IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1362 of 2003(O&M)

Date of decision: 3.3.2020

Girdhari Lal .....Appellant

VERSUS

Kuldeep Singh and another .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gurcharan Singh Gandhi, Advocate for the appellant.

Mr. Sanjiv Gupta, Advocate for the respondents.

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REKHA MITTAL, J.

The unsuccessful defendant/appellant has knocked at the door of this Court to assail judgments of the Courts decreeing suit for possession by way of specific performance of agreement dated 12.05.1992 in respect of land measuring 24 kanal 14 marlas to the extent of 3/8th share out of land measuring 65 kanal 19 marlas situated in village Churni, agreed to be sold for Rs.4,96,000/- out of which Rs.1,00,875/- were paid as earnest money in cash at the time of execution of agreement, scribed by Sh. Parmod Kumar Jain and attested by Manohar Lal and Kundan Singh.

The trial Court, in view of rival contentions of the parties, framed issues reproduced in para 7 of its judgment. On the basis of evidence led by parties when appreciated in the light of rival submissions made by their respective counsel, the trial Court accepted plea of the respondents/plaintiffs that agreement to sell was executed by the appellant/defendant, respondents/plaintiffs always remained ready and willing to perform to perform their part of the agreement and entitle to principal relief of specific performance, in exercise of judicial discretion of the Court. The judgment and decree passed by the trial Court came to be affirmed in appeal preferred by unsuccessful appellant/defendant, by the District Judge, Karnal vide decree and judgment dated 24.12.2002.

Counsel for the appellant would argue that the appellant never agreed to sell his land and agreement to sell was prepared as a security document in respect of loan of Rs.70,000/- obtained by the appellant for marriage of his daughter. It is further argued that transaction for sale of property amounts to cheating, therefore, the respondents/plaintiffs, at best, can be allowed recovery of suit amount.

Another submission made by counsel is that prior to institution of suit, the respondents/plaintiffs instituted the suit for permanent injunction restraining the appellant from alienating the suit land with the allegations that the appellant is threatening to alienate the same to a third party. The said suit was later dismissed as withdrawn without liberty to file a fresh suit, therefore, the present suit is barred under Order 2 Rule 2 of the Code of Civil Procedure, 1908 (in short 'CPC'). In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **M/s Virgo Industries (Eng.) Pvt. Ltd. Vs. M/s Venturetech Solutions Pvt. Ltd., 2012 (4) RCR (Civil) 372**. Further reference has been made to Division Bench judgment of Delhi High Court **Kamal Kishore Saboo Vs. Nawabzada Humayun Kamal Hasan Khan, 2001 (3) RCR (Civil) 565**. Reference has also been made to judgment of this Court **Harbhajan Singh and another Vs. Hazur Singh and another, 2019(1) RCR (Civil) 945**.

Counsel would further argue that as per plea of the respondents/plaintiffs, they brought money from their commission agent for payment of earnest money and balance sale consideration payable at the time of execution of sale deed. They did not examine the concerned witness to prove that any such money was paid by the commission agent either at the time of alleged payment of earnest money or availability of funds on the stipulated date i.e. 25.02.1993. It is vehemently argued that findings of the Courts accepting plea of the respondents/plaintiffs that they always remained ready and willing to perform their part of the agreement are not based upon correct appreciation of materials on record, thus, liable to be set aside. In addition, it is argued that appellant has established that on the stipulated date i.e. 25.02.1993, he was present in the office of Sub Registrar evidenced by documents Ex.D1 and D2 and had it been true that the respondents were present in the office of Sub Registrar on the stipulated date with balance sale consideration and expenses required for registration, there was no reason for the transaction to fall through, necessitating initiation of litigation. It is further argued that documents Ex.P7 and P8 relied upon by the respondents/plaintiffs with regard to their presence in the office of Sub Registrar on the stipulated date do not bear attestation of the registering authority though Ex.P7 has been attested by Notary Public, Karnal and the same have been created for the purpose of present suit.

