IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3858-2007(O&M) with
Cross Objection No.7-C of 2008
Date of decision:-14.3.2019

Inder Singh (since deceased) through LRs

...Appellant

Versus

Smt.Krishna Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rakesh Gupta, Advocate
for the appellants.

Mr.Arihant Jain, Advocate and
Mr.Arun Jindal, Advocate
for the cross objectors/respondents No.1 to 6.

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<u>H.S. MADAAN, J.</u>

Briefly stated, facts of the case are that defendant Inder Singh being co-sharer in the suit land situated at village Rajana entered into an agreement to sell with the plaintiffs – Mauji Ram and Hari Ram on 26.7.1997 at the rate of Rs.2,35,000/- per acre receiving a sum of Rs.1,25,000/- as earnest money; that the agreement to sell was scribed by a regular Deed Writer and attested by Sh.Raghbir Singh, resident of village Kharak Gagar; that the final date for execution of sale deed was fixed to be on or before 18.7.1997 when remaining consideration amount was to be paid; that it was also agreed that defendant set No.1 would get the suit land redeemed from the PARD Bank, Safidon before execution of the sale deed; that it was also agreed that in case defendant set No.1 failed to get the suit land redeemed and perform his part of agreement by the date fixed, then he would be liable to pay double of the earnest money received by him or in the alternative plaintiffs would have a right to get the sale deed qua the suit land executed through Court of law; that possession of the suit land was handed over to the plaintiffs at the time of entering into an agreement; that the plaintiffs had been ready and willing to perform their part of contract and in that regard had appeared before Sub Registrar on 18.7.1997 with the balance sale consideration for execution and registration of the sale deed but despite notice, defendant set No.1 did not redeem the suit land up to 18.7.1997 and did not turn up to execute and get registered the sale deed; that the plaintiffs got their presence recorded before Sub Registrar, Pillukhera on 18.7.1997; that in the meanwhile defendant set No.1 got the joint land partitioned and sold some land to defendants set No.2 vide sale deeds No.525 dated 13.1.1999 and 107 dated 25.5.1998 only to defeat the rights of the plaintiffs and to cause harassment to them, in that way playing fraud not only with plaintiffs but with defendants set No.2 also.

Feeling aggrieved the plaintiffs had brought a suit seeking specific performance of agreement to sell against the defendants after declaring the sale deeds executed by defendant set No.1 in favour of defendants set No.2 as well as mutations sanctioned on the basis thereof to be illegal, null and void besides craving for grant of order restraining the defendants from alienating the suit property to any other person.

On notice, the defendants had appeared and filed written statements contesting the suit. In the written statement filed by him defendant set No.1 controverted the assertions in the plaint submitting that the plaintiffs are estopped from filing the suit by their own act and conduct; that as a matter of fact defendant set No.1 was ready to execute and get registered the sale deed on 18.7.1997 and was present in the office of Sub Registrar for that purpose; that he was accompanied by S/Sh.Baljeet Singh, Rattan Lal and Om Parkash, LVO, PLDB, Safidon since defendant set No.1 had himself called the bank authorities to the office of Sub-Registrar, Pillukhera; that an application for marking the presence of answering defendant was moved before Sub Registrar Pillukhera, which was returned to him after marking his presence; that as a matter of fact, the plaintiffs did not have money to pay the balance consideration amount and to bear ancillary expenses and as such refused to get the sale deed executed in their favour, in that way they were not ready and willing to perform their part of agreement. Such defendant had admitted the execution of agreement to sell and receipt of Rs.1,25,000/- stating that Rs.1,05,000/- were paid at the time of execution of agreement and Rs.20,000/- were adjusted with regard to pronote and receipt dated 1.7.1996. Such defendant took various other legal objections contending that the suit was barred by limitation; that suit was not maintainable; that the plaintiffs had no locus standi to file the suit; that the plaintiffs were guilty of concealment of the facts. In the end, such defendant prayed for dismissal of the suit.

Defendants set No.2 filed a separate written statement contending that suit was not maintainable and as a matter of fact defendant set No.1 had never agreed to sell the suit land with the plaintiffs, rather he had agreed to sell only 280/10229 share of the entire khewat of the land; that the answering defendants are bonafide purchasers for consideration; that they had purchased the property after proper verification of the revenue record and had no knowledge about any past agreement between plaintiffs and defendant set No.1. Such defendants also prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issued were framed:

1. Whether the defendant No.1 has entered into agreement to sell dated 27.6.97 as alleged in the plaint? OPP.

1-A Whether the plaintiffs are entitled to specific performance of contract in lieu of agreement to sell dated 27.6.97? OPP.

