IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.225 of 2020 (O&M)
Date of Decision: 4.2.2020

Gurmail Singh ... Petitioner

Versus

Charan Singh ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashok Singla, Advocate for the petitioner

RAJIV NARAIN RAINA, J.

1. This petition has been presented under Article 227 of the Constitution assailing the order of the learned District Judge, Patiala dated 1.10.2019 setting aside the order of the trial court allowing the defendant's application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 by rejecting the plaint. The trial terminated has been revived for adjudication. The prayer is for setting aside the order as erroneous.

2. The facts are that the petitioner was one of the defendants in the suit instituted on 20.4.1995 by the plaintiff praying for specific performance of an agreement dated 8.2.1994 for sale and purchase of land measuring 16 Kanals 0 Marla by directing the contesting defendant to execute and get the sale deed registered in favour of the plaintiff on payment of the balance sale consideration and for permanent injunction restraining the defendant from creating any encumbrance on the suit property. The target date fixed was 5.2.1995 to await receipt of balance sale

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consideration and for registration. The defendant committed breach of contract to sell the land by backing out of the deal.

3. The aggrieved plaintiff filed a suit for specific performance of the agreement. Eventually, learned Civil Judge (Sr.Division), Patiala partly decreed the suit by judgment and decree dated 9.1.2008. The trial judge found that the defendant had only 11 Kanals 6 Marlas of land in his ownership and to that extent, the suit was decreed. The remaining land was in the ownership of his parents which he had no power to sell. The appeal filed by the defendant against the said decree was dismissed by the learned Addl. District Judge, Patiala. The decree was executed to the extent of 11 Kanals 6 Marlas out of 16 Kanals- 0 Marla of land.

4. Later, the plaintiff discovered that in addition to the land already purchased by him, the defendant had meanwhile acquired title to land measuring 8 Kanals 18 2/3 Marlas in the same khewat by way of inheritance from his father. Thus, the defendant acquired title to some additional land which had been deducted at the tme of partial decree. Therefore, the plaintiff is entitled to obtain a decree for possession to the extent of further 4 Kanals 14 Marlas land by way of specific performance as against the initial decree for the entire parcel of land admeasuring 16 Kanals. On the date of the sale deed, the defendant had no further title other than 4 Kanals 16 Marlas. The plaintiff had accepted that position and took decree for part of the land to the extent of defendant's ownership. The defendant had been directed by the decree to refund the amount of sale consideration after adjusting the price of land measuring 8 Kanals 6 Marlas of land.

5. Meanwhile, the pending appeal in this court was decided confirming the decree to the extent of 11 Kanals 6 Marlas in favour of the

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plaintiff and against the defendant. Obviously, defendant could not sell land more than his share and had no title beyond that reduced land. The decree attained finality. It transpired that subsequently, the defendant became owner of 4 Kanals 0 Marla of land by way of inheritance from his parents. The land measuring 8 Kanals 6 Marlas suffered a registered sale deed dated 18.11.2016 through execution proceedings filed under Order 21 Rule 11 of the CPC.

6. Feeling deprived of proposed ownership of the balance 4 Kanals 14 Marlas of land out of 16 marlas agreed to be sold, the plaintiff filed civil suit No.1533/2014 by way of specific performance of the agreement dated 8.2.1994 against the defendant claiming mandatory injunction for delivery of possession by compelling the defendant to transfer the full ownership of land agreed to be sold on 8.2.1994 on acquiring title by inheritance over the remaining land which could not be sold as promised. This second suit was filed in 2014. The first suit was for specific performance and for possession. The second suit was for possession by way of specific performance as comes forth from the head note of the two suits.

7. In the second suit, the petitioning defendant filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint claiming that he suit was not maintainable and was barred by the principle of res judicata because already a civil suit between the parties had been decided with respect to the sale agreement dated 8.2.1994 and that had atained finality. The plaintiff opposed the application praying that several opportunities had been taken by the defendant to file written statement when the application was filed to avoid submitting a reply on merits. The plaintiff urged that the defendant having inherited remaining land of 4

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Kanals 14 Marlas by way of inheritance from his parents subsequent to the agreement to sell, the entire agreement should be enforced against the defendant as per the sale agreement.

8. The trial court dismissed the application under Order 7 Rule 11 of the CPC on 17.12.2015 holding that not only was the suit barred by limitation as the agreement pertains to 1994, it was also barred by the principle of res judicata. The Civil Judge held that once the subject matter of agreement has already been finally decided between the parties, other than the cause of action, rights under newly acquired title cannot be kept pending for all times to come. The suit was held to be not maintainable and the plaint was rejected by order dated 17.12.2015 by the learned Civil Judge (Jr.Division), Patiala.

9. Feeling aggrieved by the order of rejection, the petitioning defendant carried an appeal under Section 96 of the CPC to the court of learned District Judge, Patiala praying that the order of the trial court rejecting the plaint be set aside as erroneous.

