

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.4573 of 2017(O&M)

Date of decision:11.10.2018

Sunita

.....Appellant

VERSUS

Data Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manoj Sharma, Advocate for
Mr. Amit Chaudhary, Advocate for the appellants.

REKHA MITTAL, J.

CM No.15876-C of 2018

Heard.

Allowed as prayed for.

Affidavit of Sh. Amit Chaudhary, Advocate is taken on record
subject to just exceptions.

Disposed of accordingly.

RSA No.4573 of 2017

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement dated 01.10.2003 in respect of land measuring 43 kanal 9 marlas was decreed by the trial Court and appeal preferred by Sunita, subsequent purchaser of land to the extent of 3/4 share vide sale deed dated 17.06.2008, has been dismissed by the Additional District Judge, Palwal and as a consequence, judgment and decree passed by the trial Court have been affirmed without variance.

Data Ram – respondent No.1 claimed specific performance of agreement dated 01.10.2003 on the premise that defendants No.1 to 3 and Smt. Khajani, predecessor in interest of defendants No.1 to 4, were owners to the extent of 4/5th share in land measuring 54 kanal 5 marlas, detailed in para 1 of the judgment of trial Court and they entered into agreement to sell land for sale consideration of Rs.19,01,000/-. An amount of Rs.14,01,000/- was paid by the plaintiff before the Sub Registrar, Hodal as part payment on 01.10.2003. The certified copy of registered agreement to sell was produced with the plea that original agreement has lost. The date for execution and registration of sale deed was fixed for 30.06.2006. It is averred that the respondent/plaintiff always remained ready and willing to perform his part of the agreement and approached the defendants several times and offered to pay balance sale consideration. He visited office of the Sub Registrar, Hodal on 30.06.2006 with balance sale consideration and other expenses. He got affidavit attested from the Sub Registrar, Hodal in respect of his presence on 30.06.2006. A legal notice dated 05.07.2008 through Sh. N.S. Sarout, Advocate was issued to the defendants but they did not respond nor turn up to perform their part of the agreement. Defendants No.1 to 4 in order to defeat the agreement to sell executed a false and fictitious sale deed dated 17.06.2008 in favour of defendant No.5 (appellant herein) with regard to 3/4th share in suit land. Defendant No.5 had knowledge and notice of agreement to sell at the time of registration of sale deed, therefore, sale deed dated 17.06.2008 is not binding upon the plaintiff and liable to be declared null and void.

Defendants No.1 to 4 filed written statements and contested claim of the respondent/plaintiff. Defendant No.4 has averred that the

agreement dated 01.10.2003 is illegal, null and void and not binding upon rights of the answering defendant. It is mentioned in the alleged agreement to sell that plaintiff shall have the right to get the sale deed registered in his name or in favour of his nominee. Hence, defendants executed and registered sale deed dated 17.06.2008 in favour of defendant No.5 on asking of the plaintiff himself.

The appellant/defendant No.5 filed her separate written statement raising preliminary objections inter alia non-maintainability of the suit; locus standi of respondent/plaintiff to file the suit and suit being barred by limitation. It is averred that defendants No.1 to 4 have wrongly prepared agreement dated 01.10.2003 to defeat the sale deed executed by them in favour of answering defendant. The agreement to sell is false and fictitious document and an act of fraud and misrepresentation. There was litigation pending between the plaintiff and defendants No.1 to 4 and agreement was got prepared by the plaintiff to put pressure upon them. It is further averred that she is a bona fide purchaser for valuable consideration of suit land. The sale deed dated 17.06.2008 is a legal and valid document and suit for specific performance is liable to be dismissed.

The controversy between the parties led to framing of following issues by the trial Court:-

1. Whether the defendants No.1 to 3 and Khajani had executed an agreement to sell on 01.10.2003 receiving Rs.14,01,000/- as part payment in regard to the agreement to sell of the suit land? OPP
2. Whether the sale deed dated 17.06.2008 in favour of defendant No.5 was executed in favour of the defendant

No.5 with the knowledge of existence of agreement to sell dated 01.10.2003? OPP

3. Whether the plaintiff was always ready and willing to perform his part of contract while defendant have failed, hence entitled to specific performance of contract? OPP
4. Whether the suit is not maintainable in present form? OPD
5. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Respondent No.1/plaintiff appeared in the witness box and examined Praveen Kumar PW-1, Bhagwan Singh, Registry Clerk, Sub Registrar Office, Hodal PW-3.

Defendants No.1 to 4 examined Gianwati DW-1, Attar Singh DW-2 and Sunita - defendant No.5 appeared as her own witness.

The trial Court answered issues No.1 to 3 in favour of respondent/plaintiff and eventually decreed suit of the plaintiff and he was held entitled to specific performance of agreement to sell Ex.P1. Defendants were directed to execute and register the sale deed regarding suit land and hand over possession to the plaintiff within a period of 2 months from the date of decree. As has been noticed hereinbefore, the judgment and decree passed by the trial Court became subject matter of challenge by Sunita, purchaser of suit land to the extent of 3/4 share vide sale deed dated 17.06.2008 but remained unsuccessful to get any relief.

Still feeling dis-satisfied, the present appeal has been preferred by her.

Counsel for the appellant would argue that the trial Court framed issue No.2, onus whereof was placed upon the respondent/plaintiff. No issue was framed by the trial Court in respect of plea raised by the appellant that she is a bona fide purchaser for valuable consideration. It is vehemently argued that findings of the trial Court on issue No.2 that appellant had notice of agreement to sell dated 01.10.2003 are based upon assumptions and presumptions but there is no material on record to substantiate his plea in this regard.

