

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. RSA-3102-2015 (O&M)
Date of decision : 22.01.2020

Aneet Goel and another

...Appellants

Versus

Harjit Singh and others

...Respondents

2. RSA-3394-2015 (O&M)
Date of decision : 22.01.2020

Kailash Singla

...Appellant

Versus

Harjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Avnish Mittal, Advocate for the appellants
(In RSA-3102-2015)

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Sandeep Singh, Advocate for the appellant
(In RSA-3394-2015)

Mr. S.K. Singla, Advocate for respondent Nos.2 and 3.

Mr. Naresh Prabhakar, Advocate for respondent No.5.

ANIL KSHETARPAL, J.

By this judgment, RSA-3102-2015 filed by defendant Nos.2-3
and RSA-3394-2015 filed by defendant No.1 in Civil Suit

No.571/03.12.2005 shall stand decided. Both these appeals are arising from a common judgment passed by the learned trial Court as well as by the Appellate Court.

The plaintiffs have filed a suit claiming declaration, possession of the suit property by way of specific performance of the agreement to sell and for grant of decree of permanent injunction.

Some facts are required to be noticed in brief.

Dispute is with regard to plot No.2649, Phase-11, SAS Nagar, Mohali. Paramjit Singh-appellant No.2 in RSA No.3102 of 2015 was the owner thereof. He had appointed Aneet Goel-appellant No.1 in RSA No.3102 of 2015, as his power of attorney. Paramjit Singh through Aneet Goel entered into an oral agreement to sell in favour of Ashok Kumar-defendant No.4, correctness whereof is not disputed. Ashok Kumar on the basis of the aforesaid oral agreement entered into further agreement to sell by specifically describing himself as an Agreement Holder in favour of Harjit Singh dated 20.09.2004 for a total agreed sale consideration of ₹27,85,000/- out of which ₹3,00,000/- was received as earnest money. The target date for execution and registration of the sale deed was fixed as 03.11.2004. Thereafter, Harjit Singh-plaintiff No.1 in turn, further entered into an agreement to sell in favour of plaintiff Nos.2 and 3 i.e. Kanwaljit Singh and his wife Hardeep Kaur for a sum of ₹31,50,000/- on receipt of ₹4,60,000/- as earnest money. In the aforesaid agreement, the target date was fixed as 31.10.2004. It may be significant to note that the execution of the aforesaid agreements and receipt of earnest money is not in dispute.

Pursuant to the aforesaid agreement to sell, plaintiff Nos.2 and 3

after getting signatures of defendant-Paramjit Singh through his attorney Aneet Goel applied for and granted 'No Objection Certificate' by Greater Mohali Development Authority, on 14.10.2004. Thus, the consent of Paramjit Singh to sell the property in favour of Kanwaljit Singh and Hardeep Kaur is also not in dispute. The aforesaid 'No Objection Certificate' was valid for a period of 180 days. It is the case of the plaintiffs that 31.10.2004 and 01.11.2004 were holidays and, therefore, they alongwith the balance sale consideration visited the office of Sub-Registrar, and moved an application Ex.P4 before the Sub-Registrar for marking their presence and got attested affidavit dated 02.11.2004 from the Executive Magistrate/Sub-Registrar in order to prove their presence. However, the defendants did not come forward to honour the agreement to sell and perform their part of the contract.

At this stage, it may be noticed that the owner-Paramjit Singh through Aneet Goel sold the suit property vide sale deed dated 07.10.2005 in favour of defendant No.1-Smt. Kailash Singla, (appellant in RSA No.3394 of 2015) for a sum of ₹35,00,000/-. It may be noted here that although Smt. Kailash Singla had claimed that owner had entered into an agreement to sell with her on 20.05.2005 and received ₹15,00,000/- as earnest money, however, the aforesaid agreement has not been produced. The sale deed dated 07.10.2005 was also executed after obtaining 'No Objection Certificate' from allotting authority i.e. GMADA.

The plaintiffs i.e. Harjit Singh, Kanwaljit Singh and Hardeep Kaur filed the present suit praying for the relief referred to above. Smt. Kailash Singla was impleaded as defendant No.1, Paramjit Singh defendant No.2, Aneet Goel defendant No.3 whereas Ashok Kumar as defendant No.4.

