IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.2828 of 2014 (O&M)
Date of decision : 26.02.2018

Tarsem Singh and another ...Appellants

Versus

Jarnail Singh and others ...Respondents

2. RSA No.2829 of 2014 (O&M)
Date of decision : 26.02.2018

Tarsem Singh and another ...Appellants

Versus

Jarnail Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Advocate and
Ms. Aarzoo B. Garewal, Advocate for the appellants.

Mr. Sanjay Gupta, Advocate for respondent No.1.
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ANIL KSHETARPAL, J. (ORAL)

Defendants Nos.2 and 3-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court granting the relief of specific performance of the agreement to sell dated 12.12.1996, although, learned trial Court found that the plaintiff is only entitled to refund of the earnest money.

In the considered opinion of this Court, the following substantial questions of law need determination:-

A) Whether the First Appellate Court committed an error in reversing the discretion exercised by the trial Court without discussing/analyzing the reasons given by the trial Court to deny the relief of specific performance?

B) Whether a registered sale deed in which payment of the entire sale consideration is admitted can be set aside on the ground that some part of the payment has not been proved by the marginal witnesses?

The plaintiff claimed that Late Sh. Hansa had executed agreement to sell in his favour on 12.12.1996 to sell the suit property for a total sale consideration of ₹4,00,000/- and had received ₹1,00,000/- as an earnest money. The sale deed was to be executed and registered on payment of the balance sale consideration on 26.11.1999. The plaintiff instituted the suit on 27.11.1999. The plaint is dated 26.11.1999. The plaintiff in his plaint has further pleaded that Hansa in order to frustrate his rights under the agreement to sell had executed a sale deed in favour of defendant No.2 on 10.01.1997 for a sum of ₹4,90,000/-. Defendant No.2 had further executed a sale deed in favour of defendant No.3 dated 18.03.1999. Although, the suit was filed when Hansa was alive, however, Hansa died after the institution of the suit. Although, the exact date of death of Hansa has not come on file, however the application for bringing on record the legal heirs of Hansa is dated 06.04.2000. After the application was allowed, three daughters of Hansa through their attorney filed written statement admitting the execution of the agreement to sell with the plaintiff and receipt of earnest money. Surprisingly, the stand was taken in the written statement that the sale deed executed by Hansa in favour of defendant No.2 and further sale deed executed by defendant No.2 in favour of defendant No.3 are illegal. The execution of the sale deed was denied.

Since, the execution of the agreement to sell in favour of the plaintiff was admitted, the learned trial Court after noticing certain facts chose to grant relief of refund of the earnest money. The reasons given by the trial Court are as under:-

1. It was unusual that the target date for execution and registration of the sale deed was fixed after a period of almost three years.
2. The plaint of the suit filed by the plaintiff is dated 26.11.1999 i.e. the day fixed in the agreement to sell for execution of the sale deed.
3. In between the rights of defendant Nos.2 and 3 have intervened and they have become owner of the property by registered sale deed.
4. Possession of defendant Nos.2 and 3 is admitted.

Learned first Appellate Court during the hearing of the appeal initially directed the trial Court to send a report after recording a finding on issue Nos.9A, 9B and 9C and after receipt of the report, learned First Appellate has proceeded to accept the appeal and reversed the discretion exercised by the trial Court. Learned first Appellate Court has recorded a finding that the sale deeds in favour of defendant Nos.2 and 3 are not bona fide. The payment of the sale consideration is not proved on the file. That is how these two appeals have come up for decision before this Court.

It is not in dispute before this Court that Hansa was having only four daughters. It is also not in dispute that Hansa during his lifetime used to live with defendant Nos.2 and 3. It is further not being disputed that Hansa had suffered a paralytic attack and was ailing.

NOW THE STAGE IS SET FOR DECIDING THE QUESTIONS OF LAW:-

A) Whether the First Appellate Court committed an error in reversing the discretion exercised by the trial Court without discussing/analyzing the reasons given by the trial Court to deny the relief of specific performance?

B) Whether a registered sale deed in which payment of the entire sale consideration is admitted can be set aside on the ground that some part of the payment has not been proved by the marginal witnesses?

A careful reading of the judgment passed by the learned First Appellate Court shows that the learned First Appellate has not even discussed the reasons given by the trial Court, noticed above, to deny the relief of specific performance of the agreement to sell which is discretionary under Section 20 of the Specific Relief Act, 1963. Of course, the reason for denying the relief of specific performance has to be based upon sound judicial reasoning based upon appreciation of the evidence. Learned First Appellate Court has not even chosen to examine this issue.

Learned First Appellate Court was swayed by the fact that the witnesses examined by the defendants could not explain, at what point of time, the payment of the sale consideration was paid. The First Appellate Court has held that since one of the marginal witnesses stated that the payment was not paid before him therefore, the payment of the sale consideration is not proved.

In the considered opinion of this Court, a registered sale deed executed and registered, has a presumption of genuineness. Hansa, the executant admitted in the sale deed that the entire sale consideration has been paid to him in advance. This fact should have been considered by the First Appellate Court in the context that Hansa used to live with defendant No.2 and he was not having any son. He after the execution of the sale deed dated

10.01.1997 remained alive for more than three years and never made any complaint to any one with respect to the fact that the sale consideration has not been paid.

Learned First Appellate Court has erred in returning a finding that since the marginal witnesses have failed to depose that consideration was paid in their presence, therefore, the payment of the consideration is not proved. First of all, the sale deed is not required to be attested by the marginal witnesses as per Section 54 of the Transfer of Property Act. Secondly, the marginal witnesses are to attest the documents about its due execution and contents having been explained to the executant.

Still further, a registered sale deed cannot be set aside on the ground that the part of the sale consideration has not been paid. As per Section 55 of the Transfer of Property Act, the balance sale consideration, if any, remains unpaid, is a first charge on the property sold.

Hence, question Nos.A and B are answered in favour of appellants.

Judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

Regular Second Appeals are allowed.

26.02.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No