IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.976 of 2013 (O&M)
Date of decision: 9th March, 2018

Amarjit Singh & another

… Appellants

Versus

Gurcharan Singh & others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.M. Sharma, Advocate for the appellants.
Mr. Mohd. Yousaf, Advocate for respondents No.1 & 2.
None for respondent No.3.

FATEH DEEP SINGH, J.

Amarjit Singh and his minor son Karanvir Singh, present appellants, through this regular second appeal have challenged judgment and decree dated 03.09.2012 passed by the Court of learned Additional District Judge, Sangrur dismissing the appeal of the present defendant/appellants upholding the findings of the trial Court of learned Civil Judge (Junior Division), Dhuri dated 07.08.2008 whereby suit of the plaintiff/respondents was decreed.

Upon hearing learned counsel for the two sides and perusal of the records of the case. The present suit was filed by the plaintiffs on the allegations that defendant No.1 was owner in possession of ½ share of land total measuring 53 Bighas 9 Biswas i.e. 26 Bighas 14 Biswas and 10 Biswasis. The plaintiffs claimed that defendants entered into an agreement to sell dated 10.06.2004 with the plaintiffs undertaking to sell this property for a total consideration of Rs.10,69,000/- at the rate of Rs.40,000/- per Bigha and received earnest money in advance amounting to Rs.7,35,000/-. It is alleged that a balance amount of Rs.3,34,000/- remains to be paid and it was undertaken between the parties that the sale deed will be executed on or before 15.12.2004 alleging that before the said date defendants mortgaged this property on 14.06.2004 with the respondent-State Bank of India and hence the suit in question for possession by way of specific performance with allied reliefs was filed. It is claim of the plaintiffs that they were always ready and willing to perform their part of the agreement but it was the defendant who had backed out of it surreptitiously with a mala fide intention and even on 11.10.2004 had fraudulently through transfer deed No.1350 dated 11.10.2004 transferred part of this land in favour of defendant No.2, his son, and got mutation No.3399 entered, and thus, challenged this mutation terming it to be illegal and void ab-initio.

The defendants (now appellants) took a plea that the said agreement to sell was an outcome of threat, coercion and fraud and at no point of time the defendants ever agreed to sell this land to the plaintiffs, refuting that any earnest money was ever received and in fact defendant Amarjit Singh had earlier entered into an agreement to sell dated 13.12.2003 with Piara Singh and Balbir Singh of his village, who are witnesses of agreement dated 10.06.2004 claimed by the plaintiffs and in which, date for execution of the sale deed was fixed as 15.05.2004 but they failed to get the sale deed executed and therefore, the said agreement to sell became inoperative and that fraudulently and under coercion, signatures of the defendant Amarjit Singh were obtained by these persons and thus, denied the averments of the suit.

The stand of the Bank is that the owner Amarjit Singh had secured Kisan Credit Card limit as well as Kisan Gold Loan to the tune of Rs.35,000/- and 2,15,000/- respectively for which, land measuring 10 Bighas and 9 Biswas was mortgaged with the Bank as collateral security through mortgage deed No.693 dated 14.06.2004 and for which mutation No.603 dated 14.06.2004 was entered in the revenue records.

Upon replication, the trial Court framed following issues:

1. Whether the defendant No.1 entered into an agreement to sell the land measuring 26 bighas 14 bighas 10 biswasies in favour of the plaintiff as alleged? OPP
2. Whether the plaintiffs are entitled for possession by way of specific performance of agreement to sell dated 10.6.2004? OPP
3. Whether the sale deed No.1350 dated 11.10.2004 executed by defendant No.1 in favour of defendant No.2 and mutation No.3399 sanctioned in favour of defendant No.2 on the basis of said sale deed, are illegal, null, void, malafide and are the result of collusion between defendant Nos.1 and 2? OPP
4. Whether the plaintiffs are entitled for the relief of declaration? OPP

