

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

RSA 2862 of 2016 (O&M)

Date of Decision: February 28, 2022

Harmohinder Singh Virk

...Appellant

Versus

Rahul Arora and another

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Prateek Gupta, Advocate
for the appellant.

Mr. Amit Jain, Senior Advocate with
Mr. Varun Prakash, Advocate
for respondents No. 1 and 2.

FATEH DEEP SINGH, J. (Oral)

The undisputed background that is well enunciated in the submissions of the counsel for the two sides and is also clearly reflected from the records of the Courts is that defendant No. 1 Rahul Arora has inherited the estate from his grand parents besides other properties including the house in question situated in the city of Chandigarh.

While defendant No. 1 was residing abroad his father defendant No. 2 Tilak Raj Arora being his attorney entered into an agreement to sell dated 31.03.2021 for the sale of this house with the plaintiff. The terms and conditions of which agreement to sell are not at all displaced or disputed. It is in pursuance of the same, amounts detailed in the pleadings have been received on behalf of the owners either in cash or by way of bank transactions. In all, a sum of Rs. 4 lacs stands paid to the seller by the buyer out of total sum of Rs. 35 lacs. One of the terms of the sale was that owner shall obtain 'No Objection Certificate' from the estate officer, Chandigarh/Income tax clearance certificate from the Income Tax Department.

When the deal could not be completed, the plaintiff served upon defendants legal notice dated 21.06.2004 and, thereafter, the present suit was filed by the plaintiff seeking a decree by way of specific performance of the agreement to sell dated 31.03.2011 and in the alternate sought relief for the recovery of Rs.35 lacs as damages.

From the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 31.03.2001 in respect of H.No. 230, Sector 21-A, Chandigarh and in the alternate for recovery of Rs.35 lacs as damages for breach of contract? OPP.*
2. *Whether the suit is barred by limitation? OPD.*
3. *Whether the suit is not maintainable? OPD.*
4. *Relief.*

Plaintiff examined Satish Kumar, Criminal Ahlmad as PW1 and himself stepped into the witness box as PW2 and also examined Inderjit Singh Bhimbra as PW3 and proved documents Ex.P1 to Ex.P13.

In rebuttal, defendants examined defendant No.2 Tilak Raj as DW2 (sic) and proved on record copies of rent (Ex.D1 and Ex.D2) and copy of GPA Mark A.

The Court of learned Civil Judge, Junior Division, Chandigarh vide judgment and decree dated 24.05.2014 partly decreed the suit of the plaintiff holding that plaintiff is entitled to receive a sum of Rs.4 lacs with interest @ 9% per annum from the date of filing of the suit till its realization.

Aggrieved over these findings plaintiff again knocked at the doors of learned Additional District Judge, Chandigarh who through impugned judgment and decree dated 19.03.2016 upholding the judgment of the trial Court dismissed the appeal with costs and it is in these circumstances, the present regular second appeal has come about by the unsuccessful plaintiff/appellant.

In the light of admitted legal proposition as has been laid down in 'Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act,

1918 which has its application to the States of Punjab and Haryana.

Heard Mr. Prateek Gupta, Advocate for the appellant and Mr. Amit Jain, Senior Advocate assisted by Mr. Varun Parkash, Advocate for respondents No. 1 and 2 and perused the records.

It is well enshrined law that pleadings are the very foundation of a case of a party. The written statement of the defendants filed in the suit is clearly an admission by the defendants No. 1 and 2 admitting the agreement to sell (Ex.P1) having been undertaken on 31.03.2001 and terms therein and the receipts of the money but took the plea that Tara Rani grand mother of Rahul Arora had earlier through gift deed dated 17.04.1971 gifted the property to her heirs but the same was set aside through order dated 15.12.1978 by the income tax authorities and it is thereafter through Will dated 22.07.1987, she has bequeathed her properties including the one in question to her grand son Rahul Arora. Though a strong resistance has

