

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:10.9.2019

RSA No. 3403 of 2013 (O&M)

Anant Vishal Goel

---Appellant

vs.

Neelam Miglani and others

---Respondents

RSA No. 4363 of 2013 (O&M)

Roop Singh

---Appellant

vs.

Anant Vishal Goel and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Harsh Aggarwal, Advocate
for the appellants in RSA No. 3403 of 2013
Mr. Kul Bhushan Sharma, Advocate
for the appellant in RSA No. 4363 of 2013
Mr. Pritam Saini, Advocate and
Ms. Mannat Anand, Advocate
for respondent No. 1 in RSA No. 3403 of 2013
for respondent No. 2 in RSA No. 4363 of 2013

Rekha Mittal, J.

This order will dispose of RSA No. 3403 and 4363 of 2013 as these have emerged out of judgments and decrees passed by the courts whereby suit filed by Anant Vishal Goel-appellant in RSA No. 3403 of 2013 for possession by way of specific performance of agreement with consequential relief for injunction, was dismissed by the courts but the First Appellate Court allowed relief of recovery of Rs. 2 lakh along with interest to be paid by his co-plaintiff-Roop Singh, appellant in RSA No. 4363 of 2013.

The plaintiffs shall be referred to as 'appellants' whereas defendant No. 1 as 'respondent', for the sake of convenience.

Anant Vishal Goel filed the suit on the allegations that

respondent being allottee of plot No. 2245, Sector 65, Faridabad vide allotment letter dated 21.2.2005 entered into agreement to sell with Roop Singh at premium of Rs. 4,10,000/- besides amount of Rs. 1,56,250/- being 25% paid by respondent to defendant No. 3 as well as balance amount payable by respondent to defendant No. 3 Haryana Urban Development Authority (in short "HUDA") in six yearly installments. An agreement to sell-cum-receipt was executed by respondent in favour of Roop Singh after receiving Rs. 1 lakh in cash as earnest money. The date for execution and registration of sale deed was fixed as 31.3.2005 after obtaining 'No Objection Certificate' from MCF/HUDA and if NOC is not granted, the earnest money shall be refunded to the purchaser and balance amount of sale consideration shall be paid by the purchaser at the time of execution and registration of sale deed. In case, the seller fails to comply with the formalities, she shall be liable to refund double of the earnest money to the purchaser. It is further averred that Roop Singh was always ready and willing to perform his part of the agreement. He (Roop Singh) entered into agreement to sell the said property with Anant Vishal Goel on 13.2.2005 on same terms as mentioned in the agreement dated 12.2.2005 and received a sum of Rs. 1,00,000/- from the plaintiff. Respondent, agreeing to the agreement executed between plaintiff and Roop Singh applied for permission to transfer the plot in favour of plaintiff which was received by HUDA on 17.3.2005. Plaintiff gave General Power of Attorney to his father Bhagat Ram Goel vide GPA dated 23.12.2003. Respondent did not turn up for execution and registration of sale deed and as such legal notice dated 20.2.2006 was issued by the plaintiff. He has now come to know that

civil litigation is pending between respondent and Roop Singh with regard to property in question in which plaintiff has not been impleaded as party. The plaintiff asked the defendants several times to get the sale deed executed and registered after getting no objection certificate from HUDA but they refused to accede to request of the plaintiff. Hence the suit.

Defendant No. 1 filed the written statement raising preliminary objections inter alia that plaintiff has no cause of action and locus standi to file the suit, suit is not maintainable and the same is false and frivolous. On merits, it is stated that suit of the plaintiff is barred by the provisions of law as Roop Singh has already filed a suit for permanent and mandatory injunction against the answering defendant which was dismissed in default on 10.6.2006. The plaintiff has no independent right or title to file suit against defendant No. 1 as he alleges himself to be prospective purchaser of plot in dispute from Roop Singh. The plot was allotted by HUDA to defendant No. 1-respondent but Roop Singh in collusion with M/s Rawat Properties approached her at her residence at Jagadhari and got her signatures on blank printed papers with the assurance that M/s Rawat Properties will manage the plot and intimate her about the proceedings of HUDA. She never received any amount from M/s Rawat Properties or from Roop Singh and she had only signed on several printed papers which were never read over to her. She was never absolute owner of the plot on 12.2.2005 and had also not deposited balance 15% amount which was to be deposited within one month after the date of allotment, therefore, question of entering into any agreement to sell does not arise. The plot in question was transferable only as per terms and conditions of HUDA and as such the

agreement is not permissible under the provisions of law.

Roop Singh defendant No. 2 filed the written statement admitting claim of the plaintiff. Defendant No. 3 also filed the written statement raising certain preliminary objections and prayed for dismissal of suit on merits.

