

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4998 of 2010 (O&M)

Date of Decision: 23.7.2019

Gurmeet Singh

---Appellant

versus

Bhajan Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Abhilaksh Grover, Advocate
for the appellant

Mr. TPS Bawa, Advocate
Mr.R.S.Athwal, Advocate,
for respondents No. 1, 5 and 11

Mr. Rajinder Goyal, Advocate
for respondents No. 12 to 19

Rekha Mittal, J.

Challenge in the present appeal has been directed against the judgment and decree dated 24.7.2010 passed by the Additional District Judge (Fast Track Court) Ropar whereby appeal against the judgment and decree dated 28.7.2009 passed by the Additional Civil Judge (Senior Division), Anandpur Sahib (hereinafter referred to as the “trial court”) was allowed, judgment and decree impugned was set aside and suit filed by the appellant-plaintiff for specific performance of agreement of sale dated 20.1.1994, was dismissed.

The appellant-plaintiff has staked his claim to suit land measuring 93 kanal 2 marlas i.e. 1/3rd share out of 279 kanal 6 marlas,

detailed in head note of the plaint on the basis of agreement to sell dated 20.1.1994 purported to be executed by Smt. Krishna Devi-defendant No. 3 as Mukhtiar-e-aam of defendants No. 1 and 2 namely Jai Chand and Om Raj sons of Ram Ditta whereby she agreed to sell the suit land @ Rs. 70,000/- per acre and sale deed was agreed to be executed on 31.12.1998. It was averred that plaintiff paid Rs. 1,50,000/- on the date of execution of agreement, Rs. 1,00,000/- on 1.1.1995 and Rs. 1,50,000/- on 24.8.1996 and the appellant paid total sum of Rs. 4 lakhs towards sale price as per agreement to sell. Defendants No. 1 and 2 executed six sale deeds i.e. four sale deeds dated 24.3.1999 in favour of Balihar Singh, Kirpal Singh, Ravinder Singh and Ajit Singh and two sale deeds in favour of Balihar Singh, Kirpal Singh and Ravinder Singh in respect of suit land which are void, malafide, illegal, unauthroized, without consideration, ineffective and not binding on the plaintiff. The appellant always remained ready and willing to perform his part of the agreement and remained present with balance sale consideration and other expenses required for the purpose of registration etc. in the office of Sub Registrar, Nurpur Bedi on the stipulated date i.e. 31.12.1998. He got attested affidavit on 31.12.1998 in respect of his presence to get the sale deed executed and registered.

Defendants No. 1 and 2 filed joint written statements raising preliminary objections that plaintiff has filed baseless and false suit in collusion with Smt. Krishna Devi; he has not approached the court with clean hands; agreement is a fabricated, manipulated and ante dated document. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Defendants No. 4 to 7 filed separate written statement and

raised preliminary objections regarding maintainability of the suit and plaintiff being not entitle to equitable and discretionary relief of specific performance of contract. The answering defendants are bona fide purchasers for valuable consideration without notice of alleged agreement to sell and they are protected under Section 41 of the Transfer of Property Act, 1882 (in short “the Act”).

The appellant filed replication(s) re-asserting and re-affirming the stand taken in the plaint and controverted the preliminary objections raised in the written statements.

The trial court framed issues, reproduced in para 4 of the judgment of said court. Having heard counsel for the parties in the light of materials on record, the trial court decreed suit of the plaintiff-appellant for specific performance of agreement to sell. Defendants No. 1 to 3 were directed to get the sale deed executed and registered in favour of the plaintiff within a period of two months after receiving balance sale consideration, failing which the appellant was left at liberty to get the sale deed registered through process of the Court.

As has been noticed hereinbefore, the appeal preferred by defendants No. 1 and 2 was allowed by the First Appellate Court while reversing findings of the trial court on material issues and eventually suit of the appellant-plaintiff was dismissed.

Counsel for the appellant would argue that reasoning adopted by the First Appellate Court to uphold plea of defendants No. 1 and 2 that agreement to sell was ante dated or the same was prepared after power of attorney dated 28.4.1989 given by defendants No. 1 and 2 in favour of defendant No. 3 having been cancelled in March 1994 suffers from

perversity and can not stand the test of judicial scrutiny. To bring home his contention, it is argued that defendants did not produce notification in respect of Nawan Shehar being declared as a District in November 1995 and as such findings of the First Appellate Court that mentioning of address of the plaintiff and that of the attesting witnesses namely Harbans Lal Sarpanch and Satnam Singh of District Nawan Shehar in an agreement executed in January 1994 is an evidence of ante dated, are not based upon materials on record. It is further argued that Smt. Krishna Devi on the basis of validly executed power of attorney by defendants No. 1 and 2 authorizing her to alienate the suit property agreed to sell the suit land for a valuable consideration and appellant paid a sum of Rs. 4,00,000/- to said Krishna Devi from time to time, proved in view of recital in the agreement and subsequent endorsements made thereon, therefore, judgment and decree passed by the trial court is liable to be restored after setting aside the judgment and decree passed by the Court in Appeal.

