

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2977-2021 (O&M)

Date of Decision: April 21, 2023

Surender Kumar Sharma and others

...Petitioners

Versus

Nitin Goel and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Amit Jhanji, Senior Advocate with
Ms.Eliza Gupta, Advocate
for the petitioners.

Mr.Sanjiv Gupta, Advocate
for respondent No.1.

Mr.Aman Pal, Advocate
for respondent No.2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the judgment dated 06.10.2021 passed by learned Addl. District Judge, thereby, reversing the order dated 16.07.2021 passed by learned Civil Judge (Jr. Divn.), passed on the application under Order 39 Rule 1 and 2 read with Section 151 CPC.

For the convenience of discussion, the parties are referred to as making appearance before the Courts below.

The material facts of the case are as follows:-

That, plaintiff Nitin Goel (respondent No.1 herein) had filed a

suit for specific performance of agreement to sell dated 13.01.2014, with consequential relief of permanent injunction against defendant No.1 Vikram Singh (respondent No.2 herein) and defendants No.2 to 4, namely Surender Kumar Sharma, Mahesh Kumar Sharma and Vinod Kumar (petitioners in the present petition). In the suit, it was averred that defendants No.2 to 4 are the owners of the land measuring 2 Bigha-19 Biswa, situated at Chand Sarai, outside Jundla Gate, Karnal, which is part of the Diwan Cold Storage. On 28.12.2013, all the defendants purported to the plaintiff that defendants No.2 to 4 had executed an agreement to sell dated 07.06.2008 with regard to land measuring 3 Bigha-3 Biswa, which includes the suit property, in favour of defendant No.1 and handed over the possession of the aforesaid land to defendant No.1.

Further, it is also averred that defendants No.2 to 4 represented to the plaintiff that defendant No.1 is competent to enter into agreement to sell the aforesaid land, in favour of the vendees and they shall remain bound to execute and get registered the sale deed, in favour of the vendees or assignees of defendant No.1. Upon this representation, the plaintiff agreed to purchase the suit property and had paid a sum of Rs.5,00,000/- as earnest money to defendant No.1 in the presence of defendants No.2 to 4 on 28.12.2013. It was agreed that the defendant No.1 shall execute an agreement to sell of the suit property in favour of the plaintiff, within a period of 15 days or so, and the terms and conditions shall be incorporated in the agreement to sell.

Further, it is averred that on 13.01.2014, the defendant No.1 executed an agreement to sell of the suit property, in favour of the plaintiff,

for a total sale consideration of Rs.95 lakh and received the part sale consideration of Rs.15 lakh from the plaintiff. In this way the defendant No.1 received the total earnest money of Rs.20 lakh, from the plaintiff by 13.01.2014.

The defendant No.1 agreed to execute the sale deed, in favour of the plaintiff from the defendants No.2 to 4, after giving one week prior notice and it was also agreed that in case the defendants fail to get the sale deed executed in favour of the plaintiff, then the plaintiff shall have the right to get the sale deed executed and registered from the Court of law, by filing a suit against the defendants or in the alternative, the plaintiff shall have a right to get the double of the earnest money. Also, it was agreed that the defendants shall produce their clear title and other documents, in the shape of 'no objection certificate' from the concerned department, which may be necessary for the execution and registration of the sale deed. The possession of the suit property was to be handed over to the plaintiff at the time of registration of the sale deed.

Also, it is averred that in the year 2016, the plaintiff requested the defendants, to get the sale deed executed and registered in his favour. However, the defendants stated that the defendants No.2 to 4 shall have to get the permission to sell the property from the Director Town and Country Planning, Haryana for the sale of the suit property, as the suit property is situated within the urban Area of Karnal and the suit property is more than 1000 sq. meters and less than one hectare. The defendants further stated that the said permission may take some time and that they shall inform the plaintiff regarding the permission to sell the suit property and thereafter,

execute and get registered the sale deed in favour of the plaintiff. Nothing was done thereafter and then, in the year 2018, the plaintiff had again requested the defendants to do the needful, but however, the defendants stated that they shall get the sale deed executed, in favour the plaintiff, within a short span, after doing the needful in the matter. Thereafter, again the plaintiff continued to approach the defendants and requested them to perform their part of the contract. However, they postponed the matter on one pretext or the other. Then, on 15.04.2021, the plaintiff had sent a notice to defendants through his counsel, thereby, asking the defendants to get the sale deed executed and registered in favour of the plaintiff on 26.04.2021. However, on 26.04.2021, even though, the plaintiff had gone to the office of Sub-Registrar along with balance sale consideration and had got marked his presence, in the office of Sub-Registrar, on the said date, but however, the defendants did not come present, to perform their part of the contract. Thereafter, the plaintiff again requested the defendants, to perform their part of the contract. However, they refused to adhere to the lawful request of the plaintiff and thereafter, the suit was filed.

