

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118

CR-1493-2023 (O&M)

Date of decision: 09.03.2023

Ajay Aggarwal

...Petitioner(s)

Vs.

Sarita Chauhan & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Pratula Sethi, Advocate for the petitioner.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the plaintiff seeking setting aside of order dated 06.01.2023 (Annexure P8) passed by learned Civil Judge (Junior Division), Faridabad whereby application filed by the petitioner under Section 151 CPC (Annexure P5) for executing the agreement to sell dated 03.05.2019 and passing a decree of specific performance in terms of admission made by respondent No.1/defendant No.1, has been dismissed.

2. Brief facts of the case are that the petitioner/plaintiff filed present Civil Suit No.311 of 2021 against respondents/defendants seeking specific performance of agreement to sell dated 03.05.2019 whereby respondent No.1/defendant No.1, being owner in possession of the suit property, had entered into said registered agreement to sell for a total sale consideration of Rs.5,50,000/-.

3. It is submitted by learned counsel for the petitioner that in pursuance to the petitioner making complete payment of total sale

consideration of Rs.5,50,000/-, respondent No.1 had also delivered actual physical possession of the suit land to the petitioner; whereafter, the petitioner had even raised construction on the suit land. However, sale deed was not executed in favour of the petitioner by respondent No.1. Subsequently, as respondent No.1 became dishonest and further sold the property to remaining respondents No.2 to 4 herein/defendants, the petitioner was constrained to file above mentioned Civil Suit No.311 of 2021.

4. Upon notice, respondent No.1 filed written statement and contested the Suit. Respondents No.2 to 4 had filed joint written statement and contested the Suit.

5. In the meantime, respondent No.1 had filed a separate Civil Suit No.2396 of 2020 dated 14.10.2020 against remaining respondents/defendants No.2 to 4 seeking relief of declaration and consequential permanent injunction to declare the impugned sale deed dated 30.07.2019, GPA bearing No.4583 dated 15.10.2019 and impugned sale deed No.6457 dated 17.10.2019 as illegal, null and void.

6. It is submitted by learned counsel for the petitioner that in the said Civil Suit No.2396 of 2020 (Annexure P4) filed by respondent No.1, said respondent No.1 had duly admitted the claim and prior right of the petitioner over the suit property. It is submitted that in view of this admitted position, the petitioner filed present application (Annexure P5) under Section 151 CPC dated 26.08.2022 before the learned trial Court praying for executing the agreement to sell dated 03.05.2019, and to pass a

decree of specific performance by way of possession of agreement to sell in terms of admitted claim by respondent No.1. Respondent No.1 filed reply dated 03.01.2023, and respondents No.2 to 4 filed joint reply to petitioner's application under Section 151 CPC.

7. It is submitted by learned counsel for the petitioner that learned trial Court is in grave error in dismissing the aforesaid application of the petitioner as, respondent No.1 had duly admitted claim of the petitioner over the suit land. It is submitted that respondent No.1 had specifically admitted the petitioner's claim in para 6 of the plaint Annexure P-4. Thus, in view of the admission made by respondent No.1 in regard to prior right of the petitioner, learned trial Court was in patent error in dismissing the petitioner's application (Annexure P5).

8. No other argument is raised on behalf of the petitioner.

9. I have heard learned counsel for the petitioner.

10. The petitioner has based his claim on averment made by respondent No.1 in Para 6 of the Civil Suit No.2396 of 2020 (Annexure P4) filed by respondent No.1. Petitioner is not a party to the said Suit. Said Para 6 is reproduced hereinbelow:-

"6. That the plaintiff demanded money from the defendant No.1 to clear the bank loan, then the defendant No.1 say that firstly the plaintiff gave the No Dues then he will return the money then the defendant No.1 suggest the plaintiff for further loan from defendant No.4, but as security she has to pledge her property. The defendant No.1/respondent No.1 (Satvinder Chaudhary alias Vicky Jatt) said that the sale deed of House No.2021, Bhikam Colony, Ballabgarh, containing Ajay Aggarwal, which is in the name of plaintiff, should be mentioned in the name of defendant No.4, while the plaintiff told the defendant No.1 that the agreement for

full and final payment and all original paper is with Ajay Aggarwal. The defendant/respondent No.1 said that he will get her the money for depositing the loan, on the day she get paid, on the day, she cancel the GPA. In compelling circumstances, plaintiff executed a GPA bearing No.4583 dated 15.10.2019 registered in the office of Sub Registrar Gaziabad in favour of defendant No.4 regarding her plot No.2021, situated at Bhikam Colony, Ballabgarh as security on the pressure of defendant/respondent No.1.”

11. In my view, perusal of above averment does not constitute admission on behalf of respondent No.1 in respect of claim of the petitioner. Moreover, perusal of written statements filed by respondents to the Civil Suit, as well as to the application under Section 151 CPC filed by the petitioner shows that respondents have vehemently denied the claims of the petitioner. Further, learned counsel for the petitioner does not deny that present Civil Suit is at its preliminary stage. Even no evidence has been led by any of the parties. In my view, title of the parties over the suit property cannot be decided on basis of the above said averment on part of respondent No.1 in the Civil Suit Annexure P-4, filed by her. I am in agreement with the following observations of the learned trial Court in the impugned order:-

“5.It is the case of the plaintiff that the defendant No.1, who has filed a separate civil suit pertaining to the same property, where, she has sought relief of declaration that the sale deed dated 30.07.2019, GPA dated 15.10.2019 and sale deed dated 17.10.2019 are illegal null and void, has admitted the claim of the plaintiff in that suit qua the suit property in this suit. The present suit however, is still at a nascent stage. Issues are yet to be framed in this case, implying that no evidence has been led by any of the parties qua the main controversy. Perusal of the written statement filed by the defendants reveals that the claim of the plaintiff has not been opposed and challenged by the defendants herein. Neither defendant No.1 nor the remaining defendants have admitted any part of the claim of the plaintiff in the present suit. Prima facie, the material facts of the

plaintiff's suit are under dispute. Since, the defendant No.1 against whom the main relief is sought in this case, has not admitted any part of the plaintiff's claim in this suit, it cannot be said that plaintiff is entitled for a decree based on admission as provided under Order XII Rule 6 of CPC."

12. Learned counsel for the petitioner is unable to controvert the above reasoning. Accordingly, I find no error in the impugned order passed by learned Civil Judge (Junior Division), Faridabad dismissing the petitioner's application under Section 151 CPC. Present Revision Petition therefore stands, **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

09.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No