

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4595 of 2019 (O&M)
Date of decision: 08.01.2020

Sohan Lal(since deceased) through his LRs

... Petitioner

versus

Sham Sunder & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S.M. Wadehra, Advocate,
for the petitioner.

Mr. S.D. Sharma, Senior Advocate with
Mr. K.R. Sharma, Advocate
for the caveator/respondents.

ARUN MONGA, J. (ORAL)

CM-13058 of 2019

For the reasons mentioned in the application, same is allowed.

Delay of 7 days in filing the appeal stands condoned.

RSA-4595 of 2019

1. This second appeal filed by defendants is against concurrent findings of facts recorded by both the learned Courts below whereby the plaintiff's suit for possession by way of specific performance of agreement to sell was decreed vide trial Court judgment and decree dated 06.08.2018 as upheld by the first Appellate Court dated 07.05.2019.
2. Brief factual matrix, as has been noticed by the first Appellate Court in para No.2 of the impugned judgment.
3. Plaintiff filed a suit for possession by way of specific

performance of agreement to sell dated 09.06.2004. It was claimed that Sohan Lal owner of shop bearing MC No. 291/7 situated in Ward No.7, Kainaur Road, Morinda(suit property) initially entered into oral agreement to sell the shop to the plaintiff for Rs.12,12,500/- in the presence of Gurnath Singh, Harjit Singh and Mahesh Kumar. Sohan Lal received Rs.2 lacs as earnest money. Remaining sale consideration of Rs.10,12,500/- was to be paid on 14.07.2003. In the meanwhile, a partition suit had been filed by Ratan Lal, wherein the shop in question was subject matter of partition. Defendant Sohan Lal and the plaintiff executed agreement dated 09.06.2004 with the condition that both the parties will abide the decision of the Court in partition suit and defendant will execute the sale deed of the suit property within 15 days of the decision of partition suit. It was the case of the plaintiff that despite decision of the partition suit, the defendant failed to execute the sale-deed, as agreed.

4. The defendant contested the suit tooth and nail. He denied having ever agreed, orally or in writing, to sell the shop in dispute.

5. Based on the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether the defendant executed agreement to sell dated 09.06.2004 in favour of plaintiff in respect of the suit property ?OPP*

2. *Whether plaintiff remained ready and willing to perform his part of the contract ?OPP*

3. *Whether defendant committed breach of the terms and conditions of the above said agreement to sell dated 09.06.2004 ?OPP*

4. *Whether the plaintiff is entitled to possession by way of specific performance as prayed for? OPP*

5. *Whether the present suit is not maintainable in the*

present form?OPD

6. *Whether the plaintiff has not come to the court with clean hands? OPD*

7. *Whether the plaintiff has no cause of action to file the present suit?OPD*

8. *Whether instant suit is barred on account of provisions of O 2 R 2 CPC and constructive res-judicata?OPD*

9. *Relief.*

6. In support of their respective pleadings, both the parties adduced oral as well as documentary evidence, based whereupon the trial Court decreed the suit in favour of the plaintiff, which in turn was re-affirmed by the first Appellate Court.

7. The trial Court came to the conclusion that to prove the due execution of the agreement to sell dated 09.06.2004, plaintiff himself stepped into the witness box as PW1 and examined marginal witnesses. The defendant though denied the execution of the agreement to sell but failed to prove his case. The evidence led by the plaintiff remained unrebutted, unchallenged and uncontroverted as the defendants were proceeded against ex-parte and due to death of Sohan Lal, his legal representatives were permitted to join the proceedings at the time of arguments. The trial Court held as proved due execution of the agreement to sell the shop in question by the defendant in favour of plaintiff. It was also held that the plaintiff remained ready and willing throughout to perform his part of the agreement, but the defendant failed to adhere to the agreement. Consequently, it was held that the suit of the plaintiff deserved to succeed and accordingly a decree was passed for possession by way of specific performance of agreement to sell dated 09.06.2004 executed by defendant in favour of plaintiff in respect of suit shop with all rights appurtenant thereto and

consequently ordered the defendant/ vendor to execute the sale deed in favour of plaintiff on payment of balance sale consideration of Rs.10,12,500/-, after adjusting Rs.2 lacs already received as earnest money on 14.07.2003.

