

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.70 of 2015(O&M)
Reserved on : 07.12.2023
Pronounced On:12.12.2023

Vasdev Bajaj

.Appellant

Versus

Sh. Satish Kumar Gupta and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Kumar Jindal, Senior Advocate, with
Mr. Samar Ahluwalia, Advocate
for the appellant.

Mr. A.S.Chadha, Advocate and
Mr. S.K.Biriwal, Advocate, for the respondents.

ANIL KSHETARPAL, J

C.M.No.15596-C-2015

1. For the reasons mentioned in the application, which is supported by the affidavit, the delay of 36 days in filing the appeal is condoned.

2. CM stands disposed of.

MAIN

3. In this execution second appeal, the competing claims of two different decree holders for specific performance of the agreements to sell in two separate suits are required to be adjudicated. In other words, this court is called upon to adjudicate regarding the superior right out of both the decree holders for specific performance.

4. In order to comprehend the issue, the relevant facts, in brief, are required to be noticed.

5. Mr. Rahul Arora was owner of Plot No.447-P, Sector 21-C, Faridabad. On 24.10.2001, Mr. Vasdev Bajaj, the appellant, claims that Mr. Rahul Arora executed an agreement to sell in his favour on receipt of Rs.1,50,000/- as an earnest money, out of the total sale consideration of Rs.18,00,000/-. It was agreed that the Courts at Chandigarh shall have territorial jurisdiction over the matter. Mr. Vasdev Bajaj filed a suit for specific performance of the agreement to sell dated 24.10.2001, against Mr. Rahul Arora and Mr. Ramesh Arora in the Civil Court at Chandigarh, on 25.07.2006. The aforesaid suit was decreed on 23.11.2007. A conditional decree for specific performance of the agreement to sell was passed while directing Mr. Rahul Arora to execute the sale deed in the favour of Mr. Vasdev Bajaj after receiving the remaining amount within a period of two months. Mr. Vasdev Bajaj filed an execution petition on 01.12.2012, which was transferred to the Civil Court at Faridabad.

6. On the other hand, Mr. Rahul Arora executed an agreement to sell on 08.02.2003, with respect to the same property in the favour of Mr. Satish Kumar Gupta. It is the case of Mr. Satish Kumar Gupta that the agreement to sell was entered on 07.02.2003 when Rs.2,00,000/- was paid by the cheque, however, formal agreement to sell was reduced into writing on 08.02.2003 when the plaintiff paid another sum of Rs.2,00,000/- in cash. The plot was agreed to be sold @ Rs.2500/- per square yard and the assessment of total sale consideration came as Rs.33,63,323.25/- subject to variation depending upon the increase or decrease according to the size of the plot.

7. On 19.02.2003, another supplementary agreement to sell was reduced into writing and signed by the parties on the payment of additional

sum of Rs.3,00,000/- in cash and Rs.8,00,000/- through cheque. Mr. Satish Kumar Gupta also deposited Rs.7,98,687/- with Haryana Urban Development Authority to clear the outstanding amount with respect to the plot in dispute. This suit was filed in the Civil Court at Faridabad. The aforesaid civil suit filed by Mr. Rahul Arora was contested by Mr. Rahul Arora while claiming that Mr. Satish Kumar Gupta did not come to the court with clean hands and in fact, he had himself taken a loan from Mr. Satish Kumar Gupta and the blank signed papers obtained in order to secure loan have been used by the plaintiff to forge agreement to sell.

8. The suit for possession by way of specific performance filed by Mr. Satish Kumar Gupta was decreed on 07.04.2011. This suit was sincerely contested by Mr. Rahul Arora. It is significant to note that in this suit on 06.02.2007, the court restrained Mr. Rahul Arora from alienating the suit property. The judgment and decree passed in the favour of Mr., Satish Kumar Gupta was challenged in the appeal by Mr. Rahul Arora which was dismissed on 21.09.2012. Thereafter, Mr. Rahul Arora filed RSA No.386 of 2013 in the High Court which also got dismissed on 15.03.2013. Mr. Satish Kumar Gupta filed an execution petition in the civil court at Faridabad in which Mr. Vasdev Bajaj filed objections under Order XXI Rule 58 CPC.

