IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.993 of 2014 (O&M)
Date of decision : 07.08.2018

M/s Ameri Estate Pvt. Ltd. ...Appellant

Versus

Lachhman and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate for the appellant.

Mr. Sushil Jain, Advocate and
Mr. R.S. Malik, Advocate for the respondents.

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ANIL KSHETARPAL, J.

CM No.2283-C of 2014

Application is allowed, as prayed for.

Main Case

The subsequent purchaser-appellant is in the Regular Second Appeal against the judgments passed by both the Courts below.

The question of law which needs consideration is that whether a registered sale deed executed, can be set aside on the ground that the sale consideration, which was paid through bank transaction has now been blocked by the Central Bureau of Investigation after a period of 9 months when the amount was in the account of Vendors?

The admitted facts are that the plaintiffs sold the land measuring 37 kanals and 15 marlas in favour of defendant Nos.1 and 2 vide registered sale deed dated 23.01.2003 for a total sale consideration of ₹8,50,000/-. The entire amount of the sale consideration was received through cheque drawn on the bank which was deposited by the Vendors in their account and the amount was credited. On 22.10.2013, Central Bureau of Investigation stopped the bank of the Vendors from disbursing the aforesaid amount deposited by the Vendors.

The plaintiffs filed a suit on 02.04.2005 pleading that in fact the amount of ₹8,50,000/- was ill gotten money of Miss Mayawati and defendant No.2 is her brother, whereas defendant No.1 is wife of defendant No.2 and since it was a corruption money, therefore, the payment has been stopped by the Central Bureau of Investigation and hence, there was a fraud and, therefore, the sale deed is required to be set aside.

The defendants contested the suit and pleaded that the entire amount of sale consideration has been transferred in favour of the plaintiffs in January, 2003 itself. It was further submitted that the defendants are ready to deposit ₹15,50,000/- in the Court. In case, the Court finds that the plaintiffs are not able to utilize the amount, the Court can pay from the amount to be deposited in the Court.

Both the Courts below have chosen to decree the suit by recording a finding that since the amount paid was ill gotten money and the vendors were not able to utilize the amount because Central Bureau of Investigation has stopped the disbursement, hence, the sale deeds are required to be set aside.

It may be noted that on 22.07.2006, the plaintiffs had withdrawn the suit while making a statement that they have compromised with the defendants. Defendant Nos.1 and 2 are alleged to have sold the property in favour of the appellant-company on 30.08.2006 through a registered sale deed for a sum of ₹1,65,15,625/-. After the sale deed, the plaintiffs filed an application for restoration, which was dismissed but appeal was allowed. That is how, thereafter, the suit proceeded and decreed on 15.11.2011. The appellant filed an application with leave to defend which was dismissed, however, later on the order was reversed by this Court and the appellant was permitted to file the appeal. However, the first appeal was also dismissed.

Learned counsel for the appellant has produced the photocopy of the sale deed, admittedly, executed by plaintiffs-respondents, correctness of the aforesaid sale deed is not being disputed by the learned counsel for the respondents. On careful reading of the copy of the sale deed, it is apparent that on receipt of cheque of ₹8,50,000/-, it has been recorded that the vendees have become owners in possession of the property and now the vendors or their successors-in-interest have been left with no right, title or interest in the property.

From the reading of the sale deed, it is apparent that the sale deed does not incorporate any condition that if the cheque is dishonoured or the payment is stopped by the Central Bureau of Investigation, the sale deed would be treated as cancelled.

Learned Senior Counsel appearing on behalf of the appellant submitted that the sale deed cannot be cancelled or set aside in such circumstances. He submitted that even if it is assumed that for the sake of arguments, the cheque was not encashed, still the vendees could only recover the amount as per Section 55 of the Transfer of Property Act, 1882 and such amount shall be charge on the property which has been sold. He submitted that in the present case, it is not in dispute that on execution and registration of the sale deed, the amount had been paid and duly credited in the account of the vendors. Hence, submitted that the Courts committed an error in setting aside the sale deed.

On the other hand, learned counsel for the respondents submitted that a fraud has been played on the vendors and they did not come to know that the amount was ill gotten money. He submitted that the plaintiffs-vendors are not in a position to utilize the amount, the payment whereof have been blocked by the Central Bureau of Investigation.

At this stage, learned counsel for the appellant while referring to the judgment passed by the Hon'ble Supreme Court Ex.PX dated 06.07.2012, has submitted that Hon'ble Supreme Court has already held that no case is made out against Miss Mayawati, Ex-Chief Minister of Uttar Pradesh.

Now the stage is set for considering the question of law, as framed above.

A registered sale deed is a contract between the parties and the parties are bound by the terms of the contract. As per the sale deed, the vendees became owners in possession of the land on execution of the sale deed. It was further provided that the vendors or their successors-in-interest are left with no right, title or interest in the property.

In these circumstances, as per Section 55(4) (b) of the Transfer of Property Act, 1882, the Vendor is only entitled to recover the amount and such amount shall be charge on the property in the hands of the buyer. In the present case, the payment was made through cheque which was duly encashed and the amount was credited in the accounts of the vendors. For a period of 9 months, the amount remained in the account of the vendors. In such circumstances, the Courts below clearly erred in setting aside the sale deed, merely, on the basis of conjectures and surmises. The sale deed does not provide that if the payment of the amount goes out of the hands of the vendors, the sale deed would come to an end.

As per Section 8 of the Transfer of Property Act, 1882, unless a different intention is expressed or necessarily implied, a transfer of property takes place forthwith. In the present case, it is admitted that in the sale deed, there is no different intention is either expressed or necessarily implied. Section 8 of the Transfer of Property Act, 1882, is extracted as under:-

> *"**8. Operation of transfer.**—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.*
>
> *Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;*
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> *and, where the property is machinery attached to the earth, the moveable parts thereof;*
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> *and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;*
>
> *and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;*
>
> *and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."*

Plaintiff No.2 when appeared in the witness-box has admitted that he had executed the sale deed with his free will.

In view of the aforesaid discussion, the question of law, as framed earlier, is answered in favour of the appellant. The judgments and decrees passed by both the Courts below are set aside. However, in the interest of justice, a decree for recovery of ₹8,50,000/- alongwith interest payable by the Nationalised Bank on the Fixed Deposits receipt is passed in favour of the plaintiffs and against the defendants. The aforesaid amount shall remain charge on the property sold. The amount be paid by the defendants within a period of one month from the date of receipt of certified copy of the judgment and decree passed by this Court.

It is further directed that the amount shall be released by the Executing Court to the Vendors on furnishing an undertaking and surety that in case, Central Bureau of Investigation allows the withdrawal of the amount, the same shall be repaid to the defendants. The Executing Court shall be under obligation to inform branch concerned of the bank with respect to the undertaking being given by the plaintiffs.

In view of the above, the present Regular Second Appeal is allowed.

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

07.08.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No