2. Whether the sale deed No.525 dt. 3.1.199, sale deed No.107 dt.25.5.98 are illegal, null and void and not binding on the rights of parties? OPP.

3. Whether the suit is out of limitation? OPD.

4. Whether the suit of plaintiffs is not maintainable in the present form? OPD.

5. Whether the plaintiffs have no locus-standi to file the present suit? OPD.

6. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

7. Relief.

In order to prove their case, the plaintiffs had examined PW1 Sh.Satyanarain, PW2 Sh.Raghbir Singh, PW3 Sh.Hari Ram and PW4 Sh.Hari Shankar besides tendering some documents.

On the other hand, the defendants had examined Sh.Om Parkash as DW1, Sh.Bhagwan Dass as DW2, Sh.Satish Kumar as

DW3, Sh.Baljeet Singh as DW4, Sh.Inder Singh as DW5, Sh.Mahender Singh as DW6, Sh.Jitender Kumar as DW7 and Sh.Amar Singh as DW8 besides tendering some documents.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 10.11.2003 dismissed the suit of the plaintiffs with no order as to costs. However, in the interest of justice, the trial Court had observed that plaintiffs were entitled to get their money back from the defendant set No.1 i.e. Rs.1,25,000/- with interest @ 12% per annum from the date of execution of agreement to sell till date of actual realization.

Feeling aggrieved by the said judgment and decree, the plaintiffs as well as defendant set No.1 had filed separate appeals before District Judge, Jind, who vide a consolidated judgment dated 27.8.2007 dismissed both the appeals.

Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant set No.1 has filed the present regular second appeal before this Court, notice of which was issued. On getting notice respondents/plaintiffs No.1 to 6 have appeared and filed cross-objections, notice thereof was given to the appellant/defendant set No.1. In the cross-objections they have craved for grant of specific performance of agreement to sell.

I have heard learned counsel for the parties besides going through the record.

A perusal of the judgment passed by the trial Court goes to show that the trial Court has decided issue No.1 in favour of the plaintiffs holding that defendant set No.1 had entered into an agreement to sell dated 26.7.1997 as alleged in the plaint, for the reason that execution of the agreement was admitted by defendant set No.1. As regards issue No.1-A *“Whether the plaintiffs are entitled to specific performance of contract in lieu of agreement to sell dated 27.6.97? OPP”* and issue No.2 *“Whether the sale deed No.525 dt. 3.1.199, sale deed No.107 dt.25.5.98 are illegal, null and void and not binding on the rights of parties? OPP”*, the trial Court has decided both these issues against the plaintiffs. The reasoning give for returning such findings is as follows:

> *29. Keeping in view the arguments addressed by Ld. Counsel for both the parties I have no hesitation to say that it is admitted case of both the parties that on dated 26.7.1997 agreement to sell was executed by defendant set No.1 in favour of plaintiffs and sale deed was to be executed upto 18.7.1997 and the defendant set No.1 alongwith witnesses appeared before Sub Registrar on 18.7.1997 for executing the sale deed in favour of plaintiffs but these are the plaintiffs who refused to get executed the sale deed in their favour. The evidence led by the plaintiffs is showing that the plaintiffs have*