9. The Executing Court on the appreciation of the material placed on record has held that the decree passed in the favour of Mr. Vasdev Bajaj is the result of collusion between Mr. Rahul Arora and Mr. Vasdev Bajaj. Moreover, the decree has been passed by the Court at Chandigarh which had no territorial jurisdiction over the matter. Thus, with light of above mentioned facts the objection petition filed by Mr. Vasdev Bajaj was dismissed. The first appeal filed by Mr. Vasdev Bajaj has also been

dismissed by the First Appellate Court. The correctness of both the orders is challenged by Mr. Vasdev Bajaj in this appeal.

10. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the relevant documents which have been produced.

11. The learned senior counsel representing the appellant while referring to Section 21 and 21-A of the Code of Civil Procedure, 1908, submits that the objection with regard to the territorial jurisdiction cannot be taken, at this stage, in the execution petition. While elaborating the learned senior counsel submits that the objection with regard to the territorial jurisdiction is to be taken at the earliest possible opportunity in the court of first instance. He places reliance on the judgment passed by the Supreme Court in **Subhash Mahadevasa habib vs. Nemasa Ambasa Dharamdas(D) by Lrs, (2007) 3 SCC 114.** He further contends that both the courts have erred while recording the finding that the judgment and decree passed in the favour of Mr. Vasdev Bajaj on 23.11.2007 is a result of fraud and collusion between the parties. He submits that the fraud is required to be proved in absolute terms without any iota of doubt and in the absence of sufficient material, the courts below were not correct in recording such finding. In the end, he contended that the agreement to sell in favour of Mr. Vasdev Bajaj is prior in point of time when compared with agreement to sell in the favour of Mr. Satish Kumar Gupta. Moreover, the suit filed by Mr. Vasdev Bajaj was decreed on 23.11.2007, whereas the decree in the favour of Mr. Satish Kumar Gupta was passed on 07.04.2011 and thus Mr. Vasdev Bajaj is said to have a superior right in the given decree.

12. On the other hand, the learned counsel representing the

respondent while referring to the judgment passed on 23.11.2007 has submitted that on a careful reading it is clear and evident that there was no real contest put forth by Mr. Rahul Arora. He further submits that the property worth more than Rs.33,00,000/- is stated to have been agreed to be sold for Rs.18,00,000/- by Mr. Rahul Arora in the favour of Mr. Vasdev Bajaj. He further submits that if the court inherently lacks jurisdiction, the parties cannot take away or confer the jurisdiction by agreement between the parties.

13. After having analysed the arguments of the learned counsel representing the parties, there is no substance in the appeal for the following reasons:-

- (i) On a careful reading of the judgment passed on 23.11.2007 in the favour of Mr. Vasdev Bajaj, it is evident that Mr. Rahul Arora while filing the written statement did not put forth real contest. His contest was only farce and sham. From the reading of para two of the judgment, it is evident that Mr. Rahul Arora admitted the contest of para nos.1 and 2, whereas para no.3 of the plaint was denied for want of knowledge. Again the contents of para no.4 and 5 were admitted, whereas the contents of para nos. 6 and 7 were not admitted and it was submitted that the plaintiff be put to prove its contents. The contents of para no.8 were also not denied, whereas the contents of para no.9 were admitted. The contents of para nos.10 and 11 were denied on the ground that he has no knowledge of any agreement. The contents of para

no.12 of the plaint were admitted to the extent that he received notice allegedly sent by Mr. Vasdev Bajaj and he had already told Mr. Vasdev Bajaj that he has no knowledge of the agreement to sell.

(ii) It is also evident that there were two defendants in the suit filed by Mr. Vasdev Bajaj, namely Mr. Rahul Arora and Mr. Ramesh Arora. Plaintiff being the dominus litus gave up Sh. Ramesh Arora, whereas Mr. Rahul Arora did not lead any evidence. In para five, the trial court has recorded that Mr. Rahul Arora did not examine even a single witness despite effective opportunities including last opportunity granted to him. Thus, it is evident that Mr. Rahul Arora in reality did not contest the suit rather he put forth a farce contest particularly when he did not file any first appeal or second appeal, whereas he contested the suit filed by Mr. Satish Kumar Gupta tooth and nail not only in the civil court but also in first appeal as well as in second appeal.