The trial court framed issues, vide order dated 1.3.2007, reproduced in para 10 of the judgment of said court. The evidence adduced by the parties finds reference in paras 11 and 12 of the judgment of said court. When the case was pending for evidence of the defendants, Roop Singh arrayed as defendant No. 2 in the suit filed by Anant Vishal Goel, moved an application for transposing him as plaintiff No. 2 and counsel for the plaintiff made an endorsement of no objection on the application and the same was allowed vide order dated 25.1.2011.

The trial court answered issues No. 1 to 4 taken up together, against the plaintiffs and eventually the suit was dismissed with costs. Anant Vishal Goel appellant assailed the judgment and decree dated 23.9.2011 passed by the trial court in CA No. 133 of 2011. The First Appellate Court dismissed the appeal and affirmed findings of the trial court with regard to plaintiff being not entitle to specific performance of agreement of sale but at the same time, the court granted a decree for recovery of Rs. 2 lakh, twice the amount of earnest money along with interest paid by him to Roop Singh plaintiff No. 2.

Anant Vishal Goel has filed RSA No. 3403 of 2013 to assail consistent findings recorded by the courts dismissing his claim for specific performance of agreement to sell dated 12.2.2005 executed between

respondent and plaintiff No. 2 whereas the other appeal has been filed by Roop Singh plaintiff No. 2 to assail the judgment and decree passed by the First Appellate Court allowing recovery of Rs. 2,00,000/-, double of the amount of earnest money along with interest paid under the agreement dated 13.2.2005, in favour of Anant Vishal Goel.

RSA No. 3403 of 2013

Counsel for the appellant would argue that in agreement dated 12.2.2005 executed between Roop Singh and respondent, clause 6 empowered the proposed vendee under the agreement to get the sale deed/transfer paper/GPA of the said property executed in her/his own name or in the name of her/his nominee's or to any other person whatsoever and the seller shall have no objection for the same. It is further argued that since the appellant is the nominee/assignee of Sh. Roop Singh in whose favour agreement to sell Ex. P2 was executed by respondent, the appellant can legally and validly maintain a suit seeking specific performance of agreement to sell dated 12.2.2005, on the basis of agreement dated 13.2.2005 executed by Sh. Roop Singh in favour of the appellant. In support of his contention, he has relied upon Division Bench judgment of the Gauhati High Court **Prabir Kumar Das and others vs. Amulya Bhushan Paul AIR 2005 (Gauhati) 128.**

Another submission made by counsel is that sufficient evidence has been produced on record that the appellants remained ready and willing to perform their part of the agreement i.e. payment of balance sale consideration and incurring expenses of registration/transfer. The courts have seriously erred by rejecting claim of the appellant for specific

performance of agreement of sale. It is further argued that respondent was well aware of agreement executed between the appellant and Roop Singh and for that reason, she filed application Ex. PW7/A seeking permission from Estate Officer, HUDA, Faridabad for transfer of the suit property in favour of Anant Vishal Goel son of Sh. Bhagat Ram Goel though the said application was later withdrawn by her vide letter dated 23.2.2005 Ex. PW7/B.

Counsel for respondent, on the contrary, would argue that no agreement was executed by respondent in favour of Sh. Roop Singh but the agreement dated 12.2.2005 set up by the appellant has been prepared on signatures of the respondent obtained on blank typed papers and blanks therein were filled later. It is further argued that even as per agreement Ex. P2, Sh. Roop Singh was never authorized to enter into further agreement to sell the suit property, therefore, the appellant cannot seek specific performance of agreement of sale dated 13.2.2005 for want of privity of contract between the appellant and respondent. It is further argued that even the application seeking permission for transfer of suit property was prepared using blank signatures of respondent obtained at the instance of M/s Rawat Properties.

Another submission made by counsel is that prior to the suit filed by appellant Anant Vishal Goel, Roop Singh initially defendant No. 2 and later transposed as plaintiff No. 2 filed suit for permanent and mandatory injunction in respect of suit property but the suit was dismissed in default on 10.6.2006 and application filed by Roop Singh for restoration of the same, admittedly, was dismissed by the Civil Judge (Junior Division),

Faridabad vide order dated 26.4.2008. It is vehemently argued that since suit filed by Roop Singh on the basis of agreement to sell dated 12.2.2005 already stands dismissed, appellant otherwise cannot maintain the present suit by claiming himself to be assignee of Sh. Roop Singh. In addition, it is argued that Roop Singh was examined as a witness by the appellant who had stated about his having entered into agreement to sell the suit land in favour of Anant Vishal Goel on 13.2.2005 whereby he purportedly received Rs. 1,00,000/- from Anant Vishal Goel and as such the question of Roop Singh being ready and willing to perform his part of the agreement does not arise. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court *Abdullakoya Haji and others vs. Rubis Tharayil and another 2019 (11) Scale 107*.

Counsel representing appellant Roop Singh echoed arguments advanced by counsel representing Anant Vishal Goel. It is vehemently argued that since Roop Singh assigned his rights created vide agreement dated 12.2.2005 in favour of Sh. Anant Vishal Goel, suit filed by him seeking specific performance of agreement to sell may be allowed.

I have heard counsel for the parties, perused the paper book and records.

The Courts have not rejected the agreement of sale dated 12.2.2005 executed between Roop Singh and respondent. Appellant initially impleaded Roop Singh as defendant No. 2 but later he was transposed as plaintiff No. 2 on the basis of application filed by him to which there was no objection by the appellant/original plaintiff. Since Roop Singh was arrayed as defendant No. 2 in the suit originally filed in the year

2006, the appellant sought specific performance of agreement to sell dated 13.2.2005 which was purportedly executed between Roop Singh and appellant. I stand fortified in my observations from averments in para 12 of the plaint wherein it has been averred that cause of action accrued to the plaintiff on 13.2.2005, then on 31.3.2005 etc.

Indisputably, agreement dated 13.2.2005 does not bear endorsement of respondent. Perusal of clause 6 of the agreement dated 12.2.2005 does not give an inkling that Roop Singh was authorised to enter into further agreement of sale qua the suit property on the basis of agreement dated 12.2.2005. A relevant extract from clause 6 of the said agreement, reads as follows:-

“.....That the purchaser can get the sale deed/transfer paper/GPA of the said property executed in her/his own name or in the name of her/his nominee's or to any other person whatsoever and the seller shall have no objection for the same. All expenses on execution of sale deed/Transfer paper/GPA will be borne by the said purchaser.”

The contention of the appellant by relying upon clause 6 extracted hereinabove is patently misconceived, thus, untenable. He also can not derive any advantage to his contention even if respondent had filed application Ex. PW7/A seeking permission from HUDA, Faridabad for transfer of plot in favour of Anant Vishal Goel. As per clause 6, the proposed vendee was left at liberty to get the property transferred in his own name or in the name of his nominee or any other person whatsoever.

Counsel for the appellant has failed to point out any materials on record to prove that respondent had ever given his consent in respect of agreement dated 13.2.2005 executed between Anant Vishal Goel and Roop Singh.

Much stress has been laid by counsel for the appellant that Anant Vishal Goel can maintain a suit for specific performance being assignee of Roop Singh by relying upon judgment of the Guahati High Court **Prabir Kumar Das and others' case (supra)**. Even if it is accepted that Anant Vishal Goel is an assignee of Sh. Roop Singh in view of agreement dated 13.2.2005, firstly, Anant Vishal Goel could file a suit for specific performance of agreement dated 12.2.2005 and not that of agreement dated 13.2.2005 executed between him and Roop Singh. Secondly, if Anant Vishal Goel could file a suit for specific performance only of agreement dated 12.2.2005, the question for consideration is whether Anant Vishal Goel as an assignee of Roop Singh can maintain the present suit in the face of earlier suit for permanent and mandatory injunction filed by Sh. Roop Singh, having dismissed in default and application for restoration also dismissed by the trial court. I would hasten to add that counsel for the appellant made a vain attempt to argue that since the earlier suit filed by Roop Singh was a suit for permanent and mandatory injunction, dismissal of earlier suit filed by Roop Singh would be of no consequence for maintaining the instant suit for specific performance with consequential relief of permanent injunction.

Perusal of plaint of the earlier suit for permanent and mandatory injunction filed by Roop Singh leaves no manner of doubt that Roop Singh sought specific performance of agreement dated 12.2.2005

though by claiming the said relief in the shape of mandatory injunction. A relevant extract from sub para (b) of para 9 of the prayer made in the earlier suit, reads as follows:-

“A decree of mandatory injunction directing the defendant No. 1 to get execute the sale deed in favour of the plaintiff in respect of the above-said suit property, on receiving balance sale consideration from the plaintiff as per terms and conditions of the agreement to sell dated 17.2.2005 (wrongly mentioned as such in place of 12.2.2005) as mentioned above, may also be passed in favour of the plaintiff and against the defendant.”

The earlier suit was filed by Roop Singh against respondent and HUDA. Since Roop Singh had already filed a suit for issuance of direction to defendant No. 1 to execute the sale deed in his favour on the basis of agreement dated 12.2.2005, it is difficult to accept contention of the appellant that he can maintain another suit being an assignee of Sh. Roop Singh seeking specific performance of the same agreement.