appeared before Sub-Registrar at about 2:30 P.M. whereas the defendant alongwith his witnesses and bank employee had appeared before Sub Registrar at 11-00 AM and defendant was ready to fulfill the conditions for redeeming the property from the bank after making payment of loan. There is no custom/precedent that the land cannot be redeemed at the time of execution of sale deed. However the Bank employee named Om Parkash, L.V.O. has specifically deposed that usually the land can be redeemed at the time of execution of sale deed and amount against the party is received at the time of execution of sale deed and clearance certificate can be granted even before signing the sale deed by Sub Registrar. It is pertinent to mention here that the notice given by plaintiff to defendant set No.1 is showing that he was not ready and willing to execute the sale deed because plaintiffs have demanded the amount from the defendant NO.1. First of all notice of the plaintiffs is without date, so it is also proved that no notice was given by the plaintiffs to defendant set No.1 before filing this suit or even before execution of the sale deed. Even language of the notice is also showing that the defendant No.1 was entitled for redeeming his property even on the *date of execution of sale deed and for that purposes defendant set No.1 was very much ready and willing to execute the sale deed but these are the plaintiffs who had refused to execute the sale deed on that date. The agreement to sell is not showing the specific killa numbers whereas as per suit of plaintiffs they have demanded specific killa numbers for execution of sale deed, so it is also showing the intention of plaintiffs for not executing the sale deed by pretending this excuse. The typed sale deed was never produced by the plaintiffs before Sub Registrar which was mandatory for the plaintiffs to do so and for execution of sale deed stamp papers were to be purchased by the plaintiff on that date but this has not been done by the plaintiffs at all. The application for marking presence by the plaintiff is just a counter blast of the application produced by the defendant set No.1. Readiness and willingness for execution of sale deed was to be proved by the plaintiffs and plaintiffs were to prove that they were ready and willing to pay the balance amount for execution of sale deed but mere showing the fixed deposits in the bank is not sufficient to prove their contentions. The witnesses who have been produced in oral evidence have* *specifically deposed that they were present at the time of execution of agreement to sell but their signatures are not on Ex.P1 which shows that Hari Ram and Lal Singh were present and that is why their signatures were not obtained on the agreement to sell. So far as execution of sale deed No.525 and 107 dated 13.1.1999 and 25.8.1998 are not wrong, illegal and null and void because the defendants set No.2 had purchased the property from defendant set No.1 after passing the date of execution of sale deed i.e. 18.7.1997 by defendant set No.1 in favour of plaintiffs because defendants set No.2 had purchased the property from defendant set No.1 after going through the revenue record which is clearly showing that the land is on the name of defendant set No.1 and even the contention of defendant set No.1 have been proved by the sale deeds No.107 and 525 because at the time of execution of sale deeds land of defendant set No.1 was mortgaged. Both the sale deeds have been duly proved by defendant set No.1 and witnesses of defendants set No.2 by producing oral as well as documentary evidence and both the sale deeds are binding on the rights of parties. Both the counsel have pleaded well but I am satisfied with the contentions* *raised by Ld. Counsel for the defendants whereas contentions raised by Ld. counsel for the plaintiffs are manifestly unsustainable and same hereby stands scuttled down. Accordingly both these issues No.1-A and 2 are hereby decided against the plaintiffs.*

Whereas issue No.3 was decided against the defendants holding that the suit filed by plaintiffs was within limitation. Issues No.4, 5 and 6 were decided in favour of the defendants holding that suit was not maintainable in the present form; that the plaintiffs had no locus standi or cause of action to file the suit and plaintiffs were estopped from filing the present suit by their own act and conduct. As a cumulative effect of the findings, suit of the plaintiffs had been dismissed with no order as to costs. But then strangely enough, the trial Court directed that in the interest of justice the plaintiffs were entitled to get their money back from the defendant set No.1 i.e. Rs.1,25,000/- at the rate of 12% per annum from the date of execution of agreement to sell till date of actual realization.

With the findings on material issues having been given against the plaintiffs and resultantly suit being dismissed, no order could be passed directing refund of Rs.1,25,000/- with interest @ 12% per annum. That was a glaring illegality committed by the trial Court. However, when the matter went to District Judge, Jind in appeal, learned District Judge, Jind on analysis of the evidence adduced by the parties has observed that defendant set No.1 had proved that he had been ready and willing to perform his part of contract and that in business transactions, things have to move in pre-determined sequence; that conditions of a written covenant cannot be changed by any of the parties to suit their convenience. Learned District Judge, Jind has further observed that vendor defendant vide agreement Ex.P1 had undertaken to get the land redeemed from mortgage, it was incumbent upon him to come forward to execute the sale deed of the land making it free from all encumbrance by making reference to deposition of plaintiff Hari Ram as PW3, copy of statement of account of prospective vendee Ex.P13, which showed that he had withdrawn a sum of Rs.87,500/- from his account and had deposited the said sum along with some more cash on 19.7.1997, when vendor had not come forward to execute the sale deed, considering fixed deposit receipts Ex.P14 to Ex.P16 in favour of vendee Hari Ram showing that the plaintiffs had sufficient money with them to defray amount of balance sale consideration and ancillary charges. Learned District Judge, Jind has come to the conclusion that plaintiffs had been ready and willing to perform their part of contract. In that way, learned District Judge, Jind disagreed with the findings recorded by the trial Court. I on my part find that the verdict given by learned District Judge, Jind is proper and appropriate and there is no reason to disagree with him in that regard. With execution of agreement to sell being admitted by defendant set No.1 and it being established on record that plaintiffs had been ready and willing to perform their part of contract, the specific performance of the agreement was denied to the plaintiffs for the reasons contained in para Nos.29, 30 and 31 of judgment of First Appellate Court, which for ready reference is being reproduced as under:

> *29. Nothing is more important than admission of a party against its own interest. At the first available opportunity, the prospective vendees were to claim specific performance of the agreement. Notice (Mark-X) was sent by learned counsel or the prospective vendees through their counsel; it was addressed to the vendor-defendant. Neither sending of this notice by the prospective vendees through their counsel nor receipt of the same by the vendor-defendant is denied. No specific performance of the agreement has been sought in this notice. When the prospective vendees had themselves not been interested to get specific performance of the agreement, but were interested only to receive back their money i.e. Rs.1,25,000/- with interest, specific performance cannot be thrust on them. The prospective vendees are estopped from seeking specific performance*

of agreement (Ex.P1) when they themselves had not claimed it earlier. Support has been sought from authority reported as ***Kanshi Ram Vs. Om Parkash Jawal and ors. AIR 1996 Supreme Court 2150****.*