The execution of the various agreements to sell in favour of the plaintiffs is not disputed by defendant Nos.2, 3 and 4. The receipt of earnest money by Ashok Kumar and Harjit Singh is also not in dispute. However, defendant No.1 claims that she is a bona fide purchaser for valuable consideration without notice and, therefore, she is protected under Section 19 of the Specific Relief Act, 1963. Defendant No.2, 3 and 4 have filed a joint written statement pleading that the plaintiffs had abandoned their claim under the agreement to sell as they did not have sufficient funds. The plaintiffs were never ready and willing to perform their part of contract.

On appreciation of evidence, both the Courts have decreed the suit filed by the plaintiffs. The decree, as prayed for, has been passed in favour of plaintiff Nos.2 and 3.

This Court has heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record requisitioned.

Learned Senior Counsel appearing for Smt. Kailash Singla has submitted that Ashok Kumar had no privity of contract with Kanwaljit Singh and Hardeep Kaur and, therefore, the suit filed by them was not maintainable. He further submitted that presence of the plaintiffs on 02.11.2004 in the office of Sub-Registrar is insignificant because the target date for execution and registration of the sale deed as per oral agreement between Paramjit Singh in favour of Ashok Kumar was 03.11.2004. Hence, he submitted that readiness and willingness is not proved. He further submitted that the plaintiffs were not having sufficient funds and, therefore, the decree passed by the Courts is erroneous. In the last, he submitted that injunction on further

construction was granted to the plaintiffs only on 13.02.2008 whereas by that time, defendant No.1-appellant had already raised sufficient construction consisting of two floors.

On the other hand, learned counsel appearing for the appellants in RSA No.3102 of 2015 has submitted that Harjit Singh-plaintiff No.1 has not come forward to face cross-examination, therefore, his readiness and willingness is not proved. He further submitted that there was no privity of contract between defendant Nos.2 and 3 on the one hand and plaintiff Nos.2 and 3 on the other hand. He further submitted that no specific performance of the agreements to sell dated 20.09.2004 and 24.09.2004 has been sought. He further submitted that the plaintiffs were never ready and willing to perform their part of the contract.

On the other hand, learned counsel appearing for plaintiffs No.2 and 3 has submitted that once Paramjit Singh through Aneet Goel had applied for getting 'No Objection Certificate' from GMADA, which was granted, authorizing sale of the property in favour of plaintiff Nos.2 and 3, therefore, the defendants cannot now claim that there was no privity of contract or there was no agreement between plaintiff Nos.2 and 3 on the one hand and defendant Nos.2, 3 and 4 on the other hand. Once the defendants admit that they applied for and were granted 'No Objection Certificate' containing permission to sell in favour of plaintiff Nos.2 and 3, Harjit Singh-plaintiff No.1 goes out of the picture of contract. Ashok Kumar-defendant No.4 and plaintiff No.1-Harjit Singh were only intermediary/facilitators. Plaintiff Nos.2 and 3 were always ready and willing to perform their part of contract.

On careful analysis of the arguments of the learned counsel for the parties, this Court proceeds to decide the appeal.

No doubt, there is no agreement between Ashok Kumar and Kanwaljit Singh and Hardeep Kaur. However, owner of the property is Paramjit Singh. Undisputedly, Paramjit Singh had entered into an oral agreement with Ashok Kumar. Ashok Kumar also does not dispute that he entered into further agreement to sell in favour of plaintiff No.1-Harjit Singh. In the aforesaid agreement, Ashok Kumar has specifically stated that he is an agreement holder from Paramjit Singh. Harjit Singh, thereafter, further entered into an agreement with Kanwaljit Singh and Hardeep Kaur. Pursuant thereto, Paramjit Singh applied for 'No Objection Certificate' which was granted in favour of plaintiff Nos.2 and 3. In these circumstances, learned Senior Counsel for the appellants is not correct in making submission that there was no privity of contract between defendant No.2 and plaintiff Nos.2 and 3.

Next argument of learned Senior Counsel is again without substance because once defendant Nos.2 and 3 have gained knowledge of the fact that plaintiff Nos.2 and 3 are the actual intended purchasers and thereafter applied for getting permission to sell in their favour, then it would not be appropriate to hold that he had no knowledge of the agreement to sell between Harjit Singh on the one hand and Kanwaljit Singh and Hardeep Kaur on the other hand. As per the aforesaid agreement to sell, the target date for execution and registration of the sale deed was 31.10.2004. It is not in dispute that 31.10.2004 and 01.11.2004 were holidays, therefore, the presence of the plaintiffs on 02.11.2004 in the office of the Sub-Registrar

prove their readiness and willingness. Still further, no evidence has been led by defendant Nos.2 to 4 that they visited the office of Sub-Registrar on 03.11.2004 and were ready to execute the sale deed.

