

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4439 of 2016 (O&M)

Date of Decision: April 04, 2018

Om Parkash (since deceased) through L.Rs. & others

...Appellants

Versus

Sukhwinder Sharma & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Deepak Sharma, Advocate,
for the appellants.

Mr.Pankaj Jain, Advocate,
for the respondents.

AMIT RAWAL, J.

Appellant-defendants are in Regular Second Appeal against the judgments and decrees dated 25.10.2013 and 3.11.2015 passed by the trial Court and Lower Appellate Court, whereby in a suit filed for seeking specific performance of the agreement to sell dated 26.5.2005, the trial Court ordered for decree of ₹60,00,000/- in favour of the respondent-plaintiff along with interest @ 6% per annum, i.e., the double the amount of the earnest money which has been upheld by the Lower Appellate Court.

Respondent-plaintiffs instituted the suit seeking specific performance of the agreement to sell dated 25.5.2005 in respect of land measuring 20 kanals 2 marlas, which was executed by defendant No.1 after getting consent from defendant Nos.2 to 4 @ ₹52.00 lacs per acre after

receiving the payment of ₹5.00 lacs as earnest money. The stipulated date for execution and registration of the sale deed was 5.12.2005. The plaintiffs, as per the averments in the plaint, wanted to get the sale deed executed in favour of the nominee Snow White Buildcon Pvt.Ltd. 17B, Asaf Ali Road, New Delhi and in that regard, defendant No.1 gave the power of attorney to the plaintiffs for selling the land to the persons of their choice.

On 1.6.2005, defendant No.1 requested the plaintiffs for part payment of the sale consideration, whereby a sum of ₹10.00 lacs was paid, which was acknowledged by defendant No.1 while thumb-marking the receipt. In this regard, defendant Nos.2 to 4 also signed the receipt as consenting party. Defendant No.1 stated to have made another request to the plaintiffs for receipt of another amount, i.e., ₹15.00 lacs, which was paid through Cheque bearing No.014615 dated 4.6.2005 drawn on HDFC Bank, Sohana. In this regard, all the defendants executed a receipt. Thus, in all as per the averments in the plaint, respondent-defendants received a sum of ₹30.00 lacs. The defendants did not appear before the Sub Registrar despite the fact that the plaintiffs remained present in the office of Sub Registrar, Mohali throughout the day. A legal notice dated 2.12.2005 was sent to the defendants through registered post, but they did not pay any heed to the same and, therefore, cause of action arose for seeking performance of the agreement to sell by filing the aforementioned suit in the month of January, i.e., on 21.1.2006.

The defendants appeared and filed written statement and objected to the decretal of the suit by raising preliminary objection that Om Parkash-defendant No.1 was not of sound disposing mind on 25.5.2005. He has been suffering from epileptic fits and loss of memory. This fact was

in the knowledge of the plaintiffs, who had capitalized on such fact. Om Parkash was Headmaster in a School and being highly educated persons, the question of appending the thumb impression on the agreement to sell did not arise. The rate of the land was ₹1.5 crore per acre, therefore, there was no occasion for the defendants entering into any agreement @ ₹52.00 lacs per acre. The amount received was on account of the treatment of Om Parkash. In that regard, the plaintiffs obtained the thumb impressions of Om Parkash. The endorsement at the back of the agreement showing part payment itself shows that the lines had been added later after taking thumb impressions of Om Parkash on several papers.

Since the parties were at variance, the trial Court framed the following issues:-

- “1) Whether the plaintiffs are entitled to possession through for specific performance of agreement to sell dated 25.5.2005 of the suit land? OPP*
- 2) Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP*
- 3) Whether the suit is not maintainable in the present form? OPD*
- 4) Whether the plaintiffs have not come to the court with clean hands? OPD*
- 5) Relief.”*

Respondent-plaintiffs examined as many as four witnesses, and also brought on record documents Ex.P1 to Ex.P16, i.e., agreement to sell Ex.P1, receipts Ex.P2 to Ex.P4, death certificate of Om Parkash Ex.P5, legal notice Ex.P6, jamabandies for the year 2001-2002 Ex.P7 to Ex.P9, sale deed dated 18.8.2005 Ex.P10, sale deed dated 18.1.2008 Ex.P11, agreement to sell dated 6.7.2005 Ex.P12 and statements of accounts Ex.P13 to Ex.P16.