8. Legal representatives of Sohan Lal i.e. appellant herein preferred an appeal before the Appellate Court below. The Appellate Court upheld the findings of the trial Court. It was held that by leading cogent and convincing evidence plaintiff has established the due execution of the agreement to sell and that he remained ready and willing to perform his part of the contract. The plea raised by the defendants regarding suit being bad under Order 2 Rule 2 CPC was negated and it was held that at the time of filing the earlier suit for permanent injunction, no cause of action had arisen for the plaintiff to seek specific performance due to pendency of partition suit between Sohan Lal and his brother. The plea that due to efflux of time prices have escalated and relief of specific performance be denied, was turned down. The appeal was accordingly dismissed by the first Appellate Court, leading to the filing of instant regular second appeal.

9. I have heard Mr. S.M. Wadehra, learned counsel for the appellant/ defendants, Mr. S.D. Sharma, Senior Advocate and Mr. K.R. Sharma, Advocate for the caveator/ respondents herein and have gone through the paper-book carefully.

10. Learned counsel for the appellant strenuously argued that first Appellate Court did not formulate the points for determination as per provisions of Order 41 Rule 31 CPC. The vapidness of said argument is reflected from perusal of first Appellate Court judgment, particularly paras 14 onwards, which would reflect that provisions under Order 41 Rule 31

CPC stood substantially satisfied in view of the elaborate discussion contained therein. Even otherwise, assuming there has been formal deviation of the compliance of Order 41 Rule 31 CPC, the same does not seem to have caused any real prejudice to the defendants. Both, the trial Court as well as learned Appellate Court below, have referred to the record and based thereon recorded an elaborate discussion after evaluating the said record. Both the Courts below gave sound concurrent findings against the appellants herein and, therefore, this Court find nothing wrong in the same so as to call for any interference in the second appeal on the ground of ostensible non-compliance of Order 41 Rule 31 CPC.

11. Furthermore, trial Court judgment, particularly in para No.9 thereof, shows that defendant was proceeded against ex-parte during trial of the suit. Thereafter, following the death of defendant, his legal representatives were brought on record and were allowed to join proceedings from the stage they had caused their appearance before the trial Court. The trial Court judgment also shows that no evidence at all was led by the defendant's/ LRs. Appellate Court in the impugned judgment also noticed the same and rightly held against the defendants for lack of any evidence adduced by them. In the premises, both the Courts below having referred to and evaluated the pleadings, coupled with appreciation of oral and documentary evidence gave concurrent findings qua issues No.1 to 4 (supra). In the absence of any evidence having been led by the defendants, no interference is warranted in the presumption of correctness of facts adduced by the Courts below, which is as per unassailed evidence produced by the plaintiff. Mere abstract criticism of evaluation of evidence and in the absence of counter-pleadings and corresponding evidence is untenable. The

real point for determination before the first Appellate Court was correctness or otherwise of the findings recorded by the trial Court on the issues framed in the case. The same have been dealt with and adjudicated upon by the first Appellate Court by rendering detailed and elaborate findings. Therefore, the cases of **B.V. Nagesh & Anr. Vs. H.V. Sreenivasa Murthy, 2010(3) SCC 530** and **Vinod Kumar Vs. Gangadhar, 2014(4) Law Herald(SC) 3244**, relied upon by learned counsel for appellant are of no avail. It is, therefore, not of much significance whether the Appellate Court formulated any formal point for determination.

12. Both the Courts below held that the plaintiff was always ready and willing to perform his part of the contract. In absence of any evidence to the contrary, the case of **M/s J.P. Builders & Anr. Vs. A. Ramadas Rao & Anr. 2011(2) Law Herald(SC) 1218** and **Vijay Kumar & Ors. Vs. Om Parkash, 2018(4) Law Herald(SC) 2635**, as relied upon by learned counsel for the appellant cannot come to their rescue.

13. The plea of appellant to deny the relief of specific performance on account of passage of time, has adequately been dealt by the Appellate Court in para No.25 of the impugned judgment. No fault could be found with the approach of learned Appellate Court to turn down the plea of the appellants in this regard by observing that due to pendency of partition suit, the sale-deed could not have been executed earlier and not much time had passed interregnum so as to deny the relief of specific performance to the plaintiff. Therefore, reliance of learned counsel for the appellant on the cases of **Vimleshwar Nagappa Shet Vs. Noor Ahmed Sheriff & Ors. 2011(3) Civil Court Cases (SC) 673** and **Chandrasahas Narayan Shetty Vs. Misribai Ramkuvar Pandit & Ors. 2010(1) Civil Court Cases**

(Bombay) 785 is of no avail.

14. Another aspect that deserves to be noticed is that there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. Mere deviation from procedural requirements under Order 41 Rule 31 PC does not call for any interference to disturb the concurrent findings of facts recorded by the Courts below.

15. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending applications stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

January 08, 2020

Jiten

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No