sought to be put to this claim of Rahul Arora by the heirs of Baldev Raj another son of Tara Rani out of her wedlock with Hans Raj both parents (since deceased). Defendant Tilak Raj another brother of Baldev Raj out of a wedlock with Satish Gorawara had three daughters namely, Ramna Kohli, Sushma Sood and Sobhana Chojjar and who are main opposers to this claim and have also contested the probate petition but the same has no relevance in the present dispute before this Court. The general power of attorney (Ex.P-2) given by the son to the father by way of clauses 7 and 9 bear out that the seller had undertaken to get the sale deed effected as per the wishes of the buyer after obtaining no objection certificate from the estate officer and will also obtain income tax clearance certificate from the income tax department concerned. As has been argued on behalf of the appellant Harmohinder Singh Virk, the said document is an implied contingent contract governed under Chapter III of the Indian Contract Act 1872, Section 31 onwards. The contingency in the present case as per the agreement to

sell Ex.P1 is obtaining of this NOC by the sellers from the concerned department and as part of the contract, the buyer had paid amounts in question in cash as well as through bank.

Section 31 of the Contract Act defines a contingent contract as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen and by virtue of Section 32 of the Act such a contingent contract can be enforced on an event happening and can be enforced by law until and unless that event has happened.

Now reverting back to the instant case, it is not disputed that during the Course of arguments on the basis of Will dated 22.07.1987, Rahul Arora has obtained favourable judgment and which still holds good as on date and, thus, poses a question if under these circumstances can sellers run out of their obligations in giving go ahead to this contingent contract. The parties are governed by the “**Law of Equity**” and, therefore, necessitates that equity must be done to the parties. As is duly established the sellers have obtained huge sums of

rupees from the buyer and, thus, can not refuse to perform their part of the contract in the present case. Though the date for completion of the bargaining has been fixed for 09th July 2001 but strongly speaking in view of the riders placed therein necessitating obtaining of 'No Objection Certificate' from the department concerned, it is illustrative that time is not the essence of this contract between the parties and by virtue of Section 52 of the Indian Contract Act the reciprocal promises are to be performed as mentioned in the agreement to sell (Ex.P-1) by both the sides under law.

Though much fanfare has sought to be raised over the objections that has to be raised by children of Baldev Raj and his widow Satish Gorawara namely by Ramna Kohli, the daughter, however, in her stand taken in the collateral proceedings of probate she had accepted the fact that though they were aware of the execution of the Will, none of them challenged the same and even their suit for partition of the properties left behind by their deceased grand parents has been

dismissed in default and, thus, in limbo. In the light of the same as on date no right accrues to these objectors to the claim of Rahul Arora over the property in question.

Counsel for the respondents has sought to refute the arguments of the appellant side on the grounds that the power of attorney Ex.P2 which is general power of attorney is not a registered document and does not bestow upon Tilak Raj Arora father of Rahul Arora any right to alienate the property. It needs to be reiterated here that the father has acted on behalf of son as his lawful attorney and the family had been receiving amount so given by the buyers as part payment of this transaction. Though legal notice (Ex.P10) was served upon the owners/sellers to undergo their part of the contract and from the evidence on the records it is reflective that during this period from the date of execution of the agreement to sell till the serving of the legal notice and, thereafter, on the filing of the civil suit on 06.07.2004 there has been elements of readiness and willingness on the part of the buyer showing his inclination

in going and proceeding ahead with this agreement. The general power of attorney dated 25.04.94 (Ex.P-2) given by Rahul Arora to his father Shri T.R. Arora (Tilak Raj Aora) contains Clause 10 of which is reproduced as below to lay emphasis:-

“To sell, exchange, surrender, lease or dispose of any of my property and to transfer release any mortgage, or also to any circumstances mortgages or charges or otherwise to calise or obtain the benefit there of in such manner as my said attorney shall think proper”.

and therefore having been not revoked till date certainly authorizes the father to enter into transaction on behalf of son and even Rahul Arora moved a letter dated 29.12.2001 before the income tax officer seeking no objection to fulfil his obligations arising out of agreement to sell of the house in question but the response dated 21.07.2003 shows that the authorities have asked them to get determined their right and

that too in a competent Court of law and, therefore, is enlisting the fact that the seller is unable to deliver then to undergo his obligation of the contract.