On the other hand, defendant Rajiv Kumar himself appeared as DW-1 and also examined Dr.Jagbir Singh DW-2. The defendants also brought on record documents Ex.D1 to Ex.D6, i.e., treatment record of Om Parkash Ex.D1, certificates issued by Dr.J.S.Shashi Ex.D2 and Ex.D3, treatment record of Silver Oaks Hospital Ex.D4 and copies of notifications Ex.D5 and Ex.D6.

On the preponderance of the evidence by noticing that the defendants had admitted the thumb impressions of Om Parkash and signatures of his sons with regard to payment of ₹5.00 lacs, found that the plaintiffs have been ready and willing to perform their part of the agreement, but despite that, instead of exercising the discretion as envisaged under Section 20 of the Specific Relief Act, noticed that the land agreed to be sold had been completely acquired by GMADA and compensation of ₹2.45 crores had been received by the vendors. Keeping in view the aforementioned fact, decreed the suit for alternative relief, i.e., refund of ₹30.00 lacs and double the amount of same by adding ₹30.00 lacs, i.e., ₹60.00 lacs. The appeal preferred by the appellant-defendants had also been dismissed.

Mr.Deepak Sharma, learned counsel representing the appellant-defendants before commencing the arguments, drew the attention of this Court to the notice of motion order dated 28.11.2016 to contend that the receipt dated 4.6.2005 was having stamp paper bearing Sr.No.167352, whereas the receipt dated 1.6.2005 was having the stamp paper No.167353. The last paper of the agreement has the stamp paper bearing No.167354 and the 3rd page is having the number 167355, whereas the first page is having stamp paper No.167356 to draw the inference that the documents had been

purchased later on and the appellants had only received ₹6.00 lacs instead of ₹30.00 lacs.

On merits, he submitted that the findings recorded by both the Courts below are against law and facts and it is the result of misreading of the documents and the oral evidence, for, the appellants had proved on record that deceased Om Parkash was not mentally fit and, therefore, he could not enter into agreement with the plaintiffs. DW-2 Dr. Jagbir Singh specifically stated that Om Parkash was suffering from Demntia and the documents Ex.D1 to Ex.D6 are the testimony regarding the aforementioned disease. The signatures of his sons would not improve the legal quality of the agreement allegedly executed by Om Parkash until and unless his sons were appointed as guardian, which was not done in the present case. In fact, there is ample evidence on record, which surfaced during the cross-examination of the plaintiff that it was forged with active connivance with Bhag Singh, but the Court below erroneously believed Bhag Singh, the marginal witness of the agreement to sell. In other words, plaintiffs failed to prove that they had paid the alleged amount of ₹24.00 lacs to Om Parkash. There was no occasion for the Courts below for ordering the refund of ₹30.00 lacs for denying discretionary relief and, thus, urged this Court for setting-aside the findings under challenge.

Per contra, Mr.Pankaj Jain, learned counsel appearing on behalf of the respondent-plaintiffs submitted that the appellant-defendants failed to belie the thumb-impressions of Om Parkash and as well as Bhagwant Sharma and Rajiv Kumar sons of Om Parkash. The statement of Bhag Singh has been specific and coherent. Receipts having different stamp papers would not be fatal to the decision of the case as some times, the stamp

papers are not kept in order or are not typed in seriatim. If at all, the defendants were very sure that the same had been forged, nothing prevented them to belie the signatures/thumb impressions of the aforementioned two persons including deceased Om Parkash. The receipt Ex.P2 of ₹5.00 lacs bore the signatures of not only Om Parkash but of two other persons and receipt dated 1.6.2005 Ex.P3 with regard to ₹10.00 lacs, receipt dated 4.6.2005 of ₹15.00 lacs, i.e., ₹14.00 lacs in cash and ₹1.00 lacs through cheque. Thus, in all the plaintiffs had parted with ₹30.00 lacs, i.e., ₹5.00 lacs at the time of execution of the agreement to sell and remaining amount on the request of Om Parkash.

