

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 30 of 2021 (O&M)

Sri Krishan

... Appellant(s)

Versus

Silver Line Builders Pvt. Ltd. and Others

... Respondent(s)

AND

2. Regular Second Appeal No. 31 of 2021 (O&M)

Ajay and Another

... Appellant(s)

Versus

Silver Line Builders Pvt. Ltd. and Others

... Respondent(s)

Date of Decision: 25.02.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Hemant Bassi, Advocate
for the appellant (In RSA-30-2021).

Mr. Vaneet Soni, Advocate
for the appellants (In RSA-31-2021).

Mr. Ashish Aggarwal, Senior Advocate
with Ms. Aashna Aggarwal, Advocate
for respondent No.1-Caveator.

Anil Kshetarpal, J.

It has been brought to the notice of the Court that defendant No.1 along with his three other brothers had entered into a separate agreements to sell with respect to adjoining pieces of land in favour of the plaintiff-company. The plaintiff-respondent (the company) filed five suits for specific performance of the various agreements to sell. All the remaining

parties settled the dispute as the plaintiff-company agreed to pay the balance amount of the sale consideration as also additionally undertook to allot one flat each.

Learned counsel for the respondents has submitted that similar offer has been given to learned counsel for the appellants herein. However, learned counsel for the appellants have stated that they have spoken to the appellant(s), but the offer is not acceptable and want the Court to decide the appeals on merits.

Two different sets of defendants have filed these regular second appeals against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for specific performance of the agreement to sell.

Some facts are required to be noticed.

The respondent-plaintiff filed the suit claiming that the defendant No.1-Sri Krishan son of Sh. Narain Singh (appellant in RSA-30-2021) agreed to sell 15 kanals 8 marls of land @ ₹ 50,00,000/- per acre for a total sale consideration of ₹96,25,000/- on receipt of ₹ 9,66,500/- as earnest money. Out of which ₹7,21,875/- was paid through cheque drawn in favour of defendant No.1 on 15.12.2005, whereas the remaining amount was paid in cash.

It has come on record that defendant No.1 transferred the property in question in favour of defendant no.2 and 3 (his own sons) vide release (transfer) order dated 18.09.2006, but the plaintiff came to know about this fact on 12.12.2006. As per the agreement to sell, the sale deed was agreed to be executed and registered on or before 14.12.2006. The plaintiff-

come and execute the sale deed as per agreement to sell. However, there was no response.

The plaintiff instituted the suit on 26.02.2007. On notice, the defendants contested the suit and it was claimed that apart from the written agreement there was an oral understanding that defendant would be paid the price @ ₹3,00,00,000/- per acre. The receipt of payment of ₹7,21,875/- made through cheque was admitted. However, the receipt of remaining payment through cash was denied. Defendant No.1 also pleaded that Hari Singh, one of the witness of margin got the agreement signed from him. Defendant No.2 to 5 pleaded that the land is ancestral and therefore, defendant No.1 is not entitled to sell it.

As noticed above, both the Courts, on appreciation of evidence, have found that the plaintiff has successfully proved its case and therefore, entitled to a decree for specific performance of the agreement to sell. The plaintiff examined Sharad Mohan Parsad, a bank official as well as attesting witness of the agreement to sell, Ram Krishan.

This Court has heard learned counsel for the parties at length and with their able assistance, perused the paper books of both the appeals.

Learned counsel appearing for the appellants-defendant No.2 and 3 submits that in the written statement, it was pleaded that the property is ancestral and therefore, the defendants had no right to sell. He contends that both the Courts below have neither framed issue on this aspect nor have adverted to this fact. He further submits that the appellant has filed an application for leading additional evidence before the First Appellate Court,

which had been wrongly dismissed.

On the other hand, learned counsel representing defendant No.1-appellant contends that the plaintiff has failed to prove its readiness and willingness which is *sine qua-non* for decreeing the suit for specific performance. He further contends that defendant No.1 also filed an application for permission to lead additional evidence in order to prove his presence in the office i.e. Delhi Transport Corporation on 15.12.2015, which has been wrongly dismissed. Defendant No.1 has also filed an application for permission to lead additional evidence so as to produce bank account statement of the plaintiff-company in this Court.

