

In the High Court of Punjab and Haryana at Chandigarh

RSA-1062 of 2015(O&M)
Date of Decision:17.5.2019

Rajinder Kumar

---Appellant

vs.

Jagtar Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Gurcharan Dass, Advocate
for the appellant
Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Harsimran Aulakh, Advocate
for the respondent

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 20.8.2014 passed by the Additional District Judge, Faridkot whereby appeal against judgment and decree dated 11.9.2012 passed by the Additional Civil Judge (Senior Division), Faridkot decreeing suit of the appellant-plaintiff for specific performance of agreement of sale is partly allowed and the plaintiff-appellant has been granted alternative relief of recovery of earnest money of Rs. 1,15,000/- with interest @ 12 % per annum from the date of agreement till realization.

Indisputably, the agreement to sell dated 10.11.2005 was executed by the respondent in favour of the appellant-plaintiff for sale of land measuring 355.55 square yards @ Rs. 1525/- per square yard and sale deed was agreed to be executed on or before 30.4.2006. The earnest money

of Rs. 1,15,000/- was paid to the respondent at the time of agreement of sale. On 27.4.2006, the date for execution of the sale deed was extended from 30.4.2006 to 20.5.2006 and endorsement to this effect was made at the back of the agreement.

The plea of the appellant-plaintiff is that he always remained ready and willing to perform his part of the agreement. He requested the defendant to reach office of Joint Sub Registrar Kotkapura on 22.5.2006 as 20.5.2006 was Saturday and 21.5.2006 was Sunday. The appellant got his presence marked in the office of Joint Sub Registrar, Kotkapura but the defendant did not turn up for execution of the sale deed. He served legal notice dated 10.6.2006 upon the respondent but to no effect. The suit seeking specific performance of agreement to sell was filed on 26.3.2007.

The trial court decreed the suit to the following effect:-

“Suit of the plaintiff is decreed with costs for the relief of possession by way of specific performance of agreement to sell dated 10.11.2005 regarding land measuring one plot measuring 355.55 square yards out of khasra No. 2220 (as detailed in the head note of the plaint). The defendant is directed to get the sale deed executed within three months from today on payment of balance sale consideration by the plaintiff, failing which the plaintiff shall be entitled to get the same executed through the court.”

The Appellate Court modified the judgment and decree passed by the trial court and allowed alternative relief, noticed hereinbefore.

Counsel for the appellant would argue that the reasons that

weighed in mind of the first Appellate court for declining the relief of specific performance by interfering in the discretion exercised by the trial court are the result of misreading of evidence on record and vitiated being perverse. It is argued that no such plea was raised by the respondent-defendant that the appellant has concealed material facts from the court or his conduct is not free from doubt. The only plea raised by the respondent-defendant is that the appellant is not entitled to specific performance of agreement as he was not ready and willing to perform his part of the agreement with regard to payment of balance sale consideration etc. It is further argued that despite application of the respondent for amendment of the written statement to plead agreement dated 29.11.2002 having been rejected by the trial court and order being affirmed in revision by this Court, court has still proceeded to take note of that agreement to sell dated 29.11.2002 with a zeal to coin a story that agreement to sell in question represents a money transaction between the parties, therefore, the appellant-plaintiff is not entitled to specific performance thereof. In addition, it is argued that in the opening lines of para 19 of the judgment, Appellate Court has noticed that the appellant-defendant raised a ground for the first time in his cross examination that there was money transaction through Ex. P4 but evidence beyond pleadings cannot be taken into consideration. Later, the court for the reasons best known took a contradictory view by holding that agreement to sell represents money transaction between the parties. It is argued with vehemence that the manner in which the first Appellate Court has dealt with question of specific performance cannot stand the test of judicial scrutiny in any circumstances, whatever.

Counsel representing the respondent, on the other hand, has supported the judgment passed by the Appellate Court. It is argued that brother of the respondent who is one of the co-sharers in property comprising khasra Nos. 2220 and 2221 has not been impleaded as a party despite a specific objection being raised in the written statement, in regard whereof trial court framed issue No. 3. It is argued that the trial court committed a serious error by deciding the said issue against the respondent-defendant. It is further argued that as suit filed by the appellant-plaintiff is bad for non joinder of necessary parties, the appellant should be satisfied with the alternative relief of recovery allowed by the first Appellate Court.

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

Be that as it may, there is no dispute between the parties with regard to execution of agreement of sale, terms and conditions incorporated therein and extension of date for execution of sale deed with effect from 30.4.2006 to 20.5.2006. The suit for specific performance was filed within less than one year from the extended date for execution of sale deed.