5. Whether the plaintiffs are entitled for permanent injunction? OPP

6. Whether the plaintiffs are entitled for alternative relief of recovery of Rs.14,70,000/- ? OPP

7. Whether the alleged agreement to sell is result of threat, coercion and without consideration? OPD 1 & 2.

8. Whether the plaintiffs have filed present suit by concealing the true facts? OPD

9. Whether the plaintiffs have not affixed the ad-valorum Court fee? OPD 1 & 2.

10. Whether the suit is not maintainable in the present form? OPD

11. Relief.

Plaintiffs examined Feroz Khan, Scribe of the document as PW1, Amar Singh plaintiff as PW2, Lakh Kaur Nambardar as PW3, Balbir Singh and Piara Singh aforesaid as PW4 and PW5 respectively and lastly examined Fazal as PW6 and closed the evidence.

Defendants examined defendant Amarjit Singh as DW1 and his own father Gurdial Singh as DW2, Scribe of the agreement to sell dated 13.12.2003 Parwinder Goyal as DW3 and thereafter Labh Singh, Senior Assistant from State Bank of India, Malerkotla was examined as DW4 and then evidence of the defendants was closed. It was consequent thereupon, the impugned findings were returned.

Appreciating the arguments of the two sides, though on behalf of the present appellants, the agreement dated 10.06.2004 is termed to be an outcome of coercion, fraud and thereby invariably Amarjit Singh defendant accepts his signatures thereon and in terms of Section 106 of the Indian Evidence Act, 1872 burden lies upon him to prove it to the hilt. Learned counsel for the appellants could not displace the argument that the sale deed was to be executed with the plaintiffs on 15.12.2004 and on 14.06.2004 since defendants had mortgaged the property in favour of the Bank and therefore, speaks ill about their conduct, the same to be deceitful and impregnated with falsehood.

Admitting the claim of the present appellants that the plaintiffs in connivance with Balbir Singh, Piara Singh and commission agent Darshan Singh had obtained the signatures on blank stamp papers under threat and coercion, learned counsel could not impress this Court why and what made the present appellants remain quiet throughout till filing of the present suit by the plaintiffs and rather to the mind of this Court, appears to be on a spree fleecing people of their money by repeatedly entering into agreement to sell and thereby mortgaging his property with the Bank to create a charge to defeat the rights of the parties, with whom he had entered into an agreement to sell. Not only this, as is the admitted stance of the appellants that before the date fixed for execution of the sale deed with the plaintiffs i.e. 15.12.2004, on 11.10.2004 the appellant has transferred the land through transfer deed dated 11.10.2004 in favour of Karanvir Singh defendant No.2 as well as earlier mortgaged the land on 14.06.2004 with the Bank, are factors which weigh heavily in the mind of the Court that the appellants have not come to the Court with clean hands and their acts fall mere within the realm of fraud and deception. In the impugned findings, the Court below has termed this act to be mala fide to delay and defeat the interests of the plaintiffs who were prospective vendees and being an arrangement between father and son, has rightly set aside the transfer deed bearing No.1350 dated 11.10.2004 whereby land measuring 9 Bighas 10 Biswas was transferred in favour of his son, being an outcome of fraud and collusion. The necessary element of readiness and willingness by the plaintiffs to undergo their part of the contract is well proved from the records by the scribe, marginal witnesses including Nambardar namely Lakh Kaur. The learned counsel for the appellants could not in any manner convince this Court how the conclusions and findings drawn by the Court below were palpably illegal, perverse and against the evidence as well as law, and therefore, clearly fulfills the conditions laid down in Section 15 of the Specific Relief Act, 1963 as in terms of Section 20 of this Act invests in the Court ample jurisdiction and discretion to decree specific performance and which has been rightly done so by the impugned findings. Since it is there that through deed dated 14.06.2004 a part of this property has been mortgaged with the Bank, it is duty of the executing Court to ensure that out of the balance consideration, the appellant is made to pay the dues of the Bank being an institution where public money is involved, and its interests are adequately protected.

In the light of what has been detailed and discussed above, learned counsel for the appellants could not convince this Court of any illegality or perversity in the impugned findings which needs to be upheld and resultantly, the instant appeal being devoid of any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 9, 2018
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No