10. The question before the learned District Judge was whether the suit would proceed to its logical end or should it be terminated at the threshold on the grounds of appeal. The basic fact was that the defendant had sold land to the plaintiff more than he owned, as the agreement was for 16 Kanals 0 Marla of land of which only 11 Kanals 6 Marlas had been executed in terms of the partial decree restricting the said agreement to existing ownership rights. On acquiring the entire property described in the agreement to sell and in the sale deed that was registered through court orders in execution, would this be a triable issue in the second suit by giving an opportunity to the parties to lead their evidence and urge pleas on law and facts?

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11. As said before, the trial judge had taken the view that the suit was barred by res judicata. That was an erroneous view according to the learned District Judge, Patiala in appeal. If the defendant had acquired title to more land in the same Khewat to make up 16 Kanals- 0 Marla, then the suit filed by the plaintiff could not be held to be prima facie not maintainable in claiming the remaining land by decree. To lean to this view, the learned District Judge relied on Section 13 of the Specific Relief Act, 1963 which reads as under:-

> "13. Rights of purchaser or lessee against person with no title or imperfect title.
>
> (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:--
>
> (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
>
> (b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;
>
> (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a

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> valid discharge, and, where necessary, also a conveyance from the mortgagee;
>
> (d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.
>
> (2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property."

12. On the point of res judicata, the learned District Judge observed in his order that in the previous suit the relief to the extent of 11 Kanals 6 Marlas was granted to the plaintiff in partial satisfaction of the land agreed to be sold, but in the present suit, the claim of the plaintiff is based on acquisition of title by the defendant to some more land in the same parcel created at a subsequent stage by succession upon the death of the parents. Similarly, the question of limitation in such like cases the learned judge held is a mixed question of law and fact which can be resolved by evidence. This question cannot be decided without receiving the written statement and framing issues and allowing the parties to lead evidence in discharge of their burdens of proof. All these questions need to be gone into by way of trial, adjudication and determination of the inter se rights of the parties over the left out 4 Kanals 14 Marlas of land. In these circumstances, the plaint should not have been rejected under Order 7 Rule 11 of the CPC to abort a trial.

13. Consequently, the appeal has been allowed by the learned District Judge by his order dated 1.10.2019 setting aside the order of the

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trial court. However, the District Judge has made it clear that any observation made in his order shall have no bearing on the merits of the case which shall be determined by the learned trial court.

14. Feeling aggrieved by the order of the learned District Judge, this revision has been filed.

15. I have heard learned counsel for the petitioner at length and perused the paper-book.

16. Keeping in view the facts and circumstances of this case, I fail to find any material irregularity, infirmity or error in reasoning in setting aside the order of the trial court and allowing the appeal making way for a trial. Prima facie, the suit is not barred by res judicata or by limitation or by any other law in this regard to allow an application under Order 7 Rule 11 of the CPC.

17. Furthermore, the sale agreement of 1994 was a solemn contract which, but for the deviant conduct of the defendant, could not be executed in whole and only in part. Defendant cannot take advantage of his own wrong. The balance land is subject matter of the fresh suit and the issue is eminently triable by an adjudication of the rights of the parties. It cannot also be lost sight of the fact that from 1995, the parties are in litigation till appeal to this Court under Section 100 of the CPC which was dismissed concluding the case before the present suit was filed.

18. Learned counsel for the petitioner has cited six judgments in his favour. These are Sof Yamma vs. Chandy Abrahan, 2017 (2) AIR Kar 426, Zonal Manager, Life Insurance Corporation of India vs. Sushil Kumar Jain son of Shri Ram Kumar Jain and others, 2013 (4) S.C.T. 691, Vinod Kumar Singh and others vs. Devraj Singh and others, 2015 (35) RCR (Civil) 319, Ramesh Kumar Sharma vs. The Ambassador, Royal

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Netherlands Embassy, 2002 (1) S.C.T. 761, A.E.Rathina Naicker vs. V. Thirumalai, 2017 (4) MLJ 40 and the last one by this Court in Shekhar Verma vs. Raj Gupta and others (CR No.5173 of 2017 decided on 4.12.2018).

19. I have perused these judgments carefully but find in them no similarity to the facts of this case and all are clearly distinguishable. The peculiar fact situation arising in this case does not occur in those cases. It would be a sheer waste of time to narrate the facts of those cases which are poles apart on the points involved in the present case. In none of those is there a partial decree in a suit for specific performance of a sale agreement by way of possession or a vendor cheating the vendee and accepting sale consideration beyond entitlement at the time of signing contract and later on acquiring title to the remaining land which is up for enforcement in the second suit holding down the defendant to honour his commitment mane in 1994.

20. Section 13 of the Specific Relief Act explains the actionable statutory rights of purchaser or lessee against person with no title or imperfect title. Section 13 (1) (a) provides that if the vendor or lessor has subsequent to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest.

21. In view of the conclusions, I find no merit in this petition which is dismissed in limine. Parties are directed to appear before the trial court on 17.2.2020.

22. It is, however, clarified that any observation made by this Court would have no bearing on the merits of the case which shall remain

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subject to trial by evidence to reach an independent and fair conclusion on materials which are yet to come on record.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned *Yes*

Whether Reportable *Yes*

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