Another submission made by counsel is that before the trial Court, the appellant filed two applications. One for amendment of the written statement in order to raise a specific plea with regard to there being an agreement of sale between defendants No.1 to 4 and the appellant, a copy whereof is Mark A. The second application was filed seeking permission to adduce additional evidence. Further submitted that as agreement to sell executed by defendants No.1 to 4 in favour of the appellant also bears signatures of Data Ram – respondent/plaintiff, it goes a long way to show that the respondent/plaintiff cannot seek specific performance of agreement dated 01.10.2003 at the cost of causing irreparable loss and injury to the appellant. The last submission made by counsel is that observations made by the Court in appeal, in para 12 of the judgment, are factually incorrect.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned and certified copies of documents made available during the course of hearing.

Indisputably, defendants No.1 to 4 have not preferred any appeal against the judgment and decree passed by the trial Court, therefore,

findings of the trial Court that defendants No.1 to 3 and Smt. Khazani (since deceased) had executed agreement to sell dated 01.10.2003 in favour of the respondent/plaintiff, as per terms and conditions incorporated therein, have attained finality. Though the appellant had raised a plea that the agreement set up by the respondent/plaintiff is a forged and fabricated document but she has failed to substantiate this plea, though otherwise she is not entitled to raise any such defence with regard to agreement of sale. This apart, agreement of sale dated 01.10.2003 is a registered document and one of the defendants had gone to the extent of saying that sale deed in favour of appellant was executed being nominee of the respondent/plaintiff on the basis of agreement to sell dated 01.10.2003. In this view of the matter, the appellant cannot be allowed to raise any contention qua findings of the trial Court in respect of agreement of sale. Counsel for the appellant has not raised any submission to assail consistent findings recorded by the Courts upholding plea of the respondent/plaintiff that he always remained ready and willing to perform his part of the agreement, therefore, entitled to principal relief of specific performance of agreement to sell.

No doubt, the trial Court framed issue no.2 and onus thereof was cast upon the respondent/plaintiff. As a matter of fact, the trial Court could frame an issue, if the appellant is a bona fide purchaser for valuable consideration and without notice of agreement to sell dated 01.10.2003. At the same time, as the appellant knew well her case pleaded in the written statement and adduced evidence by raising a categorical plea that she is a bona fide purchaser of part of suit land, she cannot escape her liability to establish her plea that she is a bona fide purchaser for valuable

consideration and had no notice of agreement of sale dated 01.10.2003. Had she been able to successfully discharge that onus, only thereafter the respondent/plaintiff was required to prove by way of rebuttal that she had the necessary notice.

To substantiate her plea in this regard, the appellant tendered into evidence her duly sworn short affidavit Ex.DW3/A. A relevant extract from her testimony reads as follows:-

“The deponent is a bonafide purchaser. The deponent is in (sic) owner in possession of the suit property. Plaintiff has no right title or interest in any manner. The plaintiff has fraudulently prepared a false and fictitious agreement of sale dated 01.10.2003 to defeat the right of the deponent in collusion with other defendants. The deponent has purchased the suit land for a valuable consideration. The amount was paid to the vendor of deponent defendant No.5. Sale deed is Ex.D1. Agreement is Mark A.”

Her testimony in examination in chief is conspicuously silent as to what inquiries were made by her before purchasing the suit land or that she had no notice/knowledge of agreement of sale dated 01.10.2003 before getting the sale deed executed. In her cross examination, she would state that she did not know that Devi Singh, Attar Singh, Gianwati and Khajani Devi had entered into bargain with the plaintiff for selling their land. She did not remember where is the land situated or where is it. She further stated that she did not know that Data Ram had bargained to purchase the land for Rs.19,01,000/- and paid Rs.14,01,000/- vide agreement Ex.P1.

Perusal of examination in chief and cross examination of Sunita Devi makes it evident that she has failed to lead sufficient much less tangible evidence to prove that she is a bona fide purchaser of suit land. A copy of agreement dated 25.08.2006 is Mark-A produced in the testimony of Sunita. No specific plea was raised by Sunita in respect of this agreement Mark A nor the said document has been proved in accordance with law. Perusal of photocopy thereof shows that it is purported to be signed and thumb-marked by Data Ram with his photograph affixed thereon. As has been rightly noticed by the Court in appeal, neither this document was put to Data Ram in his cross examination nor it has been specifically pleaded in the written statement, nor its original has been produced on record or the same is proved in accordance with law. In the given circumstances, the appellant cannot derive any advantage to her contention that since agreement Mark-A bears endorsement/attestation of Data Ram – respondent/plaintiff, he is estopped from seeking enforcement of agreement dated 01.10.2003 that operates to deprive the appellant of ownership of land, subject matter of sale deed executed in her favour.

Counsel for the appellant has made submissions with regard to having filed application for amendment of written statement and permission to adduce additional evidence, stated to be dismissed by the trial Court. Perusal of grounds of appeal raised before the first Appellate Court would make it apparent that correctness and legality of those orders were not challenged before the first Appellate Court. Counsel for the appellant would say that the orders were not challenged by way of revision before this Court. In such a situation, the orders passed by the trial Court dismissing applications for amendment of written statement and adducing

additional evidence have attained finality. Even it is not plea of the appellant that during the course of hearing of first appeal, counsel for the appellant therein made any submissions to challenge the orders. Not only this, the orders are not a part of paper-book. In the given scenario, the appellant cannot derive any advantage of her attempt to amend the written statement and adduce additional evidence qua agreement Mark-A.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, applications for condonation of delay in filing and re-filing are of academic relevance only.

OCTOBER 11, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no