

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3270 of 1987 (O&M)
Date of Decision: February 27, 2019

Kanwal Parkash

... Appellant

Versus

Kamlesh Ohri and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Dadwal, Advocate,
for the appellant.

None for the respondents.

Amit Rawal, J. (Oral)

Present regular second appeal has been directed against the judgment and decree dated 10.06.1987 of the learned District Judge, Hoshiarpur.

Plaintiff – Kanwal Parkash instituted a civil suit No. 66/84 dated 21.09.1984 claiming specific performance of two agreements to sell dated 27.05.1982 (Ex.P1 and P2) with Rishi Dev Khanna-defendant no.1 and defendant nos. 2 to 6 through Mrs. Kamlesh Ohri, one land measuring 3 kanals 9 marlas and second 21 kanals 2 marlas at the rate of Rs.14,000/-per kanal by receiving a sum of Rs. 5,000/- and Rs. 45,000/- (total Rs.50,000/-) as advance money. It was stated that defendant no.2 had already obtained permission vide order dated 17.09.1980 to sell the property of the minors from the competent court and according to the terms and conditions of the agreement to sell, defendants were to execute and register the sale deeds

either in favour of the plaintiff or his nominee by 30.09.1982. Plaintiff had always been ready and willing to perform his part of the agreement, but the defendants refused to honour the agreement. Defendant no.2 did not taken the permission from the guardian court for depositing the shares of her minor children and also a clearance certificate from the Income Tax Department.

In a separate written statement, defendants no. 1, 2 and 4 to 6 opposed the suit by denying the execution of the agreement to sell. It was alleged that one Mr. Dass, who was attorney as well as Advocate of Mrs. Kamlesh Ohri duped her and misled the courts. Defendant no.3 was a major and suit was bad for mis-joinder of parties.

Defendant No.3 in a separate written statement pleaded that she was not a party to the alleged agreement, therefore, it was not binding upon her.

Plaintiff filed replication and controverted the averments made in the plaint and controverted the averments made in the written statement.

On the basis of the pleadings, the trial Court framed the following issues:-

- “1. Whether defendant no.1 validly executed the agreement to sale dated 27.05.1982 and received Rs.5000/- as earnest-cum-advance money? OPP*
- 2. Whether defendant No.2 validly executed the agreement to sell deed dated 27.05.82 on her own and on behalf of minor defendants No.3 to 6 and received Rs. 45000/- as earnest-cum-advance money? OPP*
- 3. Whether the plaintiff has been ready and willing to perform his part of contract with the remaining sale consideration? OPP*

4. *Which of the party committed the breach of the contract?
OP Parties*
5. *Whether the plaintiff is entitled to the alternative relief of
damages to the tune of Rs.3,43,700/-? OPP*
6. *Whether the suit is bad for multifariousness? OPD*
7. *Whether the agreement in dispute is not binding on the
minor defendants 3 to 5? OPD*
8. *Whether the agreements are unconscionable
transaction? If so, its effect? OPD*
9. *Whether the agreement is not binding on the defendants
No.3, as alleged in para 1 of the written statement? OPD*
10. *Relief.”*

The plaintiff in support of the evidence, examined 4 witnesses in one case and another also examined 4 witnesses and brought on record agreements of sale (Ex.P1 and Ex.P2), order of learned Senior Sub Judge (Ex.P3), notice (Ex.P8) and applications (Ex.P10 to Ex.P12) and various other documents. Whereas, defendants no. 1 and 3 also entered into witness box as DW1 and DW2 respectively and examined DW3 – Sardari Lal, Lambardar and DW4 – Ram Lubhaya and tendered documents Ex.D1, lease deed and Ex.D2 to D9 sale deeds to show that they had sufficient income from those properties and there was no intention to sell the properties.

The trial Court, after noticing all the facts and evidence, held that agreements were proved, the permission had been taken by the guardian and decreed the suit. Two appeals were filed. Appeal of Rishi Dev Khanna was dismissed and cross objections filed has also been dismissed as there was no application for restoration, whereas appeal filed by Kamlesh Ohri has been allowed on technical grounds that the conditions contained in the order dated 17.09.1980 were not complied with.

Mr. K.S. Dadwal, learned counsel, appearing on behalf of the

appellant submitted that the findings arrived at by the lower appellate court are totally absurd as it was not the duty of the plaintiff to deposit the amount. He was to pay the entire amount to the guardian and she was to comply by depositing the amount. It was the duty of the defendant no. 2 to get the sale deed approved from the Court and that stage, would have not come only at the time of execution, in case the defendants had not come forward for performance of the sale deed and in her absence, the Court Commissioner would have taken that permission, as other findings have not been set aside.