(iii) Moreover, a perusal of the judgment passed in the suit filed by Mr. Vasdev Bajaj, it is evident that the parties by an agreement tried to confer jurisdiction over the court located in Chandigarh, which is per se not permissible. As per Section 16 CPC, the suits related to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situated. In this case, the property is situated at Faridabad. Therefore,

by the application of rules of law, the civil court at Chandigarh inherently lacks jurisdiction. This observation assumes significance particularly in the facts of the present case. It may be noticed that ordinarily the objection with regard to lack of territorial jurisdiction is required to be taken before the court of first instance at the earliest opportunity. However, Section 21(1) CPC provides that if there is a consequent failure of justice, the objection can be entertained even when it was not taken up at earliest possible opportunity. Section 21(1) CPC provides that if the court comes to a conclusion that there is consequent failure of justice, the objection with regard to the place of suing can be permitted even at a subsequent stage. Section 21(2) CPC is with regard to pecuniary jurisdiction of the Court, whereas Section 21(3) CPC provides for the power and competence of the Executing Court to allow objections. Section 21(A) lays down that no suit shall lie challenging the validity of a decree passed in a former suit on any ground based on an objection to the place of suing. However, in this case, there is a failure of justice and therefore, Mr. Satish Kumar Gupta is entitled to claim that the decree passed by Court at Chandigarh is without jurisdiction.

- (iv) This court has carefully read the judgment passed in **Subhash Mahadevasa Habib's case (supra)**. In fact, the aforesaid judgment has been passed in the peculiar facts

of that case. In para 24, the question was with regard to objection of peculiar jurisdiction of the court to pass the decree. In that context, the Supreme Court explained the scope of Section 21 and 21-A of the Code of Civil Procedure. Ultimately, the judgment was passed taking into consideration the facts of the given case. Hence, the judgment would not help the appellant.

- (v) Moreover, on 06.02.2007, by an order of injunction passed in the suit filed by Mr. Satish Kumar Gupta, Mr. Rahul Arora was restrained from alienating the suit property. However, he never disclosed this fact while contesting the suit filed by Mr. Vasdev Bajaj in Chandigarh. It was not disclosed by Mr. Rahul Arora to the Court at Chandigarh that there is a parallel suit filed by Mr. Satish Kumar Gupta with respect to the same property, pending at Faridabad. Similarly, in the suit filed by Mr. Satish Kumar Gupta, Mr. Rahul Arora did not disclose that there is a suit filed by Mr. Vasdev Bajaj. Moreover, it is further evident that on 08.02.2003, the parties agreed to sell the property for more than Rs.33,50,000/-. There was no occasion for Mr. Rahul Arora to sell the same property for Rs.15,00,000/-. The agreement to sell in favour of Mr. Satish Kumar Gupta is genuine because he paid a significant part of the earnest money through bank transactions, however, Mr. Vasdev Bajaj has failed to prove that on 24.10.2001, the alleged

date of agreement to sell, he paid any amount through the cheque.

- (vi) At the end, both the courts on the appreciation of material on record come to a conclusion that the decree obtained by Mr. Vasdev Bajaj, the appellant, was a result of collusion and in substance, to frustrate the rights of Mr. Satish Kumar Gupta, who was a genuine purchaser.

14. In view of the aforesaid discussion, even if the alleged agreement to sell in favour of Mr. Vasdev Bajaj was prior in point of time, however, the same would not confer any superior right particularly when it was found that the aforesaid agreement to sell was a result of collusion between Mr. Vasdev Bajaj and Mr. Rahul Arora. Similarly, even if the decree was passed in favour of Mr. Vasdev Bajaj, prior in point of time when compared with the decree passed in favour of Mr. Satish Kumar Gupta, still it would not make any difference particularly when the courts have come to a conclusion that the decree was a result of collusion.

18. Consequently, finding no merits, the appeal is dismissed.

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

12th December, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO