the suit the appellants purchased the remaining part of the property in dispute also. In the trial admittedly issue No.7 was to the effect as to whether the appellants were *bonafide* purchasers for value without notice. Admittedly neither the appellants appeared to give

testimony nor they examined any evidence. Admittedly, they gave up issue No.7. Admittedly, during the pendency of that suit they further sold the property to some third person. The trial Court, however, decreed the suit of respondent No.1 in the alternative directing refund. Respondent No.1 filed an appeal in which on 18.02.2009 notice was issued for 25.03.2009. On 25.03.2009 the report which had come was that the appellants No.2 to 4 had refused service and personal service of respondents No.6 to 8 could not be effected. The case was fixed for service by proclamation. However, since the report of proclamation did not come 4-5 times but on every occasion the proclamation report was not received back. It was in those circumstances, that by order dated 04.11.2009 the appellate Court passed the following order :-

“Present :- Shri R.K.Bajaj, Advocate for the appellant.

Shri H.S.Saharan, Advocate for respondent No.1.

Munadi issued against respondent No.2 to 6 again not received back either effected or unaffected. As such, I am satisfied that these respondents cannot be served in ordinary way of service. As such, they be got served through proclamation to be published in 'Summerghosh Sirsa' for 15.12.2009 on deposit of publication charges”.

*Sd/- N.K.Biriwal
ADJ, FTC, Sirsa
04.11.2009”*

Since none appeared the appeal was taken up for hearing and allowed and decree for specific purpose was passed in favour of respondent No.1. The application of the appellants having been dismissed they are before this Court.

The short submission of the learned counsel for the appellants is that there was no ground for the Court to have recorded its satisfaction that the service of the appellants could not be effected in the ordinary process. There is some merit in this argument.

However, learned counsel for respondent No.1 has argued that once the appellants sold the property in dispute in the year 2004 without, not only taking the leave of the Court, but even informing the Court, as well as in view of the fact that they never appeared in the Court to testify nor led any evidence and rather gave up issue No.7 they are now dis-entitled from prosecuting this appeal.

In my considered opinion, the argument of the learned counsel for respondent No.1 must prevail. Though technicalistically speaking it may be said that there may not have been adequate grounds for passing the order of satisfaction by the appellate Court yet the conduct of the appellants also can not be ignored and speaks volumes. Their actions as have been brought out by the counsel for respondent No.1 do clearly reveal that they were acting in concert with the original vendor in trying to somehow or the other avoiding the specific agreement for sale which had been executed by the respondent No.2.

Consequently, I do not deem it appropriate to interfere with the order.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

23.05.2018
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No