The respondents have already been served, but there is no representation which fact is evident from the order dated 28.08.2014 which reads as under:-

“CM-9826-C-2014

This appeal was dismissed for non-prosecution vide order dated 14.08.2014.

The instant application has been filed to recall the order dated 14.8.2014 and restore the appeal to its original number.

Notice was issued to the respondents.

As per office report, service is complete. However, no one is present on their behalf.

In view thereof, the order dated 14.8.2014 is recalled and the appeal is restored to its original number.

RSA-3270-1987 (O&M)

List on 15.10.2014.”

Present appeal is of the year 1987. Accordingly, the same is decided on merits.

It would be apt to reproduce para no.9 of the Lower Appellate

Court judgment in which the order dated 17.09.1980 imposing the condition had been reproduced:-

“9. Agreement of sale Ex.P2, was entered into in respect of the property of minor defendants Nos. 3 to 6 by Smt. Kamlesh Ohri defendant no.2 acting as their guardian. Smt. Kamlesh Ohri defendant no.2 was no doubt the mother and natural guardian of defendants no. 3 to 6 but she could not as natural guardian of these minors, sell their property without permission of the Court. Defendant No.2 is actually alleged to have obtained permission of the Court for selling the property of her minor children defendants Nos. 3 to 6. She applied to the Guardian Court for granting her permission to sell the property of her minor children and this permission was granted to her by Shri Bhagwan Singh, Senior Sub Judge, exercising delegated powers of the District Judge, Hoshiarpur vide order dated 17.9.1980 copy of which is Ex.P3. A perusal of this order would show that permission to sell the property of the minor defendants nos. 3 to 6 was granted to their mother Smt. Kamlesh Ohri defendant no.2 on the following conditions:-

- 1. The sale deed and the consideration of sale will be got approved from the Court before execution and registration of the sale deed;*
- 2. The amount of sale price of the share of minors will be deposited by the guardian in some scheduled bank in the name of minors. The guardian will be entitled to withdraw suitable amount from time to time as and when it is necessary for the benefit of the minors with the permission of the Court;*
- 3. The guardian will furnish security in the sum of Rs. Two lacs undertaking to abide by the conditions imposed above.*

These conditions are not proved to have been complied with by Smt. Kamlesh Ohri at the time of entering into the agreement sale Ex.P2 with the plaintiff. The consideration for the sale is not shown to have been got approved from the Court and there is nothing to show that Smt. Kamlesh Ohri furnished security in the sum of Rs. Two lacs as directed in the above stated order, copy of which is Ex.p3. That being so the agreement of sale entered into by Smt. Kamlesh Ohri on behalf of the minor children cannot be specifically enforced. I am in this behalf, supported by a recent authority of our own High Court “Jatinderpal Singh vs. Nachhatter Singh and others” 1986-1, Punjab Law Reporter 183 wherein it was held:-

“that the court granted permission to sell plot and permission was neither sought nor granted for the sale of house along with the plot. Secondly, while granting permission the Court specifically mentioned that approval of the Court would be taken for the intended sale. No such approval was ever sought, without which sale could not take place. Therefore suit for specific performance could not be decreed.”

The other grounds on which the lower appellate court dismissed the suit was that the amount of earnest money deposited by Kanwal Parkash was in the joint account of her and her Advocate Mr. Dass, which was later on withdrawn by the Advocate and it was not Rs. 45,000/-.

I have heard learned counsel for the appellant and perused the paper book, records of the Courts below and of the view that following substantial questions of law arise for consideration:-

1. Whether the lower appellate Court has correctly interpreted the terms and conditions of the order dated

17.09.1980 granting permission to defendant no.2 to sell the property?

2. Whether the plaintiff was responsible in not honouring the afore-mentioned conditions?

The condition imposed in the decree extracted in para 9 *ibid* revealed that the action was required to be done by defendant no.2 and not by the plaintiff. The role of defendant no.2 was to pay the entire money and the permission to deposit in the share of the owner. If defendant no.2 had not come forward, plaintiff could have moved the application in compliance of the direction of the Executing Court and the Executing Court directed the parties for implementation of permission dated 17.09.1980, for that stage, has not been envisioned by the Courts below in non-suiting the appellant. The plaintiff cannot be found to be faulted in case defendant no.2 did not deposit the entire earnest money of Rs. 50,000/-.

For the reasons afore-mentioned, the substantial questions of law are answered in favour of the appellant-plaintiff and against the respondents-defendants. Judgment and decree of the Lower Appellate Court is set aside and upheld the judgment and decree of the trial Court. Plaintiff is granted four months' time to deposit the balance sale consideration for the purpose of execution of the sale deeds registered.

Accordingly, the appeal stands allowed.

February 27, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No