The suit filed by Sh. Roop Singh was dismissed in default in absence of the plaintiff as well as defendant(s) therein, therefore, the suit was dismissed under order 9 Rule 3 of the Code of Civil Procedure (in short “the Code”). Rule 4 deals with liberty to the plaintiff to bring a fresh suit or to get the suit restored. A relevant extract therefrom is quoted thus:-

Plaintiff may bring fresh suit or Court may restore suit to file.- Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he

satisfies the Court that there was sufficient cause for such failure as is referred to in rule 2, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.”

A plain but careful reading of the aforesaid extract makes it apparent that the plaintiff may avail either of the remedies i.e. he may bring a fresh suit subject to law of limitation or file an application to get the order of dismissal set aside by satisfying the court in terms of Rule 4 aforesaid.

In the case at hand, indisputably, Roop Singh filed an application for setting aside order of dismissal of suit dated 10.6.2006 but the same was dismissed by the trial court vide order dated 26.4.2008. Since application filed by Roop Singh for restoration of civil suit No. 162 of 2005 was dismissed, neither he nor his assignee can file a fresh suit seeking the same relief in the form of specific performance of agreement to sell. If it is so permitted, the same would render the provisions of rule 4 negatory and there would be no end to litigation.

Examined from another angle, Roop Singh could file a fresh suit subject to law of limitation. Roop Singh was transposed as plaintiff No. 2 in the year 2011 seeking specific performance of agreement of February 2005, therefore, his claim for specific performance of that agreement is otherwise clearly barred by limitation. In this view of the matter, the appellant cannot maintain the present suit for specific performance of agreement even by asserting himself to be assignee of Sh. Roop Singh.

Before proceeding further, it is pertinent to note that pleadings were not amended after transposition of Roop Singh as plaintiff No. 2.

Appellant in para 4 of the plaint has raised averments with regard to readiness and willingness to perform the agreement. A relevant extract therefrom, reads as follows:-

“That the purchaser i.e. defendant No. 2 was always ready and willing to perform his part of the agreement and is still ready and willing to perform his part of the agreement.”

Defendant No. 2 was Roop Singh. Readiness and willingness of Roop Singh to perform his part of the agreement gets falsified and belied from pleadings that on the very next day of agreement dated 12.2.2005, Roop Singh entered into agreement dated 13.2.2005 in favour of Anant Vishal Goel and received Rs. 1 Lakh as per document Ex. P11. Had Roop Singh been ready and willing to perform his part of the agreement, there was no reason for him to enter into further transaction for sale of the suit property in favour of Sh. Anant Vishal Goel. It further appears to the court that this document Ex. P11 has been prepared by the appellant and Roop Singh on the blank signatures of Neelam Miglani available with a property dealer. In this view of the matter, plea of the appellant with regard to readiness and willingness is also not tenable. That being so, I do not find an error much less illegality in consistent findings recorded by the courts dismissing suit of the appellant for specific performance of agreement of sale.

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

RSA No. 4363 of 2013

The First Appellate Court passed a decree of recovery of Rs. 2

lakh i.e. double of Rs. 1,00,000/- received by Sh. Roop Singh from Anant Vishal Goel on the basis of receipt Ex. P11.

Counsel for the appellant would argue that no decree against Roop Singh, co-plaintiff of Anant Vishal Goel can be passed. It is further argued that no such plea was even raised that he (Anant Vishal Goel) is entitle to recover Rs. 1,00,000/- or double thereof from his co-plaintiff.

Counsel for appellant Anant Vishal Goel, on the contrary, would argue that even if plea of Anant Vishal Goel seeking specific performance of agreement is not allowed, a decree may be passed in his favour directing respondent to refund the amount of Rs. 1 lakh along with interest that was received by her from Sh. Roop Singh under agreement dated 12.2.2005. However, he has not made any submissions to support the judgment passed by the First Appellate Court whereby claim of Anant Vishal Goel was partly decreed for recovery from his co-plaintiff Sh. Roop Singh.

I have heard counsel for the parties and find that contention raised by the appellant is meritorious and liable to be accepted.

No decree can be passed by the court in favour of one plaintiff against his co-plaintiff because they do not assert any warring claims against each other. No doubt, the court can grant a moulded relief so warranted in the facts and circumstances but the court cannot pass a decree against a person against whom, no relief has been claimed. In this view of the matter, judgment and decree passed by the First Appellate Court allowing recovery of Rs. 2 lakh with interest in favour of Anant Vishal Goel and against Roop Singh is set aside. At the same time, Anant Vishal

Goel can not assert his claim for refund of Rs. 1 Lakh with interest on the basis of agreement dated 12.2.2005, in view of discussion made hereinabove while dismissing RSA No. 3403 of 2013.

In view of what has been discussed hereinbefore, the appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

10.9.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes