

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1928 of 2015(O&M)

Date of Decision: 5.7.2019

Ram Kumar

---Appellant

versus

Smt. Shakuntla Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Chanderhas Yadav, Advocate
for the appellant
Mr. Jai Vir Yadav, Advocate,
for respondents No. 1 and 2

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 22.12.2014 passed by the Additional District Judge, Jhajjar whereby appeal against the judgment and decree dated 19.4.2012 passed by the trial court decreeing suit of the appellant-plaintiff was accepted, judgment and decree impugned were set aside and suit filed by the appellant-plaintiff was dismissed.

The appellant has staked his claim for specific performance of contract dated 7.6.2005 against respondent No. 1 on the premise that respondent No. 1 agreed to sell the suit land measuring 5 kanal 4 marlas, situated in village Jahajgarh, Tehsil Beri, District Jhajjar for a sum of Rs. 1,56,000/- on 7.6.2005 and sale deed was agreed to be executed on 7.6.2006. Respondent No. 1 illegally executed sale deed of suit land in favour of respondents No. 2 and 3 on 19.12.2005 and the same is illegal,

null, void and not binding upon rights of the appellant. The appellant always remained ready and willing to perform his part of the contract but respondent No. 1 violated the same by executing illegal sale deed dated 19.12.2005. He sought declaration that the aforesaid sale deed is illegal, null, void and without consideration and liable to be set aside.

Respondent No. 1 filed the written statement and raised preliminary objections pertaining to locus standi to file the suit; maintainability of the suit and suit being filed just to harass. On merits, he pleaded that he had not agreed to sell the suit land to the plaintiff for Rs. 1,56,000/- on 7.6.2005. In fact, he had borrowed a sum of Rs. 90,000/- from plaintiff at the time of agreement and he had paid the same with interest. Plaintiff told him that he will return the agreement but he did not return the same.

Respondents No. 2 and 3 filed their separate written statement and raised preliminary objections qua plaintiff being estopped by his own act and conduct to file the suit; he has not come to the court with clean hands; he has no locus standi and cause of action to file the suit and suit is not maintainable in the present form. They denied having knowledge about agreement between plaintiff and defendant No. 1. The plaintiff has not registered the agreement to sell in the record of right. They have paid Rs. 1,60,000/- as sale consideration for purchasing the suit land vide sale deed dated 19.12.2005 and they are in possession of the suit land being bona fide purchasers. Plaintiff had filed the suit in connivance with defendant No. 1. All other material averments of the plaint have been denied with a prayer for dismissal of the suit with costs.

The trial court framed following issues:-

1. Whether the plaintiff is entitled to a decree of possession of the suit property by way of specific performance of the agreement to sell dated 7.6.2005 executed by defendant No. 1 in favour of plaintiff on the grounds as alleged? OPP
2. whether the sale deed dated 19.12.2005 executed by defendant No. 1 in favour of defendants No. 2 and 3 is illegal, null, void and not binding upon the plaintiff? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no locus-standi to file the present suit? OPD
5. Whether the suit of the plaintiff is false and frivolous and defendants are entitled to special costs under Section 35-A CPC ? OPD
6. Whether the defendants No. 2 and 3 are bona fide purchasers of the suit land and entitled to be as such ? OPD 2 & 3
7. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court answered issues No. 1, 2 and 6, taken up jointly, in favour of the appellant-plaintiff and resultantly, the suit was decreed for specific performance of agreement to sell and defendants were directed to hand over vacant possession of suit land to plaintiff within a period of two months from the date of judgment.

As has been noticed hereinbefore, the judgment and decree

passed by the trial court became subject matter of appeal preferred by defendants No. 2 and 3 and the same was allowed.

Counsel for the appellant would argue that plaintiff examined stamp vendor, deed writer and one of the attesting witnesses to the agreement besides his own statement on oath to prove agreement to sell dated 7.6.2005. It is further argued that nothing tangible and material has been elicited in cross examination of the witnesses to discard or disbelieve their testimony with regard to agreement to sell having been executed by defendant No. 1 in favour of the plaintiff. It is further submitted that as defendant No. 1 sold suit land on 19.12.2005 long before arrival of stipulated date for execution of sale deed, there are sufficient materials on record to decree suit of the plaintiff for specific performance of the agreement as was allowed by the trial court on a detailed consideration of the matter. It is further argued that findings of the Appellate Court that agreement to sell has been ante dated or is the result of collusion between the plaintiff and defendant No. 1 are the result of failure to appreciate testimony of witnesses particularly statement of Rajesh PW3 in right perspective.

