IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.113

RSA No.2481 of 2022 (O&M)
Reserved on 18.11.2022

Date of Decision: 13.01.2023

Narinder Kumar .... Appellant

Versus

Balram Kumar and another ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vishal Aggarwal, Advocate
for the appellant.

Mr. Akhil Ahuja, Advocate
for the caveator-respondent No.2.

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<u>TRIBHUVAN DAHIYA, J.</u>

This is appellant/defendant's (hereinafter referred to as the 'defendant') second appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, a suit for specific performance of an agreement to sell dated 24.02.2011 for the remaining half share in the suit property/residential house, was filed by the respondents/plaintiffs (hereinafter referred to as the 'plaintiffs'). The agreement to sell was voluntarily executed by the appellant/defendant along with his brother in favour of the plaintiffs on receiving earnest money of ₹7 lakh. The target date for execution of the sale deed was fixed as 30.11.2011. On that date, due to *inter se* dispute between the two brothers/executants, the sale deed

could not be executed. Vikas Kumar/defendant's brother accepted balance sale consideration of ₹6 lakh from the plaintiffs on 13.01.2012, which was endorsed by him at the reverse of the agreement to sell in the presence of witness Deepak Kumar. The plaintiffs served a legal notice dated 28.03.2012 to both the brothers calling upon them to execute the sale deed in terms of the agreement to sell, giving them a week's time to do so. Both the brothers did not execute the sale deed. Presence of the plaintiffs was got marked before the Sub-registrar by way of an affidavit of presence dated 09.04.2012. Thereafter, the plaintiffs met both the brothers and agreed to perform their part of the contract. On 11.04.2012, a sum of ₹3 lakh was paid to Vikas Kumar/defendant's brother vide cheque bearing No.22690. A receipt to that effect was issued on the reverse of the agreement to the plaintiffs by him. On 18.04.2012, only the defendant's brother, Vikas Kumar, executed sale deed of his half share in the suit property and got it registered in part performance of the agreement to sell executed in favour of the plaintiffs by both the brothers. The defendant, however, refused to do so leading to the institution of suit in question.

3. The defendant contested the suit pleading that the plaintiffs were bound by the terms and conditions of the agreement to sell dated 24.02.2011, in terms whereof date for registration of sale deed was fixed as 30.11.2011. But the plaintiffs did not turn up along with balance sale consideration on that date. On their failure to do so, the earnest money would stand forfeited.

4. On completion of the pleadings, following issues were framed by the trial Court:

1 Whether the defendant entered into an agreement to sell dated 24.02.2011 with the plaintiffs and

received Rs.3.5 Lakh from plaintiffs as earnest money on the same day?OPP

2 Whether the suit is not maintainable?OPD

3 Whether the alleged agreement is without consideration?OPD

4 Whether plaintiff has no cause of action and locus-standi to file the present suit?OPD

5 Whether the suit of the plaintiffs is false, frivolous and vexatious?OPD

6 Relief.

5. Issue No.1 was decided in favour of the plaintiffs by the trial Court holding that due execution of the agreement to sell was established on record, as also the payment of earnest money as well as readiness and willingness to perform their part of the contract by the plaintiffs. In the light of the Issue No.1, Issues No.2 to 5 were also decided against the defendant holding the suit to be maintainable and that the plaintiffs had *locus standi* and cause of action to file the same. The judgment of the trial Court was affirmed by the lower appellate Court in appeal.

6. Learned counsel for the appellant/defendant has contended that there was no readiness and willingness on the part of the plaintiffs to perform their part of the transaction, and they failed to make payment of balance sale consideration for execution of the sale deed on the date fixed, i.e., 30.11.2011 leading to forfeiture of the earnest money. Besides, they are not able to establish their financial capability to pay the balance sale consideration on that date. Merely because a part of the sale consideration has been accepted by his brother, it cannot be said that he/defendant will also be bound by the same, or that the time for execution of the sale deed would stand extended by an endorsement made by his brother Vikas Kumar after

receiving the part sale consideration. He has further submitted that the legal notice (Ex.P1) was also issued only to his brother Vikas Kumar and not to him.

7. Learned counsel for the parties have been heard and judgments of both the Courts below perused.

8. It is a case where execution of the agreement to sell dated 24.02.2011 as well as payment of earnest money jointly to the defendant and his brother, Vikas Kumar, stand admitted. The suit property/residential house is owned by them jointly. Although the payment of a part of sale consideration amounting to ₹6 lakh was received by one of them, i.e., the defendant's brother Vikas Kumar, on 13.01.2012, and another sum of ₹3 lakh was also received by him on 11.04.2012, still it could not be said the same was in his individual capacity, and would not bind the defendant. As the agreement in question was executed by both of them jointly and they accepted the earnest money jointly, acceptance of a part of sale consideration by one of them subsequently, cannot be said to be in that person's individual capacity. It will bind both of them as they remain joint holders of the suit property. The two are not separate legal entities. Merely because there arose a dispute *inter se* the defendant and his brother, it could not be a basis for the former to wriggle out of the agreement to sell. There is no evidence of any overt act on the part of defendant to dispel the fact of his being joint holder of the suit property or being bound by the agreement to sell. Besides, Vikas Kumar has already got the sale deed executed with respect to his half share in the suit property/residential house on 18.04.2012.

9. Further, the defendant in his cross examination as DW-1 has admitted that after execution of the agreement to sell (Ex.P7), there arose a dispute between him and his brother. This is the reason pleaded by the

plaintiffs also, for non-execution of the sale deed by the defendant. The original date for execution of the sale deed cannot be insisted upon by the defendant in view of these facts, as also on account of his own admission in cross-examination that he did not get his presence marked before the Sub-registrar on the date fixed, i.e., 30.11.2011.Therefore, it cannot be said the plaintiffs failed to perform their part of the agreement. They have established their financial capabilities and readiness and willingness by purchasing half share of the suit property, and filing the suit in question seeking specific performance against the defendant.

10. Still further, the legal notice dated 28.03.2012 was issued by the plaintiffs to both the brothers by registered post. Receipts to that effect have been duly proved on record as (Ex.P2 to P4). It cannot, therefore, be argued that no notice was issued to the defendant, or that he did not receive the same. On expiry of one week's time for execution of sale seed in terms of the legal notice dated 28.03.2012, the plaintiffs got their presence marked before the Sub-registrar on 09.04.2012, which was the first working day after the date fixed, i.e., 05.04.2012.

11. The judgment of Supreme Court of India passed in *U.N.Krishnamurthy (since deceased) through LRs v. A.M.Krishnamurthy* 2022(3) R.C.R.(Civil) 479, relied upon by learned counsel for the defendant is to the effect that plaintiff's readiness and willingness to perform his part of the contract is to be established on record, and deposit of balance sale consideration in Court after lapse of seven years would not establish the same. No such situation arises in the instant case. There is no delay on the part of the plaintiffs in performing their part under the agreement to sell. Rather, they have paid sale consideration in part, and sale deed with respect

to half share of the suit property also stands executed in their favour. Therefore, the judgment has no application to the instant case.

12. There is no escape from concluding that the defendant remains bound to execute the sale deed in terms of the agreement in question.

13. In view of the aforesaid, there is no ground to interfere with the impugned judgments, which do not suffer from any error of law. No substantial question of law arises for consideration either.

14. The appeal stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

13.01.2023
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes