

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.587 of 2017 (O&M)

Date of Decision:14.02.2018

A.B.Khosla through his LRs

...Appellant

Versus

Dimple Oberoi and others

...Respondents

RSA No.5546 of 2017 (O&M)

A.B.Khosla through his LRs

...Appellant

Versus

Dimple Oberoi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Kanwaljit Singh, Sr. Advocate with
Mr.Abhishek Bajaj, Advocate for the appellant(s) in
RSA No.587 of 2017
Mr.Kshitij Sharma, Advocate for the appellant(s) in
RSA No.5546 of 2017.

ANIL KSHETARPAL, J.

In these cases arguments were heard and the order was pronounced. However, this Court now proceeds to record detailed reasons.

Two legal heirs of defendant No.1 have filed separate appeals against concurrent findings of fact arrived at by the courts below. Both the appeals arise out of the same suit are being decided by this judgment.

Plaintiffs filed a suit for specific performance of the agreement to sell dated 30.3.2005 and also prayed for consequential relief of permanent injunction. It is the case of the plaintiffs that defendant No.1

entered into an agreement to sell with regard to House No.15, Sector-7, Panchkula with plaintiff No.1. Agreement to sell dated 30.3.2005 enables plaintiff No.1 to further enter into agreement to sell. Hence plaintiff No.1 entered into agreement to sell with plaintiffs No.2 and 3.

It was pleaded that out of total sale consideration of Rs.1.65 crore, 20 lakhs was paid as earnest money and the sale-deed was to be executed on 30.6.2005. It was also agreed that defendant No.1 would get No Objection Certificate/Permission from the Estate Officer, Haryana Urban Development Authority, Panchkula and also clear all dues. It is further case of the plaintiffs that plaintiff No.1 visited the office of the Sub Registrar on 30.6.2005 that is the target date but defendant No.1 did not come forward. It is further case of the plaintiffs that they were in touch with the daughters of defendant No.1 and they were being informed that defendant No.1 is not keeping good health and therefore, the moment he recovers, the sale-deed shall be executed. The plaintiffs further asserts that defendant No.1 had submitted an application on 17.6.2005 to the Estate Officer, HUDA, for getting necessary permission for transfer of plot in favour of plaintiffs No.2 and 3, which was granted on 7.7.2005. Certain formalities were required to be completed. However, due to illness of defendant No.1 the formalities could not be completed. It is further case of the plaintiffs that they got served a notice on defendant No.1 to come forward and execute the sale-deed dated 20.5.2007. However, defendant No.1 did not come forward. Hence plaintiffs filed the present suit.

Defendant No.1 denied the execution of the agreement to sell. He even denied that he had ever applied for permission to the Estate Officer, HUDA, seeking permission to transfer of the plot in favour of plaintiffs

No.2 and 3. Defendant No.1 also denied receipt of earnest money.

Both the courts, after appreciation of the evidence available on the file, decreed the suit on payment of balance sale consideration.

I have heard the learned counsel for the appellants at length and with their able assistance gone through the judgments passed by the courts below and the record, which was requisitioned.

Learned counsel for the appellants have submitted that although there is no doubt that the suit was filed within limitation but it was instituted almost after a period of three years, i.e. on 14.6.2008, as the target date for execution and registration of sale-deed was 30.6.2005. They have further submitted that in such circumstances, the decree for specific performance could not be passed. They have further pointed out that small variations in the evidence to contend the relief of specific performance in such circumstances should not have been granted. They have also submitted that defendant No.1 was almost blind and, therefore, the court ought to have considered this aspect, while passing the decree.

