

In the High Court of Punjab and Haryana at Chandigarh

RSA-1338 of 2012(O&M)
Date of Decision:13.12.2018

Harjinder Singh and others

---Appellants

vs.

Veena Thapar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Gurcharan Dass, Advocate
for the appellants
Mr. Sunil Chadha, Senior Advocate with
Mr. Himanshu Jain, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 16.2.2010 passed by the Additional District Judge, Ludhiana whereby appeal against judgment and decree dated 4.4.2006 passed by the Civil Judge (Junior Division), Ludhiana (hereinafter to be referred as “the trial court”) was allowed, judgment and decree dated 4.4.2006 were set aside and suit filed by respondent-plaintiff Veena Thapar for recovery was decreed to the following effect:-

“Suit filed by the appellant/plaintiff is decreed to the extent that she is entitled to recover Rs. 4 lacs alongwith interest @ 9% p.a. on Rs. 2 lacs w.e.f. 8.12.1990 to 24.3.1991 and thereafter interest @ 9% per annum on Rs. 4 lacs w.e.f. 25.3.1991 till 17.9.1993 i.e. date of filing of the suit and shall also be entitled

to interest @ 7.5% on the principal amount from the date of filing of the suit till its decision i.e.16.02.2010 and thereafter interest @ 6% on the principal amount from the date of the judgment and decree dated 16.02.2010 till its realization.”

On perusal of the judgments and decrees passed by the courts and submissions made by counsel for the parties, it becomes an admitted position of the case that the appellants/defendants agreed to sell land measuring 9 acres vide agreement to sell dated 8.12.1990 and an amount of Rs. 2 lakhs was received as earnest money. In continuation of agreement dated 8.12.1990, another agreement dated 25.3.1991 in respect of the same land measuring 9 acres was executed and another sum of Rs. 2 lakhs was paid to the appellants/proposed vendors making total earnest money to the tune of Rs. 4 lakhs. It was also agreed between the parties that frontal portion of the land that abuts the GT Road is occupied by some shop keepers and the appellants will get this frontal area or the land in question vacated and shall give written information to the respondent-plaintiff regarding vacation of aforesaid frontal area and sale deed shall be executed only after frontal portion of the land is got vacated by the defendants.

The plea of the respondent-plaintiff is that the appellants-defendants failed to get frontal area of the land vacated nor sent any intimation to her in this regard, therefore, the appellants are guilty of committing breach of terms and conditions of the agreement. On the contrary, the defence plea of the appellants is that they had got vacated frontal portion of the land and sent intimation in writing by UPC to the respondent-plaintiff but as the respondent-plaintiff did not have balance sale

consideration running into several lakhs, the respondent-plaintiff is guilty of violating terms and conditions of the agreement and failed to get the sale deed executed on payment of balance sale consideration of approximately Rs. 18 lakhs. By way of amendment made in the year 2001, they controverted the allegations that original agreements of sale have been misplaced/lost and DDR No. 5 dated 13.8.1993 was lodged with Police Station Sundernagar in this regard with the plea that as the respondent-plaintiff did not have balance sale consideration, she cancelled the agreement and delivered the original to the defendants-appellants.

The respondent-plaintiff filed suit for recovery of Rs. 5,26,000/- i.e. principal amount Rs. 4 lakhs and interest @ 1½% per month i.e. Rs. 1,26,000/- with future interest @ 18% per annum.

The trial court framed issues, reproduced in para 7 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court rejected claim of the respondent-plaintiff for recovery, in view of its findings on issues No. 1, 3, 3-A and 4 to 6.

As has been noticed hereinbefore, the first Appellate Court set aside judgment and decree passed by the trial court and allowed claim of the respondent-plaintiff in the aforesaid terms.

Counsel for the appellants would argue that Smt. Veena Thapar did not appear in the witness box but she examined her husband Sh. Vijay Kumar Thapar, purported to be attorney of Smt. Veena Thapar. The appellants, in compliance with the agreed terms and conditions incorporated in the agreements dated 8.12.1990 and 25.3.1991 got frontal portion of land

in question vacated and sent an intimation to the respondent-plaintiff through UPC. It is argued with vehemence that the very fact that the respondent-plaintiff cancelled the original agreements and returned the same to the defendants-appellants goes a long way to demolish plea of the respondent that she was ready and willing to perform her part of the agreement or fault for its non-performance lies with the appellants-defendants. In addition, it is argued that story propounded by the respondent-plaintiff that original agreements were lost on 12.8.1993 in regard whereof DDR was lodged on 13.8.1993 also gets demolished in view of the fact that original agreements have been produced by the appellants-defendants from their custody as the same were returned to the appellants after cancellation by the respondent-plaintiff.