As regards availability of the funds, it may be noticed that plaintiff Nos.2 and 3 had paid an amount of ₹4,60,000/- as earnest money out of total sale consideration of ₹31,50,000/-. Thus, the balance amount payable is ₹26,90,000/-. It has come in evidence that plaintiff Nos.2 and 3 had entered into an agreement to sell with regard to their other property with Manoj, received ₹5,50,000/- on 06.09.2004 and ₹5,50,000/- on 25.09.2004. The entries in this regard are reflected in the bank accounts maintained by plaintiff Nos.2 and 3. Still further, attention of the Court has not been drawn to any evidence which proves that the plaintiffs were not ready and willing. The plaintiffs did not wait for a period of 3 years (the limitation period before filing the suit). They filed the suit after a period of one year. Still further, conduct of the defendants prove that they were not ready and willing to perform their part of the contract. Defendant Nos.2, 3 and 4 filed a civil suit for declaration on 10.01.2005 that agreement to sell dated 20.09.2004 stands rescinded and 'No Objection Certificate' issued by Greater Mohali Development Authority has come to an end. Once, the plaintiffs appeared in the aforesaid suit before the Court pursuant to notice on 19.09.2005, the defendants withdrew the suit. Still further, the defendants have tried to project that they had issued notice to the plaintiffs on 03.12.2004 revoking the agreement to sell. However, neither the receipt nor acknowledgment due has been produced to prove that notice was in fact issued to plaintiff Nos.2 and 3. Notice issued to plaintiff No.1 was received back with report that he

had not met. In such circumstances, this Court does not find that the findings of the Courts below with regard to readiness and willingness of the plaintiffs to perform their part of the contract, is erroneous.

Learned Senior Counsel appearing on behalf of Smt. Kailash Singla has submitted that the injunction restraining her from raising construction was granted only on 13.02.2008 in favour of the plaintiffs but, by that time, she had already constructed two floors. It may be noted here that the appellant-Smt. Kailash Singla has not produced any evidence to prove that when the building plan of the building on the plot in question was sanctioned. Still further, pursuant to the institution of the suit, notice was served upon her and consequently she appeared before the Court. Thus, the construction, if any, raised during the pendency of the suit is governed by the Rule of lis pendens.

Now let us examine the submissions of learned counsel for the appellants in RSA No.3102 of 2015.

First argument of learned counsel appearing for the appellants in RSA No.3102 of 2015 to the effect that since Harjit Singh-plaintiff No.1 did not come forward to face cross-examination, therefore, readiness and willingness on the part of Harjit Singh is not established, is erroneous because once 'No Objection Certificate' to sell the property had been applied for and obtained by defendant Nos.2 and 3 in favour of plaintiff Nos.2 and 3, Harjit Singh-plaintiff No.1 was not required to prove his readiness and willingness.

Next argument of learned counsel for the appellants with regard to privity of contract has already been examined while examining the

argument of learned Senior Counsel appearing for Smt. Kailash Singla.

Next argument of learned counsel for the appellants is also erroneous because specific performance of agreements to sell dated 01.09.2004, 20.09.2004 and 24.09.2004 has been sought.

Next argument of learned counsel with regard to the plaintiffs not being ready and willing has already been examined in the previous part of the judgment, hence, no further discussion on the aforesaid aspect is required.

Keeping in view the aforesaid facts, both the appeals are dismissed. However, the decree passed by the Courts below is modified to the extent that Executing Court would get the cost of construction, as is being alleged by appellant-Smt. Kailash Singla assessed from a reputed assessor and the plaintiffs shall be made liable to pay the same to Smt. Kailash Singla. Smt. Kailash Singla shall also directed to join defendant Nos.2 and 3 in executing the sale deed in favour of the plaintiffs. The amount as assessed by the Assessor shall be payable within a period of two months from the date the Executing Court assesses the cost of construction. This part of the order has been passed in order to do substantive justice between the parties.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

22.01.2020
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**