Counsel representing the respondents/plaintiffs, on the contrary, would argue that concurrent findings recorded by the Courts do not suffer from an error nor raise a question of law that needs determination in the second appeal. It is further argued that both the

Courts, on detailed consideration of materials on record, have rightly upheld plea of the respondents/plaintiffs in respect of agreement to sell as well as readiness and willingness of the respondents/plaintiffs to perform their part of the agreement. It is argued that presence of the respondents in the office of Sub Registrar on the stipulated date is duly proved by oral and documentary evidence adduced by the plaintiffs. On the next day of stipulated date i.e. 26.02.1993, the respondents issued legal notice recording the factum of their presence in the office of Sub Registrar on the stipulated date and appellant was called upon to appear in the office of Sub Registrar on 15.03.1993 to receive balance sale consideration and execute the sale deed. On 15.03.1993, the respondents again went to the office of Sub Registrar and executed affidavit Ex.P13 attested by Jai Parkash, Notary Public, Karnal. Later, the suit was filed on 27.03.1993, within the shortest possible time from 15.03.1993. It is further argued that respondents have produced their bank accounts i.e. Savings Bank Account Nos.9619 in the name of Kuldeep Singh and 9620 in the name of Gurmeet Singh wherein there was balance more than the balance sale consideration and expenses required for purchase of stamp papers etc. to prove that respondents had sufficient means to discharge their obligation under agreement to sell. The last submission made by counsel is that appellant had raised inconsistent and contradictory pleas in respect of agreement of sale and the same gets falsified and belied from his own documents Ex.D1 and D2 purported to be prepared in regard to his presence in the office of Sub Registrar, Karnal on the stipulated date. According to counsel, the appellant is guilty of denying receipt of Rs.1,00,875/- towards earnest money or asserting payment of Rs.70,000/- towards loan for marriage of his daughter and as such he is unworthy of credence and reliance, therefore, there is no ground much less justified to interfere in the discretion exercised by the Courts based upon sound foundation.

To refute contention of the appellant with regard to suit being barred under Order 2 Rule 2 CPC, it is argued that though the respondents filed the suit for injunction restraining the appellant/defendant from alienating the suit land even before arrival of the target date, the present suit cannot be said to be barred under Order 2 Rule 2 CPC as cause of action to file suit for specific performance had not arrived by the time suit for injunction was filed. It is further argued that appellant cannot derive any advantage to his contention from the judgment in **M/s Virgo Industries case** (supra) in view of distinguishable facts of the referred authority.

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

The defence plea raised by the appellant with regard to non-execution of agreement of sale, non-receipt of Rs.1,00,875/- towards earnest money or taking loan of Rs.70,000/- for marriage of his daughter and agreement being executed as a security document gets demolished in view of documents Ex.D1 and D2, relied upon by the appellant in support of his plea that he was present in the office of Sub Registrar on the stipulated date i.e. 25.02.1993. In both these documents, all the details of agreement to sell namely extent of land agreed to be sold, total sale consideration and payment towards earnest money and fixation of stipulated date have been vividly recorded. Rather these documents go a long way to prove that defence plea raised by the appellant to challenge correctness of the agreement of sale is absolutely false, thus, creates doubt with regard to his credibility and veracity. In this view of the matter, nothing survives for consideration of this Court with regard to agreement of sale being entered into between the parties and terms and conditions contained therein.

Much stress has been laid by the appellant that the present suit is barred under Order 2 Rule 2 CPC due to previous suit for injunction having been filed by the respondents even before arrival of the target date i.e. 25.02.1993. The plaint of the said suit has not been produced and proved by the appellant for perusal and appreciation as to whether it can be held that cause of action to file suit for specific performance had accrued to the respondents when they filed suit for permanent injunction against alienation of the suit property. This apart, judgment in **M/s Virgo Industries case** (supra) was passed by Hon'ble the Supreme Court in view of the peculiar facts and circumstances of that case wherein it has been held, reads thus:-

> "14. The averments made by the plaintiff in C.S. Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when C.S. Nos. 831 and 833 of 2005 were instituted, namely, 28.8.2005 and 9.9.2005, the plaintiff itself had claimed that facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27.7.2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance alongwith the relief of

permanent injunction that formed the subject matter of above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in C.S. Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court.

