IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4235 of 2014 (O&M)
Date of Decision.23.03.2018

Krishan Pal and others ......Appellants

Vs

Amar Nath Pandey and others .....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocate
for the appellants.

Mr. N.D. Achint, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The appellants-defendant Nos.1 to 3 i.e. Krishan Pal, Kailash Chand and Rajbir (since deceased) represented through legal heirs, who were ex parte before the trial Court are in regular second appeal against the judgment and decree rendered by the lower Appellate Court whereby suit for specific performance of the agreement to sell dated 26.8.2004 in respect of their share has been partly decreed by taking out the share of defendant Nos.4 and 5, who were land owners, for want of permission.

The respondent-plaintiff instituted the suit for specific performance of the agreement to sell dated 26.8.2004 in respect of the land measuring 4 kanals as described in para 2 of the plaint (hereinafter called the "suit property"). It was submitted that in the aforementioned suit property, the defendant No.1 had 1/9th share, respondent No.3 1/36th share and defendant No.4 and 5 1/54th share each. They agreed to sell the same @₹10 lacs per acre. On the date of execution of the agreement, defendant No.1 received ₹29,680/- by virtue of cheque No.079158 dated 26.8.2004 and the defendant No.2 received an amount of ₹7465/- in cash, defendant No.3 received an amount of ₹7465/- in cash and respondent No.4 and 5 received an amount of ₹2490/- each in cash. The stipulated date for execution and registration of the sale deed was 15.01.2005 but the defendants did not come forward, necessitating the plaintiff to institute the suit on 1.03.2006.

The appellants, who were defendant No.1 and 2 before the trial court and as well as the lower Appellate Court, were proceeded ex parte and legal heirs of defendant No.3 were also proceeded ex parte. The suit was contested by defendant Nos.4 and 5 categorically stating that they were co-owners and their share could not be agreed to be sold without permission of the Court. The trial Court on the basis of the aforementioned pleadings framed the following issues:-

> "*1. Whether the defendants entered into an agreement to sell the suit land on 26.8.2004 in favour of the plaintiff?OPP*
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> *2. Whether the plaintiff remained ready and willing to perform his part of contract? OPP*
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> *3. Whether the plaintiff is entitled to specific performance of agreement dated 26.8.2004? OPP*
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> *4. Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD*
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> *5. Whether the suit of the plaintiff is not maintainable? OPD*
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> *6. Whether the suit of the plaintiff is bad for mis joinder and non joinder of necessary parties? OPD*
>
> *7. Relief.*"

In support of his case, the plaintiff examined Virender Kumar, Clerk of OBC, Palam Vihar, Gurgaon as PW1, Ashok Kumar Sharma, attesting witness as PW2, who has produced his affidavit on record as Ex.PW2/A and stepped into witness box himself as PW3 by placing his affidavit on record as Ex.PW3/A and tendered certain documents on record. On the other hand, defendant No.4 and 5 did not produce any evidence at all.

The trial Court on the basis of the evidence on record partly decreed the suit to the extent of recovery of the earnest money/part payment paid by the plaintiff to the defendants as described in para No.3(b) of the plaint in terms of agreement dated 26.8.2004 along with interest @6% per annum. In appeal, the lower Appellate Court set aside the judgment and decree of the trial Court and the suit of the plaintiff was decreed to the effect that he was entitled to get the sale deed executed in his favour after payment of balance sale consideration to respondent Nos.1 to 3 in view of the agreement to sell dated 26.8.2004 by way of specific performance by applying the doctrine of severability excluding $1/54^{th}$ share of defendant No.4 and 5. The respondent No.1 to 3 were directed to get the sale deed executed in favour of the plaintiff within a period of one month, failing which the plaintiff would be entitled to get the sale deed executed in his favour.

Mr. R.S. Mamli, learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court could not have applied the doctrine of severability as the suit could have been dismissed for want of permission in respect of land owned by defendant No.4 and 5. No permission in respect of share of respondent No.4 and 5 being minors had been obtained. The lower Appellate Court ought to have taken into consideration the hardship as much time has lapsed and the amount on which the suit property was agreed to be sold was too paltry, thus, urges this Court for setting the judgment and decree under challenge.

Per contra, Mr. N.D. Achint, learned counsel appearing on behalf of the respondent-plaintiff submitted that the judgment and decree of the lower Appellate Court is perfectly legal and justified as it is now settled law that in case where the agreement to sell has been entered by few co-owners on behalf of other co-owners, who were not the signatories and the agreement to sell has been proved i.e. ingredients of Section 16(c) of the Specific Relief Act, specific performance can be granted at least in respect of persons who were no signatories of agreement to sell. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in ***A. Abdul Rashid Khan (dead) and others vs. P.A.K.A. Shahul Hamid and others (2010) 10 SCC 636***.

I have heard learned counsel for the parties, appraised the paper book and of the view that the opinion expressed by the lower Appellate Court is perfectly legal and justified, for, specific performance of the agreement to sell has been confined vis-à-vis the share as noticed above in respect of appellants, who were arrayed as defendant Nos.1 to 3. They have not come forward to deny the agreement to sell, for, they were proceeded ex parte. Respondent-plaintiff has proved the execution of the sale through the testimonies of witnesses as well the witnesses regarding the encashment of cheque *ibid.*

The argument of Mr. Mamli is not sustainable in the eyes of law in view of the ratio decidendi culled by Hon'ble Supreme Court in ***A. Abdul Rashid Khan's case*** (supra) whereby it has been held that by applying the doctrine of severability, the relief of specific performance can be granted vis-à-vis the vendor-joint owners who were signatories of the agreement to sell.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court as the same is based upon the correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 23, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No