

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

RSA No.5213 of 2012 (O&M)
Date of Decision.14.02.2019

Tilak Raj and another

...Appellants

Vs

Shiv Dayal and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

This present regular second appeal has arisen out of decision rendered by both the Courts below wherein appellants-plaintiffs sought specific performance of agreement to sell dated 5.1.2004 executed by Shiv Dayal on his behalf and on behalf of defendant No.2, his mother Parsanni Devi in respect of six shops situated in Ambala. The stipulated date was 5.3.2004 but since the defendants according to the averments in the plaint did not come forward, suit was filed on 8.6.2004.

Defendant No.1, Shiav Dayal in para 6 of the written statement stated as under:-

"6. That para no.6 of the plaint is wrong and denied. The defendant No.1 and his mother remained present, but the plaintiffs had no money, but as the agreement is illegal, the present suit is not maintainable. However, the defendant was ready to execute for his share."

On perusal of aforementioned averments, it is evident that defendant No.1 had gone to the office of Sub Registrar for performance but put a blame on the plaintiffs being not present. He did not deny readiness and performance for execution on his part. The trial Court though dismissed the suit but the lower Appellate Court being last court of fact and law in para 19 of the judgment stated that defendants have denied the contention with regard to appearance of the plaintiff in the office of Sub Registrar. For the sake of brevity para 19 and 20 of the lower Appellate Court reads as under:-

“19. The plaintiffs have vehemently contended that on 11.3.2004 the defendants had come to execute and registry the sale deed in respect of the suit property. However the defendants have denied such contention. They have also denied the execution of the draft sale deed Mark-B to Mark-H. Although the said documents are of date 11.3.2004, yet, the same do not bear the signatures of any of the defendants. Unless and until said documents were executed by the defendants, there was no occasion for the plaintiffs to go to the office of the concerned Sub Registrar for the plaintiffs to go to the office of the concerned Sub Registrar for the registration of the sale deed/s. Further more, the said documents appear to be unilateral containing no signatures of the defendants. The depositions of PW5 Dharam Pal and PW6 Krishan Dev, in view of the stand

taken by the defendants, is of no avail to the plaintiffs to prove that on 11.3.2004, the defendants had come to the office of the concerned Sub Registrar for keeping the sale deed of the three shops in the suit property. Neither the said documents are signed by the defendants nor the stamp papers thereof were purchased by them. In view of their category stand that they were not present before the concerned Sub Registrar on 11.3.2004 coupled with the fact that the date of execution of the sale deed i.e. 5.3.2004 had already elapsed, the said document/s are of no help to the plaintiffs to prove their readiness and willingness to perform their part of the contract. Furthermore, as is evident from the stand taken by the plaintiffs themselves, they were having 2.5 lacs for purchase of three shops. This has come in the evidence of PW7 Charanjit and PW8 Tilak Raj. Even if they are believed, although their deposition does not appear to be correct, their such stand does not show that they were ready and willing to perform their part of the contract as contained in the agreement to sell Ex. P1 on 5.3.2004. The said documents, therefore, are also of no avail to the plaintiffs.

20. So far as the execution of the agreement to sell Ex.P1 by the defendant No.1 is concerned, learned Civil Judge has categorically held that the said document was executed by him but without any authority from the

defendant No.2. It has decreed the suit of the plaintiffs for Rs.60,000/- i.e. double of the amount paid by the plaintiffs to the defendant No.1. Although there is no bar to decree a suit for specific performance even in the absence of the clause in the agreement to sell, yet, since the plaintiffs have not proved the ownership of the defendant No.1 over the suit property and the defendant No.2 was the owner thereof, as has been pleaded by the plaintiffs themselves, the relief granted by the learned Civil Judge appears to be in consonance with the facts and circumstances of the present case. In the present case, the competency of the defendant No.1 to execute the agreement to sell Ex.P1 has fallen on the ground. No fault, therefore, can be found with such relief.

The aforementioned findings are totally opposite and contrary to the pleadings, though attempt was made by the appellants to prove ownership of defendant No.1 by placing on record sale deed dated 10.05.1988 regarding three shops constructed in khasra No.5/18. The said application vide separate order has also been dismissed holding that in the opinion of the lower Appellate Court, property prescribed in the sale deed was not related to the suit property.

In my view, aforementioned finding is also preposterous and perverse. The Court's opinion would only come when there is a reference to the clauses of the agreement to sell and the sale deed, which is conspicuously wanting.

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjeet Singh was called upon to support the aforementioned findings and after arguing at some length, both parties are *ad idem* that it is a fit case where the matter is required to be revisited at the level of lower Appellate Court qua admission of defendant No.1, as Mr. Lamba, on instructions from his client, does not press relief qua share of Parsanni Devi.

In view of consensus and noticing the aforementioned findings to be contrary to the pleadings, I am of the view that judgment and decree of the lower Appellate Court is not sustainable and the same is hereby set aside. The matter is remitted to the lower Appellate Court to decide the appeal afresh in accordance with law. In other words, the appeal is restored on file as well as the application for additional evidence.

Both the parties through their counsel are directed to appear before the lower Appellate court on 15.03.2019.

In the meantime, interim order granted by this Court shall continue. This court is sanguine that every effort will be made by the lower Appellate Court to decide the appeal within a period of four months from the date of appearance of parties before it.

The appeal stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

February 14, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No