IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1485 of 2018(O&M)
Date of decision:23.03.2022

Manjit Kaur **...Appellant**

Versus

Gurjit Singh and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: **Mr. Brij Mohan Vinayak, Advocate for the applicant-appellant.**

Mr. Adarsh Jain, Advocate, for respondent no.1 and 2.

ANIL KSHETARPAL, J (Oral)

The appellant is defendant no.1. She assails the correctness of the concurrent findings of fact arrived at by both the Courts below. The plaintiffs (respondents) filed a suit for specific performance of the agreement to sell dated 27.04.2011. It is the case of the plaintiffs that the appellant executed an agreement to sell dated 27.04.2011 with respect to a plot measuring 200 Sq. Yds. on the basis of Form No.1776, dated 20.04.2011, on receipt of Rs.6,00,000/- as earnest money out of the total sale consideration of Rs.10,00,000/-. The remaining installments as well as the loan amount was to be paid by the plaintiffs. As per the agreement to sell, the sale deed was to be executed and registered on 29.08.2011.

The defendant contested the suit while asserting that there was no agreement to sell and if there exists any, the same is a result of fraud.

Before the trial Court, the plaintiffs examined Sh. Gurjit Singh, one of the plaintiffs as PW1, PW2 Baljit Singh, witness of the agreement to sell dated 27.04.2011, PW3 Gurdev Singh, another witness to the agreement to sell (Ex.P1), PW4 Kranti K Sharma, Handwriting and Fingerprint Expert and PW5 Amit Singh, an official from the State Bank of India to prove their case.

The defendant appeared as DW2 and examined Arvind Sud, DW1 as Handwriting and Fingerprint Expert.

Both the Courts decreed the suit after noticing that defendant has identified her signatures on first and second page of Ex.P2 which is another agreement to sell dated 09.12.2010 between the plaintiffs and defendant.

This Bench has heard the learned counsels representing the parties at length and with their assistance perused the paper book.

The learned counsel representing the appellant contends that there are interpolations in the agreement to sell dated 27.04.2011. While drawing the attention of the Court to photocopy of the alleged agreement, he contends that certain spaces have been left blank and certain blank spaces have also been filled with hand and therefore, the agreement to sell cannot be specifically enforced. Moreover, at the time when the alleged agreement to sell was executed, even the letter of intent was not issued by the Greater Mohali Area Development Authority, therefore, she had herself, not become the owner of the plot on the day the alleged agreement to sell is said to be executed. The allotment authority had put restrictions on the sale of the property and therefore, the specific relief cannot be granted.

Per contra, the learned counsel representing the respondent has produced a photocopy of the agreement to sell Ex.P1. It is evident that the entire information with respect to total price, the amount of earnest money, the area of the plot, the agreed date for execution of the sale deed has been recited. He further submits that the relief of specific performance is restricted to the agreement between the parties. While elaborating, he submits that the plaintiff is entitled to the rights whatever she has. While drawing the attention of the Court to the judgments passed by the courts below, he contends that issue of alleged restriction to sell the property was never taken as a defence before the Courts below.

On a careful perusal of the agreement to sell dated 09.12.2010, it is evident that its major portion has been typed in (Gurmukhi) Punjabi language. There are certain blank spaces which have been filled up with the pen.

From a bare perusal of the agreement to sell dated 27.04.2011, it is evident that there is neither any interpolation nor the agreement is proved to be the result of forgery. Certain blank spaces have been filled handwritten, however, this by itself is not sufficient to hold that the agreement to sell is interpolated. Each page of the agreement to sell has not only been thumb marked but has also been signed by the appellant. The appellant has signed the document in English language. Moreover, the area of the plot, the application number, the total price, the payment made, the agreed date on which the sale deed is to be executed has been specified and recited. In these circumstances, in the absence of any material to prove that there are interpolations, it would not be appropriate for the Court to accept the argument of the learned counsel representing the appellant. There are only two blank spaces on page number two. Those blank spaces are in the following manner:-

> *"In case I do not transfer the plot as agreed on th expenses of the second party for Rs.......... at the time of execution of the sale/transfer deed dated........... as stipulated."*

In the considered view of the Court, such blank spaces do not necessarily lead the Court to hold that the agreement to sell is the result of forgery.

As regards the argument of the learned counsel representing the appellant that she was not even issued a letter of intent by the Greater Mohali Area Development Authority, at the time when the agreement to sell was executed, it is noted here that in view of Section 43 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the 1882 Act'), any person who enters into an agreement to sell by representing himself to be the owner of the property, is bound to honour such agreement, if she subsequently by acquires title/interest in the said property. Section 43 is based on the doctrine of estoppel and is reproduced as under:-

> ***Section 43-*** *Transfer by unauthorised person who subsequently acquires interest in property transferred.— Where a person 1[fraudulently or] erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option. Illustration A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.*

The last argument of the learned counsel representing the appellant is with regard to the restriction imposed on the sale of the property.

This court has carefully seen the letter of intent. Clause 19 of the letter of intent reads as under:-

> "*19. This Letter of Intent shall be transferable after receipt of 25% of the total price of plot, by way of sale, gift or otherwise with the prior permission of Estate*

> *Officer, GMADA, SAS Nagar subject to the payment of 1% of the total price of plot as transfer fee and Rs.1000/- as processing fee. Further, this letter of intent shall be transferred only, if the applicant is found eligible for allotment of plot at the time of scrutiny."*

It is evident that the letter of intent is transferable after receipt of 25% of the total price and with the prior permission of the Estate Officer. By now, it is well settled that an agreement to sell with respect to property, the transfer of which is dependent upon the permission of an authority, can be specifically enforced while granting liberty to the plaintiffs to apply for requisite permission. Reliance in this regard can be placed on the judgment of the Supreme Court in ***Vishvnath Sharma vs. Sham Shankar Goyla, (2007) 10 SCC 595.***

C.M.No.1713-C-2022

This is an application for permission to amend the written statement during the pendency of the second appeal. By way of the proposed amendment, the appellant seeks permission to add preliminary objection no.6 in the written statement in order to make a plea that she is not the absolute owner of the property.

It is evident that the appellant had already filed a detailed written statement. Further, the pleadings sought to be added have been covered by the learned counsel representing the appellant in his arguments.

Hence, the application is dismissed.

C.M.No.3861-C-2018

Through this application, the appellant prays for permission to produce in evidence a letter of intent dated 03.05.2012, statement of

Sh. Gurjit Singh made before the In-charge, Economic Offences Branch(K) (Police) and copy of the original agreement between Manjit Kaur, Gurjit Singh and Gurpreet Singh. The letter of intent only proves that the plot in question was intended to be allotted to the appellant. The suit is for specific performance of the agreement to sell. The letter of intent would not be of much relevance. Moreover, no convincing reason has been put forth as to why the documents sought to be produced in additional evidence were not produced for the last 11 years.

As regards the alleged agreement to sell, it is only a photocopy and therefore, cannot be permitted to be produced.

Keeping in view the aforesaid facts, the application for permission to amend the written statement, the application for permission to lead the additional evidence as well as the regular second appeal are, hereby, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

March 23, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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