Counsel representing the respondents, on the contrary, have supported the judgment and decree passed by the Court in Appeal. It is vehemently argued that trial court misdirected itself by ignoring various vital facts on record to substantiate plea of the defendants that agreement to sell has been ante dated and has been prepared after defendants No. 1 and 2 cancelled the power of attorney given to defendant No. 3, in March 1994. It is further argued that reasons that weighed in the mind of First Appellate Court to reject the agreement of sale are based on materials on record and findings by the appellate court, by no stretch of imagination, can be held to be erroneous much less perverse.

I have heard counsel for the parties, perused the paper book

particularly the judgments passed by the courts.

Indisputably, Smt. Krishna Devi wife of Gian Chand defendant No. 3 is the brother's wife (Bhabi) of defendants No. 1 and 2. Defendants No. 1 and 2 vide registered power of attorney dated 28.4.1989 authorized Smt. Krishna Devi to alienate and transfer land in dispute on their behalf. The power of attorney given by defendants No. 1 and 2 was cancelled by a registered document dated 21.3.1994 Ex. D1. The Court in Appeal, on a detailed consideration of materials on record, has assigned various reasons culled out in para 11 to 15 of the judgment and on the basis thereof, recorded its conclusions that agreement dated 20.1.1994 is a sham transaction and the same has been ante dated, therefore, the appellant-plaintiff is not entitle to any relief. In para 11, the Court has noticed that in the agreement dated 20.1.1994, the plaintiff and attesting witnesses namely Harbans Lal Sarpanch and Satnam Singh son of Pirthi Chand were recorded to be residents of a particular village of tehsil Balachaur District Nawan Shehar but District Nawan Shehar came into existence on 7.11.1995. In the succeeding para, court has taken note of suit No. 95 of 15.3.1994 filed by Gian Chand, real brother of defendants No. 1 and 2 and husband of Krishna Devi in respect of the suit land but in the plaint, there is no reference to alleged agreement dated 20.1.1994. The Court, in para 13 has taken note of certain discrepancies with regard to mentioning of khewat/khatauni numbers in the agreement of 1994 as against khewat/khatauni mentioned in jamabandi that was in existence prior to January 1994. The court has also adversely commented that it is something unusual that stipulated date for execution of sale deed was 31.12.1998 in respect of agreement dated 20.1.1994 in absence of any explanation for keeping the agreement alive for

a period of four years. The Court has also noticed that as per copy of jamabandis Ex. D12 and D13 and Ex. P1 land in question was mortgaged with bank at the time of alleged agreement but the agreement does not make reference to any such mortgage or entitlement of the vendee to retain money out of sale consideration for the purpose of clearing liability created towards the bank. It has further been held that Krishna Devi did not appear in the witness box to support cause of the appellant despite there being allegations of agreement being prepared in collusion with the parties to the agreement and attesting witnesses etc. One of the attesting witnesses of the agreement namely Satnam Singh has been stated to be closely related to appellant Girdhari Lal PW scribe of endorsement Ex. P4 regarding receipt of money on 24.8.1996 is held to be a man of shabby character against whom case under Sections 420, 467, 468 and 471 IPC was registered at Police Station Garhshankar and Harbans Lal PW2 had not turned up for cross examination for the reasons best known.

This court has verified that District Nawan Shehar was created in the year 1995 and it was not a District in January 1994. In this view of the matter, the appellant cannot derive any advantage to his contention from the factum of non-production of notification with regard to creation of District Nawan Shehar. Counsel for the appellant has not advanced any arguments much less meaningful to assail factual findings recorded by the Appellate court in paras 11 to 15 of the judgment. He has also failed to make out a case that findings recorded by the Court in Appeal to conclude that agreement is a sham transaction and the same is ante dated suffer from an error much less perversity. In the given circumstances, I find myself unable to be persuaded by the submissions made by counsel for the

appellant that findings recorded by the First Appellate Court cannot stand the test of judicial scrutiny or the same are not based upon materials on record. As a matter of fact, the trial court, for the reasons best known, ignored these material and vital facts while accepting plea of the appellant in respect of validity of agreement of sale and exercising its discretion in favour of the appellant by allowing specific performance of such agreement. The grave error committed by the trial court was rightly rectified by the First Appellate Court. That being so, there is no reason to interfere in the judgment and decree passed by the Court in Appeal.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

23.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No