Though on behalf of Mr. Amit Jain, as much stress has been laid on the fact that the arguments so set up by Rahul Arora and another is a sham transaction to deny the legitimate heirs to the estate left by deceased Tara Rani and that the appellant has failed to establish his financial capacity to pay such an amount and for which vide separate order of even date the application for additional evidence was moved by the owners which was declined by this Court.

The ratios cited K.S. Vidyanadam Vs. Viravan 1997(2) RCR (Civil) 312, C.S. Venkatesh Vs. A.S.C. Murthy (D) by Lrs and Ors 2020(2) R.C.R (Civil) 71, Sita Ram and others Vs. Radhey Shyam, 1997(2) RCR (Civil) 312 and Sukhwinder Singh Vs. Jagroop Singh and another 2020 (1) RCR (Civil) 951 are factually are at much variance and do not advance the case of the respondents.

On behalf of the appellants reliance has sought to be placed upon Man Kaur (Dead) by LRS. Vs. Hartar Singh Sangha (2010) 10 SCC 512, Prakash Chandra Vs. Narayan (2012) 5 SCC 403, Kapil Gupta and others Vs. Mahesh Kumar and others 2021(2) R.C.R. (Civil) 1, Nagina Judge and others Vs. Purshotam Singhla and others 2020(3) PLR 549 and Lalit and others Vs. Colonel Sudhier Kumar Sardana and another 2021(3) PLR 30.

The very cross-examination of DW2 Tilak Raj leaves no scope to doubt over the agreement to sell (Ex.P-1), the receipt of payments (Ex.P3, P-5 to P-9) and further agrees that it was under mistaken belief he could not get the power of attorney registered to give a legal effect to his transaction are matters which are of much relevance and even in his examination-in-chief by way of affidavit Ex.DW2/1 submits that it was under bonafide belief that he has power to sell the property in question he has entered into this agreement and obtained the money out of it leaves no scope to doubt that the

case of the sellers and buyers is dully admitted. Thus, the substantial evidence on the records, own admission by the sellers in the absence of any evidence otherwise leave no scope to doubt over the very genuineness and veracity of the agreement to sell (Ex.P1) and, therefore, by way of law of equity to do justice to both the sides, necessitates that the seller himself after undergoing his part of the obligations needs to execute the sale deeds in favour of the plaintiff.

The learned trial Court has categorically held that there was valid agreement to sell between the parties which is on consensual implied go ahead by the owner son except the legal hitch that has come in the way due to power of attorney being not registered and that the suit of the plaintiff was well within the prescribed period of limitation. Neither in his stand in the pleadings nor at this stage the son has denied having not authorised the father and who alongwith his wife, the mother of Rahul Arora have been receiving various amounts through cash and bank transactions part of the sale consideration over a

period of time and now equity forbids them to backtrack from it and thus the owners are bound to undergo their part of the contract upon receiving the balance amount.

Thus, in the light of what has been detailed and discussed above, the respondents cannot run out of their obligation in the absence of any evidence to bail them out of this commitment and, therefore, must undergo their part of obligation by giving effect to the sale deed. So far as the plea set up by Ms. Rohini Arora to contest the appeal does not bears any fruit because she had never appeared before the trial Court or the first appellate Court to contest the matter, thus, at this belated stage she cannot be allowed to play a spoil sport and became a party though her right to challenge by way of a separate suit may be there.

The Court below lost sight of the fact that the plaintiff was only seeking execution of the agreement to sell from the father and the son and even if the father has no registered power of attorney to sell the house the son who does not deny

the transaction throughout is under bounden legal duty to either do it himself or validly authorize to do so, having utilized the monies so taken from the plaintiff and put it to their own use. Thus the findings of the trial Court and the first appellate Court admitting the sale agreement instead of passing money decree needs to have decreed the suit as prayed for. Thus, these findings are reversed and modified thereby allowing the appeal and decreeing the suit of the plaintiff, however, with no order as to costs.

February 28, 2022
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No