Counsel representing respondents No. 1 and 2, on the contrary, has supported the judgment and decree passed by the Court in Appeal. It is argued that respondents No. 1 and 2 raised a specific plea that agreement to sell propounded by the plaintiff is the result of collusion between the plaintiff and defendant No. 1 and has been manufactured with a clear intent to cause loss to purchasers under sale deed dated 19.12.2005. It is argued that factum of collusion between plaintiff and defendant No. 1 is writ large

from the facts elicited in cross examination of Rajesh PW3 who is none else but brother of Dalbir defendant No. 1 whereas Ram Kumar plaintiff is his 'Mausa'.

Another submission made by counsel is that respondents No. 1 and 2 raised a specific plea that they had no knowledge of agreement to sell and are bona fide purchasers for consideration. It is vehemently argued that there is no material on record to prove that respondents No. 1 and 2 ever had knowledge of agreement to sell prior to execution of sale deed dated 19.12.2005. It is argued that rights of respondents No. 1 and 2 are protected under Section 41 of the Transfer of Property Act, 1882 (in short "the Act").

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

Indisputably, the suit land has been sold by its erstwhile owner defendant No. 1 in favour of defendants No. 2 and 3, vide sale deed dated 19.12.2005. Defendants No. 2 and 3 have raised a specific plea that they are bona fide purchasers for consideration. The trial court framed issue No. 6 in respect of the plea raised by defendants No. 2 and 3. The said issue was taken up along with issues No. 1 and 2 by the trial court. It is surprising rather mystifying that the trial court without adverting to the plea and evidence adduced by defendants No. 2 and 3 with regard to their being bona fide purchasers for consideration, answered issue No. 6 against them while deciding issues No. 1, 2 and 6 together. The manner in which the trial court proceeded to decide issue No. 6 by taking up jointly with issues No. 1 and 2 shows the trial court in poor light or to say that the trial court for the reasons best known considered issue No. 6 alongwith issues No. 1 and 2 despite

issue No. 6 being completely independent.

The Appellate court accepted plea of defendants No. 2 and 3 that they are bona fide purchasers and are protected under Section 53-A of the Act. The Appellate Court, in para 14 of the judgment, has adverted to the provisions of Section 17(1A) of the Indian Registration Act and Section 53-A of the Act and ultimately concluded that right of defendants No. 2 and 3/appellants is clearly protected as bona fide purchasers as per Section 53-A of the Act. This finding of the Appellate Court makes it evident that the Appellate Court despite reproducing Section 53-A in para 14 of the judgment did not bother to examine that Section 53-A has nothing to do with bona fide purchaser rather the same deals with part performance of agreement of sale. As a matter of fact, Section 41 of the Act is the relevant provision that protects right of a bona fide purchaser.

The question for consideration is, whether defendants No. 2 and 3 are entitle to protect their ownership on the basis of sale deed dated 19.12.2005 by taking shelter under Section 41 of the Act.

One of the purchasers Smt. Santosh Devi appeared in the witness box and tendered into evidence her duly sworn affidavit by way of examination in chief. In para 3 of the affidavit, she has specifically deposed about having made enquiries that there is no encumbrance or mortgage or agreement of sale etc. before purchasing the land and had seen record of rights. The land was found to be free from any liability. The witness was cross examined at length but there is no challenge to her testimony in respect of contents of para 3 of the affidavit with regard to their having made enquiries qua the aforesaid. As per the settled position in law,

non-challenge to testimony of a witness on a particular aspect amounts to admission on the part of contesting party. This apart, there is nothing on record suggestive of the fact that respondents No. 1 and 2 ever had an inkling much less knowledge about agreement of sale dated 7.6.2005 propounded by the appellant-plaintiff before they purchased the suit land vide sale deed dated 19.12.2005.