30. Moreover the land sold to the vendees vide sale deed dated 25.5.1998 (Ex.P4) and sale deed dated 13.1.1999(Ex.P5) is not the same which had been agreed to be sold by the vendor-defendant. By the time these sales were effected in favour of the vendee-defendants, the vendor had already become exclusive owner of the property on partition with his joint owners. There is statement of vendee-defendant Amar Singh (DW8) that inquiries were made and they were not in the knowledge of any agreement to sell from the vendor and in favour of the prospective vendees. Learned counsel for the prospective vendees has not been able to show any revenue document or any circumstance which even remotely suggests knowledge or information of agreement (Ex.P1) with the vendees defendants. Sale deeds Exs.P4 and P5 proved by Inder Singh (DW5) and Mahender Singh (DW6) and attesting witnesses Jitender Kumar (DW7) and Amar Singh (DW8) reveal that the land was purchased after payment of sale consideration *and without knowledge of agreement to sell in favour of the prospective vendees. The sale was effected in good faith and for consideration when the vendees-defendants had with bonafides purchased the same. Thus, the vendees-defendants are entitled to protection available to a bonafide purchase in section 41 of the Transfer of Property Act, 1882.*

31. Keeping in view the totality of facts and circumstances as discussed above, though the learned Lower Court had approached this aspect differently, the learned Lower Court was right in refusing specific performance of the agreement (Ex.P1) in favour of the prospective vendees. It was rightly held further that the sale deed 25.5.1998(Ex.P4) and dated 3.1.1999(Ex.P5) are valid and legal. Findings on issues no.1-A and 2 modifying the same to the effect that the plaintiffs were ready and willing to perform their part of the contract, are affirmed.

Learned District Judge, Jind had affirmed the findings of the trial Court on issue No.1, whereas with regard to findings on issues No.1A and 2, those were modified to the effect that plaintiffs were ready and wiling to perform their part of contract, findings on issue No.3 observing that suit was within limitation were affirmed, whereas findings on issue No.4 and 5 were reversed holding that a cause of action did arose to plaintiffs to bring the suit and they had locus standi to do so and maintain the suit. Findings on issue No.6 were affirmed for the reason that in the notice Mark X, the plaintiffs had sought recovery of their amount of Rs.1,25,000/- with interest and plaintiffs having themselves sought recovery of amount of advance sale consideration with interest could not claim specific performance in view of principle of estoppel. Whereas the order with regard to refund of money with interest was not interfered with.

Section 21 of the Specific Relief Act, 1963 provides that in a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance. Sub-Section (2) provides that if, in any such suit, the Court decides that specific performance ought not to be granted, but there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

In the present case though the trial Court has just held that in interest of justice plaintiffs were entitled to refund of earnest money with interest, however, the First Appellate Court by detailed reasoning observing that plaintiffs had been ready and willing to perform their part of contract and defendant had committed default in that regard has affirmed such relief granted by the trial Court. Even otherwise, defendant set No.1 has sold the suit land to defendant set No.2. There is nothing on record to show that he had suffered any financial loss by failure of the transaction entered into between him and the plaintiffs. There is no justifiable reason for defendant set No.1 to retain the amount of Rs.1,25,000/- received by him from the plaintiffs that would rather amount to undue enrichment. The plaintiffs are entitled to refund of the amount paid by them to the defendant set No.1 under the agreement to sell.

Learned counsel for the appellant has referred to ***Satish Batra Versus Sudhir Rawal, 2012(4) RCR(Civil) 890***, ***Shree Hanuman CottonMills and another Versus Tata Air Craft Ltd., 1970 AIR(SC) 1986*** and ***HUDA and others Versus Kewal Krishan Goel, 1996 AIR (SC) 1981*** in support of his contentions that defendant set No.1 had a right to forfeit the amount received by him from the plaintiffs. Those authorities do not find application to the present case due to different facts and circumstances and the context in which such observations have been made and in view of the detailed discussion above.

Thus the appeal filed by defendant set No.1 now represented by his legal representatives lacks merit and is doomed for failure and is dismissed accordingly.

As far as cross-objections are concerned, both the Courts below have been unanimous in concluding that the plaintiffs were not entitled to discretionary relief of specific performance of agreement to sell. Such inference arrived at by the Courts below does not need to be interfered with by this Court. The cross-objections are also found to be without merit and are dismissed.

14.3.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No