In the prayer clause, a prayer was made to pass a decree for possession by way of specific performance of agreement to sell dated 13.01.2014, in favour of the plaintiff and against the defendants, directing defendants No.2 to 4 to join defendant No.1, in order to execute and get registered the sale deed of the suit property, detailed in para No.1 of the plaint, after getting 'no objection certificate' from the concerned department, in favour of the plaintiff, along with consequential relief of

permanent injunction, thereby, restraining the defendants from alienating the suit property, in any manner, in favour of any other person, except the plaintiff. Even, the alternative prayer was made for passing of decree of recovery of double of the earnest money, along with interest.

Along with the suit, an application under Order 39 Rule 1 and 2 CPC was filed, thereby, seeking direction of restraining the defendants from alienating the suit property.

The defendants made appearance in the said suit and filed their written statement. Defendant No.1 Vikram Singh, in his written statement had raised objections, thereby, asserting that the present suit does not disclose any cause of action against the answering defendant, as on the basis of extension of the agreement dated 07.06.2008, executed between defendants No.1 and 4, the defendant No.1 was authorized to execute an agreement to sell and hence, agreement to sell dated 13.1.2014, was executed by answering defendant No.1, with the stipulation that Nitin Goel-plaintiff, can get the sale deed executed and registered by giving a week's notice and it was also agreed that the defendants No.2 to 4 will get the 'NOC' issued from the concerned department, but they have failed to do so. It is further stated that the suit is bad for misjoinder of the parties, as defendant No.1 has been unnecessarily arrayed in the said suit. Also, it is averred that defendants No.2 to 4, have turned dishonest and so defendant No.1 filed a suit for declaration and permanent injunction, which is pending in the Court, wherein, interim stay has been granted on 02.04.2021.

Further, it is also averred that defendants No.2 to 4 had

executed an agreement to sell with him and had delivered the possession of the same. In the written statement, there was also assertion made regarding the earlier agreement dated 31.05.2005 and renewal of the same and furthermore, it is asserted by defendant No.1 about himself to be in continuous, uninterrupted possession since 2005 and became owner, by way of adverse possession and he undertakes to deliver the physical possession in favour of the plaintiff, on the basis of the sale deed. He had admitted the terms and conditions of the agreement to sell dated 13.01.2014 and further also admitted about receipt of earnest money. However, it is averred that intention of defendants No.2 to 4 was dishonest, since the execution of agreement to sell and only on this account, they failed to get the requisite permission from the concerned authorities i.e. DTP, Haryana.

Likewise, written statement was also filed at behest of the petitioners, thereby, disputing the maintainability of the suit and that defendant No.1 had no right, title or interest to execute the alleged agreement dated 13.01.2014, in favour of the plaintiff. In fact, it is asserted that the agreement to sell dated 07.06.2008 executed by defendants No. 2 to 4, in favour of the defendant No.1, stood cancelled, as the cheques dated 03.05.2014 given by him to the defendants No. 2 to 4, were dishonored, which fact has been admitted by defendant No.1, in another suit titled as 'Vikram Singh v/s Mahesh Kumar Sharma and others', which is still pending. Now, the present suit has been filed at the instance and for the benefit of defendant No.1-Vikram Singh, as he is desperate to seek an interim injunction against defendants No.2 to 4, as he has failed in

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his effort, in suit filed by him. In fact defendants No.2 to 4 have asserted themselves to be in possession of the suit property and that the possession was never handed over to defendant No.1, as it could not be delivered to him, as the agreement dated 07.06.2008 was of the share, out of the joint *khata*, which has not been partitioned, as yet. They also denied about having knowledge of the agreement to sell dated 13.01.2014, nor they were party to it and also that it was fabricated by defendant No.1, to harm the interest of defendants No.2 to 4. They also asserted that they have every right to alienate the suit property as agreement to sell dated 07.06.2008, already stood cancelled and they have no concern with the impugned agreement to sell in favour of the plaintiff.

The application under Order 39 Rule 1 and 2 CPC, thereby, seeking restraint order, vis-a-vis, alienation of the suit property, was dismissed vide order dated 16.07.2021. To challenge the aforesaid order, plaintiff-Nitin Goel filed an appeal before learned lower Appellate Court and the appeal was accepted, vide impugned judgment dated 06.10.2021 and as a result of the same, the application under Order 39 Rule 1 and 2 CPC was allowed and defendants No.1 to 4, were restrained from alienating the suit property, in favour of third person.

Feeling aggrieved by the aforesaid reversal judgment of dismissal of the aforesaid application under Order 39 Rule 1 and 2 CPC, the petitioners, who are defendants No.2 to 4, before the Courts below, have filed the present revision petition.

Learned counsel for the parties heard.

Undisputedly, the agreement to sell dated 07.06.2008 was

executed qua 3 Bigha 3 Biswa by defendants No.2 to 4 (present petitioners) for sale consideration of Rs.95 lakh with defendant No.1-Vikram Singh and an amount of Rs.23.5 lakh was received as earnest money. Also, as per the said agreement, the defendants No.2 to 4 were to receive the remaining amount on 31.07.2008 from Vikram Singh. Subsequently, vide endorsement dated 06.12.2013, target date of this agreement was extended upto 28.02.2014 and also there is specific mention contained in this endorsement about rest of the conditions to remain the same and that after the said, time will not be extended further and it also contains the mention that Vikram Singh is given right to make agreement regarding this land. Further, it has an endorsement dated 28.02.2014, which mentions about three cheques of Axis Bank, Kurukshetra, bearing Nos.111882, 111883 and 111884, amounting to Rs.29,36,666/- each, given to Surender Kumar Sharma, Mahesh Kumar Sharma and Vinod Kumar Sharma. The date of all the aforesaid cheques is 03.05.2014. Also, there was recital in this endorsement that Vikram Singh can get the sale deed registered after clearing of the aforesaid cheques, on one month's notice and they will have no objection.

