IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2273 of 1992 (O&M)
Date of Decision.29.05.2019

Mulakh Raj ...Appellant

Vs

Laldin and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravi Sharma, Advocate
for the appellant.

Mr. S.S. Dinarpur, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is at the instance of the plaintiff, who was successful in the trial Court in civil suit bearing No.798 of 1987 seeking specific performance of agreement to sell dated 28.07.1987 in respect of land measuring 2 ½ marlas agreed to be sold for a total sale consideration of ₹2500/- but the lower Appellate Court reversed the same.

It was alleged that defendant No.1 Lal Din, owner of the suit property, entered into agreement to sell aforementioned but during the subsistence of the agreement entered into sale deed with defendants No.3 i.e. Prem Chand on 7.8.1987, which was a sham transaction. Lal Din also filed civil suit bearing No.713 of 1987 challenging the agreement to be outcome of fraud and misrepresentation. Both suits were decided together. Same stand taken in the written statement as was taken in the suit.

Plaintiff Mulakh Raj examined himself as PW1 and one Hari Charan attesting witness as PW2, Ved Parkash Grover, Scribe as PW3 and Duni Chand Lambardar and tendered various documents. On the other hand, defendant Lal Din examined himself as DW1, Prem Chand as DW2 and two more witnesses and defendant No.3 claimed himself to be bona fide purchaser for valuable consideration as the factum of execution of agreement to sell was not in his knowledge. The trial Court decreed the suit but the lower Appellate Court though upheld the finding of trial Court with regard to agreement to sell dated 28.07.1987 between Lal Din and Mulakh Raj as Lal Din during the pendency made a statement for withdrawal of appeal but noticing that the sale deed dated 7.8.1987 was a valid transaction, modified the decree and upheld the sale deed dated 7.8.1987 in favour of subsequent vendee.

Mr. Sharma, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable as no reasons have been assigned as to how the sale deed as held by the trial Court was not a sham transaction. Prem Chand, defendant No.3 had not placed on record any material to establish that a reasonable enquiry which was mandatory requirement of law, as per Section 41 of the Transfer of Property Act, was undertaken. The sale deed aforementioned was during the subsistence of earlier agreement and therefore, on acquiring knowledge, the suit was filed with promptitude. The readiness and willingness was throughout. The lower Appellate Court had not taken into consideration the factum of alternative relief.

Per contra, Mr. Dinarpur, learned counsel appearing on behalf of respondent No.3 Prem Chand submitted that the suit was not maintainable, as there is no averment regarding compliance of provisions of Section 16(c) of the Specific Relief Act. In other words, the suit was bereft of readiness and willingness. In such circumstances, the discretionary relief under Section 20 of the Specific Relief Act could not have been granted, as defendant No.3 had constructed a house and living there for so many years, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and records of the Courts below. This Court on 14.12.1992 admitted the appeal without any interim order. Even if the agreement had been proved, trial Court could not have granted the discretionary relief, in view of non-compliance of Section 16(c) of the Specific Relief Act, 1963 which is *sine qua non* for claiming relief under Section 20 of the Act *ibid.* No doubt the lower Appellate Court in just one paragraph noticed that the sale deed in favour of Prem Chand was registered document, therefore, it cannot be stated to be sham, is not a good reasoning for setting aside finding of the trial court but the fact of the matter is that appellant-plaintiff had also claimed alternative relief nor there is any such pleading in the plaint that defendant No.3 was aware of the agreement and could not be termed as bona fide purchaser. The plaintiff had also claimed alternative relief besides specific relief but there is no such assertion. Section 23 of the Specific Relief Act provides damages. The ratio decidendi culled out by Hon'ble Supreme Court in ***P. D'Souza Vs.***

Shondrilo Naidu (2004) 6 SCC 649 protected the interest of the vendee for claiming specific relief in the absence of such relief i.e. prayer in the plaint but the aforementioned ratio would not be applicable in the present case, owing to the conspicuous absence of ingredients of Section 16 (c) of the Specific Relief Act.

As an upshot of my finding, the discretionary relief could not have been granted but equally so, the lower Appellate Court remained oblivious regarding return of the amount and the compensation. Accordingly, the judgment and decree of the lower Appellate Court is modified to the extent that the appellant-plaintiff is entitled to refund of the amount i.e. earnest money paid and damages to the tune of ₹10,000/- along with interest @6% per annum from the date of institution of the suit till realization to be recovered from Lal Din, defendant. The second appeal is disposed of in above terms.

(AMIT RAWAL)
JUDGE

May 29, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No