Counsel representing the respondent-plaintiff, on the contrary, has supported judgment passed by the first Appellate Court. It is argued that plea of the appellants-defendants that they got frontal portion of the land in question vacated gets falsified and belied in view of the facts elicited in cross examination of Pardeep Kumar DW1 who is running a dhaba in the name of 'Lali da dhaba' in the land in question. It is further argued that the appellants neither sent alleged intimation with regard to frontal portion being got vacated nor replied the notices sent by the respondent through registered post by way of registered post, sufficient to prove that documents with regard to notice and/or reply by way of UPC have been manufactured to create evidence for the purpose of present litigation. According to counsel, originally the written statement was filed in March 1994 wherein no such plea was raised that the original agreements were returned by the

respondent-plaintiff. Rather plea raised by the appellants is that the original agreements are not lost but the same are destroyed by the respondent-plaintiff. Seven years after filing of the written statement, the appellants filed application for amendment of the written statement and raised the plea that original agreements, after cancellation, were returned to them but even in the amended written statement, no specific plea was raised with regard to date, month or year when the original agreements were purportedly returned to the appellants-defendants. In addition, it is argued that agreement dated 25.3.1991 alleged to be returned to the appellants is not a complete document as it does not bear signatures of Veena Thapar and the second attesting witness. The last submission made by counsel is that during the intervening period of approximately seven years from the date of filing of the written statement in March 1994 and amended written statement in 2001, the appellants might have laid their hands upon the lost documents and for that reason filed application for amendment of written statement but all the aforesaid facts reflect upon conduct that is not fair, bona fide and genuine.

I have heard counsel for the parties, perused the paper book and records.

There is no dispute with regard to execution of agreements dated 8.12.1990 and 25.3.1991 whereby the appellants agreed to sell land measuring 9 acres comprising khasra numbers, detailed in para 1 of the judgment of trial court. The appellants received another sum of Rs. 2 lakhs under agreement dated 25.3.1991. Indisputably, the appellants were obligated to get frontal portion of land abutting GT Road vacated from

shopkeepers who had constructed shops/khokhas there. The plea of the appellants is that they had performed their part of the agreement by getting the land vacated from its occupants and even sent intimation to the respondent-plaintiff in this regard by way of notice through UPC.

The first question for consideration is, whether the appellants had satisfied one of the pre-conditions that they got frontal portion of the land in question vacated from its occupants and thereafter sent intimation in writing to the respondent-plaintiff. As has been rightly argued by counsel for the respondent and noticed by the first Appellate Court that testimony of Pardeep Kumar DW1 is full of contradictions, discrepancies and variations, therefore, the same is not creditworthy. Pardeep Kumar has even gone to the extent of saying that he can not tell if they are still sitting in the land of Tara Singh, Piara Singh, Daya Singh, Gurdev Singh where our dhaba exists, noticed by the first Appellate Court and reproduced in para 11 of the judgment.

On a plain but careful reading of cross examination of Pardeep Kumar DW1, I find it difficult to differ with findings of the first Appellate court that Pardeep Kumar never vacated the suit land, therefore, the appellants did not comply with terms and conditions of the agreement to sell to get the frontal area vacated from its occupants. It further appears that as the appellants failed to comply with the aforesaid condition, they did not send notice to the respondent-plaintiff through registered post and rather tried to create evidence with regard to sending of notice through UPC. In this view of the matter, it can be held that since the appellants failed to satisfy the terms and conditions of getting the frontal portion vacated from

its occupants nor any intimation was received by the respondent-plaintiff in this regard, the appellants cannot be heard to say that agreement to sell did not fructify on account of default of the respondent-plaintiff. Such a plea could have been available to them only if they are able to establish that they had satisfied the pre condition of getting the land vacated from its occupants because the question of respondent-plaintiff having got executed the sale deed would have arisen subsequent thereto.

The respondent-plaintiff raised a plea that the agreements were lost in August 1993 and DDR was lodged with Police Station Sundernagar. A copy of DDR dated 13.8.1993 lodged on the basis of affidavit furnished by Vijay Kumar Thapar, husband of Smt. Veena Thapar is Ex. P3. The appellants originally filed the written statement in March 1994 but after about seven years, they amended the written statement to raise the plea that respondent Veena Thapar cancelled the agreements and returned the originals to the appellants-defendants. Even by way of amendment, there is no plea raised as to the date, month or year when the original agreements were returned by Veena Thapar. In the document dated 25.3.1991, signatures of Veena Thapar and second attesting witness Jasbir Singh are missing. This apart, it defies logic that even if Veena Thapar had failed to arrange funds to pay balance sale consideration and expenses of registration etc. there was any occasion with her to return the original agreements to the appellants-defendants. The matter would have been different if Veena Thapar had filed a suit for specific performance on the basis of photo copies of agreements and the appellants had raised a plea that on receipt of money paid towards earnest amount, Veena Thapar had returned the original

agreements after cancellation thereof. As there is no justifiable reason coming forth for Veena Thapar to have returned the original documents to the appellants-defendants much less cancellation thereof, the story propounded by the appellants-defendants by way of amendment of the written statement is not well founded and has rightly been rejected by the first Appellate Court.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

13.12.2018
paramjit

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