The suit land is situated in village Jahajgarh and respondents No. 1 to 3 are also residents of the same village. Neither the appellant adduced positive evidence nor brought forth any facts in cross examination of the witnesses of the defendants with regard to size of village Jahajgarh, distance between houses of defendant No. 1 viz-a-viz defendants No. 2 and 3 or distance between the suit land and houses of defendants No. 2 and 3. On the other hand, the plaintiff is a resident of village Neola Tehsil and District Jhajjar. Possession of suit land was never delivered to the plaintiff on the basis of purported agreement of sale. In the given circumstances, it is difficult to raise an inference that since defendants No. 2 and 3 are residents of village Jahajgarh where the land in question is situated, they could have the necessary knowledge of agreement of sale. In this view of the matter, it can safely be held that defendants No. 2 and 3 have established their plea that they did not have knowledge of agreement of sale when they got the land purchased through sale deed dated 19.12.2005. There is sufficient evidence on record that defendants No. 2 and 3 purchased the suit land for a valuable consideration of Rs. 1,60,000/-. Even otherwise, there is no material on record that defendants No. 2 and 3 are related to defendant No. 1 in any manner whatever. In this view of the matter, findings of the

first Appellate Court that defendants No. 2 and 3 are entitle to protect their sale being bona fide purchasers are liable to be affirmed but with modification that the said protection is available to them under Section 41 of the Act in place of under Section 53-A of the Act.

There is another aspect of the matter with regard to agreement being the result of collusion and prepared ante dated. Rajesh PW3, one of the attesting witnesses of the agreement was examined by the appellant. He tendered into evidence his affidavit Ex. PW3/A by way of examination in chief. In his cross examination, the witness has made vital admissions with regard to close relationship between plaintiff and defendant No. 1. A relevant extract from his cross examination in Hindi, but translated in English, reads as follows:-

“Stated that affidavit Ex. PW3/A was got scribed by Dalbir. Dalbir is my real brother. It is correct that Ex. P1 was written in my presence. The paper was brought by my Mause Dalbir. There was no exchange of money in my presence. It is incorrect that Ex. P1 was made after 19.12.2005. Ram Kumar plaintiff is my Mause. Dalbir defendant no. 1 is my brother. It is incorrect to suggest that I am deposing falsely at the instigation of plaintiff and defendant No. 1.”

The witness was not cross examined by counsel representing defendant No. 1 before the trial court.

A plain but careful reading of cross examination makes it evident that Rajesh is the real brother of Dalbir Singh defendant No. 1 and Ram Kumar plaintiff is the Mause of Rajesh PW3 and Dalbir Singh

defendant No. 1, therefore, there is close relationship between the plaintiff and defendant No. 1. Since affidavit of Rajesh PW3, a witness examined by the plaintiff was got prepared by defendant No. 1, it goes a long way to show that defendant No. 1 had been supporting cause of the plaintiff with a clear intent to wriggle out of the sale deed dated 19.12.2005, executed in favour of defendants No. 2 and 3. Rajesh had stated that no payment was made by plaintiff to defendant No. 1 at the time of agreement of sale which also creates a doubt that a genuine transaction was entered into between the plaintiff and defendant No. 1 for sale of suit land. The necessary inference is that this agreement was prepared later in point of time in order to cause loss to defendants No. 2 and 3, purchasers of the suit land vide sale deed dated 19.12.2005. I find fortification to my observations from statement of Satyabir, deed writer who had stated in his cross examination that he did not know if agreement was scribed after 19.12.2005 and a previous date was mentioned therein. To be fair to the appellant, the witness had voluntarily stated that agreement was scribed on 7.6.2005 and the same date was mentioned there. The instant response of the witness coupled with the facts elicited in cross examination of Rajesh certainly leads to a conclusion that agreement is the result of collusion and was ante dated. Further more, Satyavir mentioned about entry at Sr. No. 119 dated 7.6.2005 pertaining to agreement in question but with regard to entries at Sr. Nos. 118 and 120, he would state that he cannot tell that those entries in his register pertain to what. Analyzed from any angle, findings of the first Appellate Court that agreement to sell propounded by the appellant is the result of collusion between the plaintiff and defendant No. 1 and has been ante dated cannot be

faulted with. Since the agreement of sale has been ante dated and prepared in collusion with plaintiff and defendant No. 1, there was no question of defendants No. 2 and 3 having gained knowledge of agreement despite making enquiries in the village. In this view of the matter, it can safely be held that entire evidence led by the appellant to prove agreement of sale is a manufactured one with an intent to wriggle out of sale deed dated 19.12.2005. As such, a grave and serious error committed by the trial court exercising its discretionary jurisdiction in favour of the plaintiff by allowing specific performance of agreement of sale, has rightly been rectified 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. Copy of the judgment be sent to the presiding officers of the courts below at their present place of posting.

(Rekha Mittal)
Judge

5.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No