IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 5925 of 2018 (O&M)
Date of decision : October 29, 2018

Puran Singh and others .....Appellants

Versus

Kulbir Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amaninder Preet, Advocate
for the appellants.

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LISA GILL, J.

Appellants (defendants No. 1 to 10 and 12 before the learned trial Court) are aggrieved of concurrent findings rendered against them by the learned Civil Judge (Senior Division), Moga vide judgment and decree dated 04.03.2014 as well as by the learned District Judge, Moga vide judgment and decree dated 02.12.2016 whereby the plaintiffs though denied the relief of specific performance were afforded the right to recover the earnest money.

Brief facts necessary for adjudication of the case are that plaintiff - Kulbir Singh and Dalbir Singh i.e. respondents No. 1 and 2 in the present appeal, filed a suit for possession of the land measuring 517 kanal 1 marla by way of specific performance of the contract on the basis of agreement to sell dated 31.12.2005 executed by defendants No. 1 to 12 in favour of the plaintiffs. It was pleaded that defendants No. 1 to 12 entered into an agreement to sell the suit land with the plaintiffs on 31.12.2005 for the property in question at the rate of Rs.6,75,000/- per acre. Rs.85 lakhs was paid as earnest money to the prospective vendors by two cheques of Rs.42,50,000/- each. The said cheques were encashed by defendants No. 1 to 12. It was agreed that the sale deed would be executed on or before 15.06.2006. However, another agreement dated 09.05.2006 (i.e. prior to the stipulated date for execution of the sale deed) was entered into by defendants No. 1 to 12 with defendant No. 13 i.e. respondent No. 3 in this case and it was settled in the said agreement that defendants No. 1 to 12 would repay the earnest money of Rs.85 lakhs to the plaintiffs under the preceding agreement to sell. The plaintiffs had also appended their signatures on agreement dated 09.05.2006 as a testament of their concurrence with the stipulations contained in the agreement. Defendants agreed to repay the sum of Rs. 85 lakhs in two instalments i.e. Rs.50 lakhs by 12.05.2006 and Rs.35 lakhs by 11.06.2006. The defendants, however, failed to repay the said amount as agreed. According to the plaintiffs, their consent to agreement dated 09.05.2006 thus stood revoked and the earlier agreement dated 31.12.2005 stood resurrected. The plaintiffs asserted that they have were ready and willing to perform their part of the agreement dated 31.12.2005 and had sufficient financial resources to execute the same. Their presence was marked at Tehsil complex on 15.06.2006 but defendants No. 1 to 12 did not turn up for execution of the sale deed. Ultimately, the suit was filed.

Defendants resisted the suit. A joint written statement was filed by defendants No. 1, 3, 4, 11 and 12, another one by defendants No. 2, 5 to 10. A separate written statement was filed by defendant No. 13 (respondent No. 3 in this appeal). It was contended that both the plaintiffs were signatories to the tripartite agreement dated 09.05.2006 through which agreement dated 31.12.2005 stood revoked. Therefore, the suit filed by the plaintiffs for specific performance of agreement dated 31.12.2005 was not maintainable. The suit was alleged to be collusive between the plaintiffs and respondent No. 13 Gurdev Singh. Claim of readiness and willingness on the part of the plaintiffs was also denied. Defendants No. 1 to 12/appellants took a stand that it was the responsibility of defendant No. 13 to repay the earnest money to the plaintiffs. He was unable to pay back the said amount with the stipulated period. Recovery, if any, could be effected only from him and not from defendants No. 1 to 12.

Defendant No. 13 Gurdev Singh, however, claimed collusion between the plaintiffs and defendants No. 1 to 12. He stated that he was ready and willing to pay the consideration amount to defendants No. 1 to 12 in furtherance of agreement dated 09.05.2006 but they did not come forward. Rs.20 lakhs was claimed to have been given by defendant No. 13 to the other defendants but defendant No. 11, Jasbir Singh failed to even sign the agreement. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

i) Whether defendants have failed to perform their part?OPP.
ii) Whether plaintiffs are ready and still ready and willing to perform their part?OPP
iii) Whether plaintiffs are entitled for specific performance
iv) Whether plaintiffs are entitled for possession by way of specific performance?OPP
v) If issue No. 1 is not proved, whether plaintiffs are entitled for relief of recovery, as prayed for?OPP
vi) Whether plaintiffs are estopped by their own act and conduct to file the present suit?OPD

vii)Whether the suit is bad for non joinder of necessary parties?OPD

viii)Whether the suit is liable to be dismissed alongwith costs? OPD

ix)Relief.