No doubt, the suit was filed almost after three years from the target date fixed for execution of sale-deed. However, in the present case, defendant No.1 was required to get the permission from the Estate Officer, HUDA, to transfer the plot in faour of plaintiffs No.2 and 3. Defendant No.1 submitted the application only on 17.6.2005, i.e. when the target date for execution and registration of sale-deed was only 13 days away. The application filed by defendant No.1 is Ex.DW3/1. The application is not only signed by defendant No.1 but also by plaintiffs No.2 and 3. Along with the application, defendant No.1 has also attached his own affidavit dated 6.6.2005 which he got attested from Executive Magistrate, Chandigarh. The

affidavit bears three specimen signatures of defendant No.1 apart from two signatures on the affidavit. The application submitted for permission to transfer the plot in favour of plaintiffs No.2 and 3 was allowed, vide permission dated 7.7.2005 Ex.DW3/3. In other words, transfer deed could not be executed on the date fixed and thereafter it is case of the plaintiffs that they were in touch with the daughters of defendant No.1, but the defendants kept on informing the plaintiffs that defendant No.1 is not keeping well and the sale-deed would be executed the moment he recovers. Still the plaintiffs got served a notice, calling upon defendant No.1 to come and execute the sale-deed vide notice dated 21.5.2017. Although, it is true that the notice has not been exhibited, however, copy of the notice and copy of proof that notice was sent through registered post as well as by UPC and acknowledgment signed by defendant No.1 are available on the file. Hence in these circumstances, it will not be proper to hold that the plaintiff is not entitled to discretionary relief on account of delay. It is not the case of the defendants that rights of third party have intervened. As per the Limitation Act, the limitation for filing a suit for specific performance is three years from the target date fixed for execution and registration of the sale-deed. The suit has been filed within the aforesaid time.

The argument of the learned counsel for the appellant is that the appellant was nearly blind on the date of agreement and, therefore, the decree for specific performance should not have been granted. In the considered opinion of this Court, defendant No.1 or his legal heirs have been dishonest while contesting the suit. Parties are educated. After having entered into an agreement to sell and having received Rs.20 lacs as earnest money and after having applied to the Estate Officer, HUDA for permission

to transfer which was granted, now defendant No.1 and his legal heirs are totally denying the agreement to sell. Defendant No.1 went to the office of the Sub Registrar, Chandigarh, and got the affidavit required to be submitted with the application for permission, attested. Even thereafter defendant No.1 chose to deny the agreement to sell and receipt of earnest money. In the written statement, which was filed in the court, defendant No.1 rather than signing put his left thumb impression. Both the courts have held that defendant No.1 got examined his signatures from two private Fingerprint and Handwriting Experts. However, both the experts have chosen to compare the signatures in a selective manner. The agreement to sell has been proved with the examination of marginal witness namely Mohinder Kumar Batta. Agreement to sell bears the signatures of defendant No.1-predecessor of the appellants in English. Late Shri A.B.Khosla, defendant No.1 has put his signatures on the revenue stamp, attached with the agreement to sell is a continuation sheet, which is also signed by Late Shri A.B.Khosla-defendant No.1. Defendant No.1 has also signed in English on the application submitted before the Estate Officer, seeking permission to transfer his plot in favour of plaintiffs No.2 and 3. Affidavit attached thereto which was got attested by Shri A.B.Khosla on 17.6.2005 also bears the signatures of Shri A.B.Khosla in English.

Still further, there is no evidence available on the file to prove that on the date agreement to sell was executed, Shri A.B.Khosla was blind. Although, effort is made by the defendant-appellant to produce the evidence, however, both the courts have examined the evidence and found the same to be insufficient to return such findings.

Meenu Bhardwaj/appellant has appeared in the evidence as

DW-7. She has stated that when the suit was filed, her father was alive and she had moved an application through lawyer to inspect the court file. Later on she stated that she did not inspect the court file but it was inspected by her father and counsel representing him. Such being the evidence, the argument of the learned counsel for the appellant that Shri A.B.Khosla was blind cannot be accepted.

In view of what has been discussed hereinabove, this Court does not find any good ground to interfere in the concurrent findings of fact arrived at by the courts below. Both the appeals are dismissed. Pending application(s), if any, shall also stand disposed of.

14.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No