IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1475 of 2015 (O&M)
Date of Order: 05.03.2019

Jai Kishan Garg

...Appellant

Versus

Randhir Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Aggarwal, Sr. Advocate, with
Mr. Mukul Aggarwal, Advocate,
for the appellant.

Mr. Kamal Sehgal, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court and granting decree for specific performance of the agreement to sell dated 17.10.2005.

In the present case, signatures on the agreement to sell are not disputed, however, defendant has pleaded that the agreement to sell was executed in good faith and the same is result of fraud. It has been pleaded that the defendant is not the complete owner of the property.

Learned trial court after returning a finding that the execution of the agreement to sell and payment of earnest money has been proved, ordered refund of double of the amount of the earnest money on two grounds:-

(i) that the title of the defendant is not clear;

(ii) that the Rehabilitation Department is not party to the suit.

Learned first appellate court after re-appreciating the evidence decreed the suit as noticed above.

Learned counsel appearing for the appellant has submitted that in the agreement to sell, there was no date for performance of the contract. He submitted that the amount of balance sale consideration was never tendered to the defendant nor it was sent through any demand draft. Hence, he submitted that the plaintiff is not proved to be ready and willing to perform his part of the contract. He further submitted that the discretion exercised by the first appellate court is erroneous. He further submitted that the title of the defendant-appellant is defective and therefore, decree for specific performance should not have been passed. He further submitted that now the decree for specific performance of the agreement to sell is inequitable because the prices of the property have increased very sharply.

On the other hand, learned counsel appearing for the respondent has submitted that in the agreement to sell it had been clearly stipulated that the sale deed would be executed within a period of 60 days. He further drew attention of the court to the copy of the plaint wherein the plaintiff has pleaded that he contacted the defendant for execution and registration of the sale deed and the defendant orally informed him that he will get the sale deed registered on 15.12.2005. Therefore, the plaintiff went to the office of Sub-Registrar on 15.12.2005 but the defendant did not come forward and in order to prove his presence he got attested an affidavit from the Executive Magistrate on 15.12.2005. He has further submitted that the plaintiff has pleaded that he was always ready and willing and still ready and willing to perform his part of the contract. The suit was filed within one month from the date the plaintiff visited the office of Sub-Registrar. Hence, the plaintiff is proved to be ready and willing to perform his part of the contract. He further submitted that the learned first appellate court has exercised the discretion in accordance with Section 20 of the Specific Relief Act, 1963. He further submitted that there is no evidence with respect to any defece in the title of the plaintiff. He submitted that the defendant had purchased the property in a public auction from the Rehabilitation Department and his bid was accepted on 20.07.2005. Plaintiff has already deposited the entire amount and the sale is only to be approved. He further submitted that there is no evidence that there was any restriction on the sale of the property. He further submitted that if the decree for specific performance is not upheld, it is the plaintiff who would suffer irreparable loss as the defendant who had entered into an agreement to sell with open eyes but thereafter refused to perform his part of the contract. Hence, the defendant cannot be given benefit of delay in disposal of the suit.

This Court has analyzed the arguments of learned counsels and with able assistance of learned counsels for the parties gone through the judgments passed by the courts below and the record.

As regards first argument of learned counsel for the appellant, it may be noted that in the agreement to sell it was agreed that the sale deed would be executed within 60 days from the date of agreement to sell. It is the pleaded case of the plaintiff that he orally informed the defendant who agreed to come to the office of Sub-Registrar on 15.12.2005. Hence, the plaintiff visited the office of Sub-Registrar but the defendant did not come forward. In paragraph 4 of the plaint, the plaintiff has pleaded that he was always ready and willing and still ready and willing to perform his part of the contract. In such circumstances, argument of learned counsel that the amount of balance sale consideration has not been tendered is without any substance. The amount was to be tendered in the office of Sub-Registrar where the defendant did not come or show his intention to honour the agreement to sell. Amount of balance sale consideration is to be made, only if, the defendant is ready and willing to perform his part of the contract. The agreement to sell does not provide for payment of the balance sale consideration before the execution of the sale deed. The balance sale price was payable at the time when the deal was to be completed. In such circumstances, argument of learned counsel that the amount was not tendered or sent through any other mean does not have substance. The amount could only be paid once defendant had come forward to execute the sale deed.

Learned counsel for the appellant, at this stage, has tried to elaborate that the plaintiff was not ready and willing to perform his part of the contract. He has submitted that the balance sheet from the statements of accounts of the plaintiff which has been produced proves that he had cash in hand amounting to Rs.6,95,373.08.

The target date for execution and registration of the sale deed was 60 days from the date of execution of the agreement to sell, therefore, the balance sheet of 31.03.2005 would not be relevant. The balance sheet of 31.03.2006 proves that the plaintiff apart from having cash in his bank account is also having amount more than the balance sale consideration payable, which was Rs.15,25,000/-. Therefore, plaintiff was in possession of sufficient resources to pay the balance consideration. Section 16 of the Specific Relief Act, 1963, Explanation(i) provides that where a contract involves the payment of money, it shall not be essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. In the present case, once the court analyses the stand of both the parties, it is apparent that the defendant was at fault. Once the defendant entered into an agreement to sell with his free will or volition, thereafter he cannot later on turn around and refuse to honour to the agreement to sell.

Learned counsel for the appellant while drawing attention of the court to the tremendous increase in the prices has tried to invoke equitable jurisdiction.