Evidence was led by both the parties.

Learned trial Court concluded that agreement dated 09.05.2006 (Ex. PX) contemplated two disjoint transactions, which were intentionally not intertwined by the parties. The first part of agreement (Ex.P1) related to repudiation of the earlier agreement to sell (Ex.PX) with the mutual consent of the plaintiffs and defendants No. 1 to 12 and the other regarding repayment of the entire earnest money of Rs. 85 lakhs to the plaintiffs. It was held that privity of contract as per Ex.P1 was between the plaintiffs and defendants No. 1 to 12, therefore, liability so admitted in condition No. 2 in agreement Ex.PX was always upon defendants No. 1 to 12. While not affording the relief of specific performance of the agreement, the plaintiffs were held entitled to recovery of earnest money to the tune of Rs. 85 lakhs from defendants No. 1 to 12 jointly and severely alongwith interest 9% per annum upon the principal amount, from the date of filing of the suit till its realisation and future interest at the rate of 6% from the date of decree till realisation. Appeal filed by the appellants was also dismissed by the learned District Judge, Moga vide judgment dated 02.12.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vociferously argues that there is a clear cut collusion between the plaintiffs i.e. respondents No. 1 and 2 as well as defendant No. 13 - Gurdev Singh/respondent No. 3 in the present appeal. It is argued that defendant No. 13 - Gurdev Singh was liable to repay the said amount of Rs. 85 lakhs to the plaintiff on the dates as stipulated therein in terms of the agreement Ex.PX. The first agreement dated 31.12.2005 between the present appellants and the plaintiffs clearly stood cancelled by the subsequent agreement to sell dated 09.05.2006. The plaintiffs were admittedly signatories to the tripartite agreement dated 09.05.2006. It is, thus, argued that once the agreement dated 31.12.2005 stood cancelled, it is the subsequent agreement dated 09.05.2006 which would hold the field. Plaintiffs would necessarily be bound by the terms and conditions of the subsequent agreement as well. Learned counsel further argues that the plaintiffs in their application have admitted that it was defendant No. 13 who was to repay the amount of Rs.85 lakhs to them in two instalments by the stipulated date i.e. 11.06.2006. Having taken such a stand, they are not entitled to recovery of Rs.85 lakhs from the present appellants. Both the learned courts below, it is submitted, have erred in dismissing the suit filed by the plaintiffs to the extent of recovery of Rs. 85 lakhs from the present appellants. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 04.03.2014 passed by the learned Civil Judge (Senior Division), Moga as well as judgment and decree dated 02.12.2016 passed by the learned District Judge, Moga be set aside and suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellants and have perused the file as well as a photocopy of the record, which was furnished by learned counsel in Court today.

Undisputed facts of the case are that agreement dated 31.12.2005 (Ex. P1) was indeed entered into between the plaintiffs and defendants No. 1 to 12. Translation/copy of this agreement is attached with this file as Annexure A1. It is further not in dispute that before execution of the sale deed on the stipulated date i.e. 15.06.2006, as per agreement dated 31.12.2005, a tripartite agreement was entered into between the plaintiffs and defendants No. 1 to 12 and 13 on 09.05.2006. The said agreement dated 09.05.2006 (Ex.PX) is attached as Annexure A2 with this appeal. Perusal of agreement dated 09.05.2006 (Ex.PX) reveals that the present appellants agreed to sell the suit land which was earlier agreed to be sold by defendants No. 1 to 12 to defendant No. 13 – Gurdev Singh at the rate of Rs.7,50,000/- per acre. An amount of Rs.20 lakhs was received by them from Gurdev Singh – defendant No. 13 as earnest money. It is stated in Clause 2 of the agreement that defendants No. 1 to 12 – appellants agreed to return the amount of Rs. 85 lakhs to Kulbir Singh and Dalbir Singh. Out of the total price of land to be paid by Gurdev Singh, he would pay a sum of Rs. 50 lakhs on 12.05.2006 and another sum of Rs.35 lakhs on 11.06.2006 to the plaintiffs – Kulbir Singh and Dalbir Singh. The said amount would be deducted out of the price of the above said land to be paid by Gurdev Singh to defendants No. 1 to 12. Sale deed in favour of Gurdev Singh would be executed by defendants No. 1 to 12 on or before 11.06.2006. The plaintiffs successfully proved their readiness and willing for execution of their part of contract. The plaintiffs have proved on record the copies of the sale deeds (Ex.P5 to Ex.19) vide which they purchased different parcels of land for valuable consideration which runs into crores of rupees. Moreover, none of the plaintiffs/their witnesses were even given a suggestion that they did not have the financial capacity to get the sale deed executed.