The readiness and willingness had been proved to the hilt, for, the stipulated date for execution and registration of the sale deed was 5.12.2005. Legal notice is dated 2.12.2005. Suit had been filed with promptitude in January, 2006. Even the presence has also been proved before the Sub Registrar. Defendants failed to prove that the plaintiffs were not ready and willing to perform their part of the contract. The story coined in the written statement of using the blank stamp papers is neither here nor there.

The doctor had not been able to give the fact that Om Parkash did not know the pros and cons of what was right and wrong and appending of thumb impressions was on account of his own volition without any coercion or pressure and, thus, urged this Court for affirming the judgments and decrees under challenge.

Before I could give my opinion, learned counsel for the appellant-defendants had sought time and having obtained instructions from the client, ready to refund ₹30.00 lacs along interest @ 7% per annum on

the premise that double the amount of the compensation being one of the condition of the agreement to sell was too onerous.

Mr.Pankaj Jain, learned counsel for the respondent-plaintiffs did not agree to the aforementioned proposal, but left it to the discretion of this Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendants and the reason is not the one but many:-

- a) The stamp papers bearing endorsement qua receipt of further payment, over and above earnest money not in seriatim would not lead the agreement unexecutable as fact of the matter is that the thumb impressions of Om Parkash had not been denied;
- b) Receipt dated 1.6.2005 Ex.P3 bore the stamp paper No.167353, whereas receipt dated 4.6.2005 having the number of the stamp paper as 167352. Even that would not also make it unbelievable or inadmissible in evidence, for, if the defendants were sure, they could have summoned the record of the stamp vendor to establish whether they were of back date or otherwise;
- c) Both the receipts bore the thumb impressions of Rajiv Kumar, Rajneesh Kumar and Bhagwant Sharma along with the thumb impression of Om Parkash acknowledging the receipt of ₹10.00 lacs and ₹15.00 lacs over and above a sum of ₹5.00 lacs received as earnest money at the time of execution of the

agreement to sell. Even the agreement to sell was also not only thumb marked by Om Parkash, but acknowledged by Bhagwant Sharma and Rajiv Kumar (sons).

d) Assistance of the Handwriting Expert has not been taken to belie the aforementioned signatures and thumb impressions;

e) DW-2 Dr.Jagbir Singh in his statement stated that Om Parkash was suffering from diabeties, Mellitus (blood sugar), hyper tension (blood pressure), cerebro-vascular accident with dementia with an epilepsy and coronary artery disease, but the same was controlled with the help of drugs. To a specific question whether he could understand the ground reality of the life, the answer was in positive. Thus, it cannot be believed that Om Parkash, at the time of execution of the agreement to sell, was not knowing the aforementioned fact, but he had the knowledge and after understanding the contents of the agreement, appended his thumb impressions. The aforementioned agreement, as already referred, bore the endorsement of two sons and the receipt of all the three sons.

f) Bhag Singh, the marginal witness was also cross-examined threadbare and he specifically deposed that Om Parkash was in sound and disposing mind. It is not the case of the sons that they were not on good terms amongst each other. Om Parkash died during the pendency of the suit and the sons were contesting the suit, who are also signatory to the agreement to sell and the receipt. The Courts below found that the agreement had been proved to be genuine document, much

less readiness and willingness on account of the fact that the defendants have lost the right and the title in the property as the land was acquired by GMADA and ₹2.5 crores had been received as compensation. It is in those circumstance, the trial Court ordered for refund of the double the amount as the defendants failed to perform their part of the agreement. The reasoning assigned, in my view, is not able to cut ice to form a different opinion than the one arrived at.

g) The statement of Mr.Sharma with regard to ₹30.00 lacs along with interest @ 7% per annum, in my view, is also not bonafide offer, for, the land, the subject matter of the agreement, had been acquired and they have received huge compensation, but equally so the defendants cannot be compensated alternatively.

As an upshot of my aforementioned findings, the judgment and decree of the trial Court is modified to the extent that instead of double the amount, the decree shall be of ₹45.00 lacs along with interest @ 7% per annum from the date of filing of the suit. The appellant-defendants are directed to make the payment within a period of three months, failing which it shall entail interest @ 12% per annum. Decree sheet is ordered to be prepared.

Appeal stands disposed of.

April 04, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No