In the considered view of this court, increase in the price of the land after entering into a contract cannot be ground to refuse specific performance of the contract. No evidence has been led to prove that the price of the land on the date it was agreed to be sold was shockingly disproportionate to the price agreed. Increase in the prices after execution of the agreement to sell cannot be a ground to refuse specific performance of the agreement to sell.

As regards next argument of learned counsel for the appellant with regard to title of the defendant being defective, it may be noted that the defendant has not lead any evidence to prove that his title is defective. It is apparent that pursuant to the auction held, the entire price has been paid by the defendant. In such circumstances, in absence of evidence to the effect that the title of the defendant is defective, the plaintiff cannot be denied relief. The plaintiff has already made a statement that he is ready to purchase the property with the defective title, if there is any. In such circumstances, there is no substance in the argument of learned counsel for the appellant.

Last argument of learned counsel has already been dealt with under the heading discretion.

Learned counsel for the appellant has relied upon a judgment passed by the Hon'ble Supreme Court in the case of ***Umabai & Anr vs Nilkanth Dhondiba Chavan (Dead), (2005) 6 SCC 243.*** This court has carefully read the aforesaid judgment. The aforesaid judgment is on the facts of the case. The Hon'ble Supreme Court has in para 30 of the judgment held that the court while granting relief of specific performance must examine the conduct of the parties with a view to arrive at a finding so as to arrive at a finding, whether the plaintiff was all along and still ready and willing to perform his part of the contract. In the present case, learned counsel for the appellant could not draw attention of the court to any cogent evidence which may prove that the plaintiff is not entitled to the relief. The plaintiff in the present case as noticed had filed the suit immediately after having attended the office of Sub-Registrar on 15.12.2005.

Learned counsel has further relied upon a judgment passed by the Hon'ble Supreme Court in the case of ***Waheed Baig Vs. Bangi Lakshmamma & Ors, 2008(14) SCC 435,*** to contend that once title of the defendant was not clear, the relief for specific performance of the agreement to sell could not be granted. This court has carefully read the judgment. In the aforesaid case, defendant no.1 was allotted house situated in Industrial Housing Colony by defendant no.2 under subsidized Industrial Housing Scheme. Defendant no.1 was working as helper in an industrial concern and was in occupation of the house as a tenant since 1962. Defendant no.1 had leased out major portion of the house to the plaintiff and defendant no.1 was residing in the kitchen. The State Government had filed a written statement pointed out that the defendant had no alienable right over the suit property. It was in these circumstances the court held that relief of specific performance of the agreement to sell cannot be granted. In the present case, the facts are not paramateria.

Learned counsel for the appellant has further referred to the judgment passed by the Hon'ble Supreme Court in the case of ***Jayakantham And Ors vs Abaykumar 2017(5) SCC 178.*** This court has also gone through the judgment. The Hon'ble Supreme Court held that grant of a decree for specific performance of the agreement to sell is discretionary and the discretion has to be exercised by the court not in arbitrary manner but on sound and reasonable basis, guided by well settled judicial principles. Hon'ble Supreme Court further went on to hold that the agreement to sell gave an unfair advantage over the defendant and therefore, the court found that it is inequitable to grant decree of specific performance of the agreement to sell. In the present case, defendant-appellant has failed to point out circumstances which would make the specific performance of the agreement to sell inequitable or plaintiff was having any unfair advantage.

Learned counsel has further referred to the judgment passed by the Hon'ble Supreme Court in the case of ***Satya Jain v. Anis Ahmed Rushdie, (2013) 8 SCC 131*** to contend that the Hon'ble Supreme Court has ordered that current market price should be directed to be paid in case specific performance of the agreement to sell is to be granted after such a lapse of time. It may be noted here that the aforesaid judgment was clarified by the Supreme Court itself in that very case vide order dated 08.05.2013. Paragraph 19 of the judgment is extracted as under:-

> *"19. In paragraph 10 of the judgment dated 3.12.2012, the statement made on behalf of the appellants (Plaintiffs) that they are ready and willing to offer an amount of Rs.6 crores for the property as against the sum of Rs.3.75 lakhs as mentioned in agreement dated 22.12.1970 has been specifically recorded. It is the aforesaid "offer" made on behalf of the appellants/plaintiffs that had led to the direction in question inasmuch as no material was available to Court to find out as to whether the offered amount of Rs.6 crores was, in any way, indicative of the market value of the property. It is in such a situation that the direction to execute the sale deed at the market price and the request to the learned Trial Judge to determine the same came to be recorded in the judgment dated 3.12.2012. It is, therefore, clear that we did not intend to lay down any law of general application while issuing the direction for execution of the sale deed at the market price as on the date of the judgment i.e. 3.12.2012 ."*

In this case, there is no delay attributable to the plaintiff. Plaintiff was prompt in filing the suit i.e. within a period of one month from the time prescribed in the agreement to sell.

In such circumstances, ends of justice would be met by modifying the judgment and decree passed by the first appellate court directing the plaintiff to deposit the balance sale consideration along with interest as is payable by a government run bank on fixed deposit with quarterly rest. The Executing Court would carry out this exercise and determine the amount payable and thereafter call upon the plaintiff to pay the amount within 2 months.

With the aforesaid modification, the appeal filed by the defendant is dismissed.

March 05, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

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