Perusal of judgment of the first Appellate Court leaves no manner of doubt that the respondent-defendant did not assail findings of the trial court qua readiness and willingness of the appellant, the only issue raised by way of defence nor the Appellate Court set aside findings of the trial court on this aspect of the matter. The Appellate Court has totally gone off the tangent to interfere in the discretion exercised by the trial court in favour of the appellant. The Appellate Court, in para 21 has held that conduct of the respondent-plaintiff is condemnable as he has concealed

material facts from the court. Those material facts are sought to be dealt with in para 20 thereof. The two facts stated to be concealed by the appellant are firstly that he has not pleaded previous agreement to sell dated 29.11.2002 marked Ex. D1. Secondly, in the plaint, the appellant has not mentioned about second khasra No. 2221 and claimed specific performance only in respect of land comprising khasra No. 2220. In para 22, the Court introduced a new story that agreement to sell is a money transaction because there was previous agreement dated 29.11.2002 Ex. D1 having been executed between the parties.

Perusal of the written statement filed by the respondent/defendant would reveal that by way of preliminary objections, the respondent raised three objections with regard to non-joinder of necessary parties, non-payment of proper court fee and plaint being not properly verified. On merits, the respondent candidly admitted that he agreed to sell his share in the property as per the terms and conditions incorporated in the agreement and reproduced in sub paras (i), (iv) of para 2 of the plaint. The sole plea raised by the respondent-defendant is that the plaintiff was never ready and willing to perform his part of the contract as he was not ready with the amount to be paid to the defendant-respondent and for that reason the date for execution of the sale deed was extended on 27.4.2006. Once the respondent-defendant has not raised any such plea that the appellant has not approached the court with clean hands or is guilty of concealing material facts from the court, if findings of the Appellate Court are allowed to sustain, it would amount to taking appellant by surprise and condemning him without an opportunity to explain his position

in this regard. This apart, counsel for the respondent has not disputed that application for amendment of the written statement was filed to plead agreement of sale dated 29.11.2002 and the said application was dismissed by the trial court. Revision preferred by Jagtar Singh respondent to challenge order of the trial court was dismissed by the High Court. The agreement to sell dated 29.11.2002 was marked as an exhibit during cross examination of the appellant-plaintiff as he admitted his signatures thereon.

Counsel for the respondent has not advanced any arguments as to how non-disclosure of previous agreement can be said to be concealment of a material fact for the purpose of deciding the controversy qua agreement of sale admittedly executed on 10.11.2005. The second ground taken into consideration by the court that in the plaint there is reference to khasra No. 2220 and not to 2221 is also the result of its failure to take into consideration the plaint in its entirety wherein there is specific reference that agreement of sale was executed on 10.11.2005 and in para 2 it is stated that copy of agreement is attached. As the appellant had attached copy of agreement with the plaint, it is difficult to sustain observations of the first Appellate Court that the appellant had concealed the fact of khasra No. 2221 also being the subject matter of agreement to sell. In this view of the matter, findings of the first Appellate Court with regard to concealment of facts suffer from perversity, thus, set aside.

So far as findings of the first Appellate Court that the agreement in question represents money transaction are patently erroneous rather perverse in view of clear admission of the respondent admitting execution of agreement to sell, terms and conditions incorporated therein

and extension of date for execution of sale deed. This apart, once the respondent-defendant has not been permitted to plead previous agreement dated 29.11.2002, the whole focus of the first Appellate Court on the said agreement to reverse findings of the trial court for specific performance of agreement to sell in question is otherwise unwarranted and untenable.

A plain but careful reading of the observations by the first Appellate Court in paras 20 to 22 leads to an irresistible conclusion that the Court, for the reasons best known, was hell bent to upset the judgment and decree passed by the trial court so far as allowing specific performance of agreement is concerned. As has been rightly argued by counsel for the appellant, the Appellate Court has neither adverted to findings of the trial court with regard to readiness and willingness of the plaintiff to perform his part of the agreement nor set aside the same, the only defence plea available to the respondent in view of averments raised in the written statement. In this view of the matter, findings recorded by the Appellate Court rejecting claim for specific performance of agreement to sell suffer from perversity to the hilt and accordingly set aside. As a consequence, the appellant shall be entitle to specific performance of agreement to sell in respect of property, subject matter of the said agreement.

To be fair to the respondent, counsel has raised a submission with regard to suit being bad for non joinder of necessary parties. Admittedly, issue No. 3 pertaining to non-joinder of necessary parties was answered against the respondent-defendant. Counsel for the respondent has failed to point out if the respondent made submissions before the Appellate Court to assail findings of the trial court on issue No. 3 or the Appellate

Court has set aside findings of the trial court on said issue. The respondent did not file cross objections before this court to assail findings of the courts qua issue No. 3 meaning thereby that the respondent has accepted findings of the trial court on issue No. 3 and as such, it is not open for the respondent to raise such an issue in the second appeal preferred by other side.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal is allowed with costs throughout . The judgment and decree passed by the first Appellate Court rejecting specific performance of agreement of sale and allowing alternative relief of recovery is set aside. The appellant is allowed principal relief of specific performance of agreement to sell but in respect of property subject matter of the agreement of sale.

(Rekha Mittal)
Judge

17.5.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No