

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 24, 2018

1. RSA No.3417 of 2015 (O&M)

Jai Dev (deceased) through L.Rs

...Appellants

Versus

Shalinder Anand & others

...Respondents

2. RSA No.3924 of 2015 (O&M)

Balwinder Singh & another

...Appellants

Versus

Shalinder Anand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.S.S.Swaich, Advocate,
for the appellants in RSA No.3417 of 2015.

Mr.Jasbir Singh, Advocate,
for the appellants in RSA No.3924 of 2015.

Mr.Divanshu Jain, Advocate,
for respondent No.1 in both the appeals.

AMIT RAWAL, J. (Oral)

CM No.8283-C of 2015

Prayer in the application is for bringing on record the L.Rs of
Sujan Kaur.

For the reasons mentioned in the application, which is
supported by an affidavit, the same is allowed subject to all just exceptions
and the persons mentioned in Para 2 of the application are allowed to be
impleaded as L.Rs of Sujan Kaur for the purpose of prosecuting the present
appeal only.

R.S.A.No.3417 of 2015

This order of mine shall dispose of two Regular Second Appeals bearing No.3417 and 3924 of 2015 as the common questions of law and facts are involved. The same are arising out of the decisions rendered in Civil Suit No.272 of 2001 and Civil Appeal No.19 of 2013. The facts are being taken from RSA No.3417 of 2015.

Respondent-plaintiff Shalinder Anand instituted the aforementioned suit seeking specific performance of the agreement to sell dated 1.12.1999 in respect of residential plot No.2391, Sector 71, Mohali, agreed to be sold for a total sale consideration of ₹10,75,000/- against the receipt of ₹1,00,000/- as earnest money. The vendor in the aforementioned agreement to sell was Jai Dev (since deceased), the predecessor-in-interest of the appellants being his legal representatives. According to the averments in the plaint, a sum of ₹75,000/- was received by defendant No.1 on 3.12.1999, whereas the due date for registration and execution of the sale deed was 10.2.2000. Since the defendant failed to honour the agreement to sell, necessity arose for the plaintiff to institute the suit. The aforementioned suit was partly decreed and instead of granting discretionary relief, alternative relief of refund of earnest money along with interest @ 6% per annum was ordered.

Respondent-plaintiff filed an appeal before the Lower Appellate Court. It is pertinent to mention here that during the pendency of the suit, Jai Dev, the vendor, died and his legal representatives have already been brought on record and they were represented by the counsel, namely, Mr.Amrik Singh Advocate. However, the Lower Appellate Court, as per the judgment, dispensed with the service of the legal heirs on the premise that

they did not appear before the trial Court and allowed the appeal by granting the discretionary relief.

Mr.S.S.Swaich, learned counsel appearing on behalf of the appellants in RSA No.3417 of 2015 submitted that the findings of the Lower Appellate Court in dispensing with the service are totally erroneous and perverse, for, a perusal of the zimni orders of the trial Court would show that partial arguments in the suit were addressed on 10.12.2012 in the presence of the counsel for all the parties. On 11.12.2012, counsel for defendant No.1 was not present and thereafter the suit came to be decided on 12.12.2012, thus, there was no occasion for granting the exemption. Appellants have been prevented to present their cause and contest the case on merits, resulting into abdication and, thus, urged this Court for setting-aside the judgment and decree of the Lower Appellate Court by remanding the matter back.

Mr.Divanshu Jain, learned counsel appearing on behalf of respondent No.1-plaintiff submitted that there is no illegality and perversity in the judgment and decree. The appellants were aware of the judgment and decree rendered by the Lower Appellate Court. No explanation has come forward in not pursuing the matter as to whether the other party has availed the remedy and, thus, urged this Court for upholding the judgment and decree under challenge by dismissing the appeals.

I have heard the learned counsel for the parties, appraised the paper book and seen the records of the Courts below.

The orders dated 10.12.2012, 11.12.2012 and 12.12.2012 of the trial Court read as under:-

“10.12.2012

Present: Sh.Rajesh Gupta, Adv.counsel for plaintiff.

Sh.Amrik Singh, Adv.counsel for defendant No.1.

Sh.Jasbir Singh, Adv.counsel for defendants No.2&3

Defendant No.4 exparte.

Partial arguments advanced by the ld.Counsel for the plaintiff and Ld.Counsel for the defendants No.2 and 3. For remaining arguments, now to come up on 11.12.2012.

(Shiv Mohan Garg)

CJ(SD)/Mohali/10.12.12

11.12.2012

Present: Sh.Rajesh Gupta, Adv.counsel for plaintiff.

None for the defendant No.1.

Sh.Jasbir Singh, Adv.counsel for defendants No.2&3

Defendant No.4 exparte.

Remaining arguments advanced by the learned counsel for the plaintiff. Now for oral arguments if any by defendants No.2 & 3 to come up on 12.12.2012.

(Shiv Mohan Garg)

CJ(SD)/Mohali/11.12.12

12.12.2012

Present: Sh.Rajesh Gupta, Adv.counsel for plaintiff.

None for the defendant No.1.

Sh.Jasbir Singh, Adv.counsel for defendants No.2&3

Defendant No.4 exparte.

The counsel for the defendants No.2 & 3 submitted that in view of his written arguments he do not want to advance oral arguments. So vide my separate detailed judgment of even date the suit of the plaintiff for specific performance of the agreement dated 1.12.1999 and for permanent injunction is dismissed and that for the alternative relief of recovery is decreed. Decree sheet be prepared and file be consigned to the record.

Pronounced

(Shiv Mohan Garg)

On; 12.12.2012

CJ(SD)/Mohali/11.12.12

On perusal of the aforementioned orders, it is evident that on

10.12.2012, Mr.Amrik Singh Advocate was present on behalf of defendant No.1 when the arguments in part were heard. In previous orders, his presence was marked except for few dates, when the counsel had discharged his duty. Even if he was not present, the Lower Appellate Court would not have taken the fact that the legal heirs of defendant No.1 had been proceeded ex-parte by invoking the provisions of Order 41 Rule 14(4) of CPC. Such an exercise on behalf of the Lower Appellate Court is wholly fallacious and arbitrary. Even a notice to the previous counsel in the trial Court could have been sent to ascertain the service, but the manner and mode in which the appeal has been decided is not appreciable and cannot be said to be sustainable in the eyes of law.

Without commenting on the merits and de-merits of the matter as it would be in the domain of the Lower Appellate Court to decide the controversy after giving opportunity to the counsel to address arguments, I deem it appropriate to remit the matter to the Lower Appellate Court for adjudication of the appeal afresh in accordance with law. Let this exercise be undertaken within six months from the date of receipt of certified copy of this order.

The parties, through their counsel are directed to appear before the Lower Appellate Court on 21.5.2018.

Original records be also sent back.

Appeals stand disposed of.

April 24, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No