15. Furthermore, according to the plaintiff, which fact is also stated in the plaints filed in C.S. Nos. 831 and 833, on the date when the aforesaid two suits were filed the relief of specific performance was premature inasmuch as the time for execution of the sale documents by the defendant in terms of the agreements dated 27.7.2005 had not elapsed. According to the plaintiff, it is only after the expiry of the aforesaid period of time and upon failure of the defendant to execute the sale deeds despite the legal notice dated 24.2.2006 that the cause of action to claim the relief of specific performance had accrued. The above stand of the plaintiff found favour with the High Court. We disagree. A suit claiming a relief to which the plaintiff may become entitled at a subsequent point of time, though may be termed as premature, yet, can not per se be dismissed to be presented on a future date. There is no universal rule to the above effect inasmuch as "the question of a suit being premature does not go to the root of the jurisdiction of the Court" as held by this Court in **Vithalbhai (P) Ltd. v. Union Bank of India, 2005(1) RCR (Civil) 124**.

In the aforesaid case this Court has taken the view that whether a premature suit is required to be entertained or not is a question of discretion and unless "there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event", the Court must weigh and balance the several competing factors that are required to be considered including the question as to whether any useful purpose would be served by dismissing the suit as premature as the same would entitle the plaintiff to file a fresh suit on a subsequent date. We may usefully add in this connection that there is no provision in the Specific Relief Act, 1963 requiring a plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the agreement in a situation where the defendant may have made his intentions clear by his overt acts."

Counsel for the appellant has failed to draw any similarity between facts of the case at hand and that of the referred authority. In the given scenario, the appellant cannot derive any advantage to his contention from the cited judgment.

This brings the Court to the aspect of readiness and willingness of respondents to perform their part of the agreement. Counsel for the appellant has failed to point out any facts elicited in cross examination of Kuldeep Singh PW-1, one of the plaintiffs to create a slightest doubt with regard to readiness and willingness of respondents to perform their part of the agreement and documents exhibited on record as an evidence of their being ready and willing to perform their part of the agreement. This is neither mandatory nor *sine qua non* to prove presence in the office of Sub Registrar on the stipulated date by way of documentary evidence. Equally true is that there is no such requirement in law that an application or affidavit with regard to presence in the office of Sub Registrar must be attested by the Registering Authority.

The target date was 25.02.1993. The respondents have raised a categoric plea that they always remained ready and willing to perform their part of the agreement and were present in the office of Sub Registrar on the stipulated date. The very next day i.e. 26.02.1993, they issued legal notice calling upon the appellant to execute the sale deed on 15.03.1993. Few days later, on 27.03.1993 they filed suit for specific performance of the agreement. The bank accounts in the name of respondents prove that they had sufficient funds to discharge their obligation with regard to payment of balance sale consideration and incurring expenses on registration etc. That being so, it can safely be held that there is voluminous and over-whelming evidence on record to prove bona fides of the respondents with regard to their readiness and willingness to perform their part of the agreement. On the contrary, the appellant cannot derive any advantage to his contentions from the documents Ex.D1 and D2 as he tried to wriggle out of his liability under the agreement by raising inconsistent rather contradictory pleas in the written statement and even had gone to the extent of saying that he had taken a loan of Rs.70,000/- and the agreement was prepared as a security document. In this view of the matter, there is no justifiable reason to interfere in concurrent findings recorded by the Courts on the aspect of readiness and willingness of respondents, in view of the provisions of Section 16 (c) of the Specific Relief Act, 1963 or exercise of judicial discretion allowing specific performance of the agreement.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.

MARCH 3, 2020 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No