Respondent No. 3 – Gurdev Singh never returned the said amount of Rs. 85 lakhs to the plaintiffs. It is further a matter of record that sale deed in respect to the land in question was not executed in favour of Gurdev Singh – defendant No. 13 (respondent No. 3) either. Receipt of earnest money of Rs.85 lakhs by the present defendants from the plaintiffs is not denied. Stand taken by the appellants is that in view of the subsequent agreement dated 09.05.2006 they are not liable to return the said amount of Rs. 85 lakhs to the plaintiffs. Liability of the same rests upon defendant No. 13 – Gurdev Singh. It is further argued that if at all, Gurdev Singh did not return the said amount and neither came forward for execution of the sale deed pursuant to agreement to sell dated 09.05.2006, the plaintiffs are not entitled to recover the amount of Rs.85 lakhs from the appellants. Such a stand is clearly misconceived and untenable. In fact the appellants – defendants are trying to project that though they received the said amount of Rs.85 lakhs as earnest money but in view of the subsequent agreement Ex.PX, they are absolved of all liability to repay the said amount.

A perusal of agreement dated 09.05.2006 (Ex.PX) itself reveals that it is clearly mentioned therein that the present appellants – defendants have agreed to return the amount of Rs. 85 lakhs to Kulbir Singh and Dalbir Singh. It is only by way of an arrangement that the plaintiffs gave their consent that the defendants' liability would be discharged by defendant No. 13 in the event of his purchasing the suit property from the defendants. The said amount would have been deducted from the total sale consideration to be received by them from Gurdev Singh. It has been rightly held by the learned trial Court that the privity of contract (Ex. P1) was always between the plaintiffs and defendants No. 1 to 12. Consequently, liability so admitted in condition No. 2 of Ex.PX was always upon defendants No. 1 to 12. Failure on the part of defendant No. 13 may vest the present appellants with a cause of action to proceed against him for breach of condition but merely on this ground alone they cannot be absolved of their liability to repay Rs. 85 lakhs to the plaintiffs.

In case, argument on behalf of the learned counsel for the appellants is accepted to the extent that the plaintiffs are not entitled to recovery of the earnest money in view of repudiation of agreement dated 31.12.2005 and the present suit itself is not maintainable, it would indeed lead to a travesty of justice. It would necessarily lead to an anomalous and strange situation wherein vendors of the property enter into an agreement to sell the same with a particular person/persons, thereafter they receive a better offer and the first set of vendees agree to the sale of the suit property to the subsequent vendee provided their earnest money is returned. When the subsequent vendee does not carry out his part of the contract, the vendors in a curious fashion would be entitled stand absolved of their liability to repay the earnest money to the first set of vendees. Such a situation is clearly not permissible. In this view of the matter, both the learned courts below have rightly held that a decree for specific performance of the contract on the basis of agreement dated 31.12.2005 could not be afforded to the plaintiffs but they were rightly held entitled to the recovery of earnest money paid by them to the defendants.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

There is a delay of 573 days in filing of this appeal. It is stated that the parties to the lis were trying to amicably resolve the matter. Defendant No. 13/respondent No. 3 had expressed that he would consider buying the property in question and pay back the earnest money of Rs.85 lakhs to the plaintiffs. He kept seeking time to arrange the funds but he completely backed out thereafter. It is in this process, delay in filing of the appeal had agreed. I do not find any cogent or sufficient reason for condonation of delay of 573 days in filing of this appeal.

This appeal is, therefore, dismissed being barred by limitation as well as on merits with no order as to costs.

(Lisa Gill)
Judge

October 29, 2018
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No