At this stage, it would be appropriate to extract the issues framed by the trial Court:-

- “1. *Whether defendant no.1 had agreed to sell the suit land to the plaintiff for a total sale consideration of Rs.96,25,000/- and received a sum of Rs.7,21,875/- by way of cheque dated 15.12.2005 and Rs.2,40,625/- in cash as earnest money as alleged? OPP*
2. *Whether the plaintiff had always been ready and willing to perform his part of the contract and is still ready to do so? OPP*
3. *Whether the plaintiff has not come before the Court with clean hands and has concealed the true and material facts from the Court? OPD*
4. *Whether the plaintiff is estopped from claiming any relief by its own act, conduct, omission, commission, acquiesces and latches? OPD*

5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Whether the suit of the plaintiff is not maintainable? OPD*
7. *Whether the suit of the plaintiff has not been properly valued both for the purposes of Court fee and jurisdiction? OPD*
8. *Relief”.*

Both the Courts below have decided the suit as well as the first appeal on the aforesaid issues. Now, let us examine the arguments of learned counsels for the appellants. Before the first Appellate Court, three applications for leading additional evidence were filed. One application was filed by Sri Krishan, the contracting party, for permission to prove that on 15.12.2005, he was not present in the village as he was on duty with the Delhi Transport Corporation. The first Appellate Court has dismissed the application on the grounds that the defendants were already granted nine opportunities as also they have failed to fulfill the ingredients of Order XLI Rule 27 CPC. It would be noted here that the time and place at which the agreement to sell was entered, loses its significance, particularly when, defendant No.1 has himself admitted that the agreement to sell was got signed from him by Hari Singh. Therefore, there is no dispute with regard to the defendant No.1 having signed the agreement to sell. The defendant No.1 is working as a Bus Conductor with the Delhi Transport Corporation. He has not only signed the agreement to sell in English, but has also thumb marked it. Hence, even if

not advance the case of the defendant. The defendant No.1 has also filed another application for permission to lead additional evidence in the regular second appeal. Through the application, defendant No.1 wants to produce the bank accounts statement of the plaintiff-company to prove that the plaintiff did not had sufficient amount to pay. In the considered view of this Court, such application is wholly misconceived because the plaintiff, while leading evidence, produced its statement of bank account as Ex.PW.4/B. Still further, at this stage, the additional evidence should not be allowed, particularly when it is not proved that the plaintiff-company is having only this account.

Defendant No. 2 to 5 filed two applications for permission to lead additional evidence before the first Appellate Court. In the first application, the defendants sought permission to produce the copies of the revenue record to prove that the property is ancestral. It may be noted here that neither any issue on this aspect was framed by the trial Court nor the defendants led sufficient evidence before the Court below. Still further, defendant No.2 to 5 also filed another application for permission to lead additional evidence. In the aforesaid application, it has been asserted that the property is co-parcenary joint hindu family property and therefore, Sri Krishan has no right to sell the same. It is well settled that a Karta has a right to sell the property for legal necessity. It is also well settled that the co-parceners have no right to seek injunction on alienation. Reliance, in this regard, can be placed on the judgment of the Supreme Court in ***Sunil Kumar and Others v. Ram Parkash and Others (1988) 2 SCC 77***. Still further, Sri Krishan's sons have a right to challenge the alienation by a separate suit.

Hence, in such circumstances, particularly when before both the Courts below the aforesaid aspect was never seriously pressed, this Court does not find it appropriate to examine the issue in detail.

In yet another application for permission to lead additional evidence, the defendants No.2 to 5 have sought permission to produce evidence to prove that the land measuring 55 kanals 9 marlas including the suit land was given on lease to Chintal India Private Limited for a period of two years. Hence, defendant No.2 and 3 want to prove that the property is not required by the plaintiff for itself. It would be noted here that this is not the case of the defendants in the written statement. There is no issue on this aspect. Therefore, the evidence sought to be led is beyond the pleadings and therefore, cannot be permitted. Therefore, the applications for leading additional evidence have been correctly dismissed by the first Appellate Court.

Next argument of learned counsel is to the effect that the plaintiff has failed to prove his readiness and willingness. It would be noted here that both the Courts have found that the plaintiff was always ready and willing to perform its part of the contract. Still further, the plaintiff filed the suit within 2½ months from the agreed date on which the sale deed was to be executed. The plaintiff specifically pleaded that it was ready to get the sale deed executed on payment of balance sale consideration. Before filing the suit, the plaintiff also served notice on defendant No.1. Still further, it is the defendant No.1 who had transferred the property in favour of his children on 18.09.2006 i.e. before the target date for execution of the sale

deed. Hence, there is no merit in both the appeals.

However, since the balance amount of the sale consideration has remained with the plaintiff throughout, therefore, the decree for specific performance is modified to the extent that the plaintiff shall be liable to pay the balance sale consideration along with interest @ 9% from the date the amount as per the agreement became payable till the date of its deposit before the Executing Court as per the decree passed by the trial Court.

Disposed of.

The miscellaneous application(s) pending, if any, in both the appeal shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

February 25, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No