Besides the aforesaid agreement, even the execution of agreement dated 13.01.2014, which forms the basis of the suit, so filed by the plaintiff, as such, has not been disputed by defendant No.1, with whom the said agreement was executed. As per this agreement, defendant No.1 agreed to further sell the suit property in favour of plaintiff-Nitin Goel, for an amount of Rs.95 lakh. Said agreement contains mention of the agreement dated 07.06.2008. The execution of the agreement dated

13.01.2014 has not been disputed by defendant No.1.

It has to be seen about the rights asserted by plaintiff No.1, vis-a-vis the suit property. In the light of the aforesaid agreements, at the maximum, the plaintiff can assert that he has stepped into the shoes of defendant No.1 as assignee. In view of the same, now it has to be firstly seen about the right of defendant No.1, vis-a-vis, suit property, on the basis of agreement to sell dated 07.06.2008. In this regard, it is pertinent to mention that the stipulated date of the agreement dated 07.06.2008, at the maximum was 28.02.2014. On 28.02.2014, since there is recital of handing over of three cheques of Axis Bank, Kurukshetra, bearing Nos.111882, 111883 and 111884 and therein, it was also recorded that sale deed could be got executed by defendant No.1, after clearance of the aforesaid cheques, by giving one month's notice.

However, prior to 28.02.2014, an agreement to sell dated 13.01.2014 was executed by defendant No.1, in favour of plaintiff. It is specific claim of defendants No.2 to 4-petitioners that the said cheques were bounced, resulting into issuance of three separate notices dated 15.07.2014 and 21.07.2014, which are Annexures P-3 to P-5, to defendant No.1, thereby, specifically, mentioning about the cancellation of the agreement dated 07.06.2008.

In the light of the aforesaid, the last extension of the target date, as per agreement dated 07.06.2008 was 28.02.2014. To assert his right over the suit property, therefore, defendant No.1 on 22.03.2016 had filed a suit for permanent injunction against defendants No.2 to 4.

However, the said suit remained pending and ultimately, it was dismissed,

for want of prosecution, vide order dated 06.08.2018, copy whereof is Annexure P-7. Not only this, defendant No.1 Vikram Singh had then filed suit for seeking declaration and permanent injunction, vis-a-vis, the suit property, copy whereof Annexure P-8. In the said suit, Vikram Singh asserted his ownership over the suit property, on the basis of adverse possession and sought declaratory decree with consequential injunction. The said suit is still pending.

From the aforesaid, it is evident that after 28.02.2014, which was last extended date, the suit for permanent injunction was filed on 22.03.2016. At the maximum, it can be said that apprehending dishonour of agreement, right to file suit for specific performance arose to Vikram Singh-defendant No.1, on the said date. Thereafter, again suit for declaration was filed and not for specific performance.

The suit in hand was filed by plaintiff on 13.05.2021 i.e. after a period of more than five years. The right to file the suit for specific performance, on the basis of the agreement dated 07.06.2008 by defendant No.1, had already become time barred. In these circumstances, the right of the plaintiff as now asserted, over the suit property, has to be appraised. Definitely, he is an assignee and stepped into the shoes of defendant No.1 and he cannot have a better right, than the assigner. At the time, when the agreement was executed with the plaintiff, which fact is not disputed by defendant No.1, who had executed this agreement, defendant No.1 was himself not having any title over the suit property, on the basis of agreement to sell, which was unregistered document. Even though, it is now projected that defendants No.2 to 4 had met plaintiff and had

represented to him about the execution of the agreement dated 07.06.2008 and further gave assurance of the authority given to defendant No.1, to enter into agreement with him, but however, the meeting of defendants No.2 to 4 with the plaintiff, as such, has been categorically denied by defendants No.2 to 4. This representation is asserted to be based upon the recitals dated 06.12.2013.

Without dilating further, even if, we begin with assumption that such right was given to Vikram Singh, but anyhow, he cannot further grant the rights, more than, what he has in the suit property. As already observed aforesaid, the right to sue for specific performance of defendant No.1 is barred by limitation and in these consequences, he had never become owner of the suit property and now also, by way of filing of the suit, defendant No.1 asserts his adverse possession, which all the more, establish about his malafide intention. In these circumstances, when defendant No.1 was not having better rights, he could not pass on the rights, on the basis thereof, by virtue of agreement dated 13.01.2014. Defendants No.2 to 4 are not signatory to the agreement dated 13.01.2014. In the light of the same, where there is no privity of contract between the plaintiff and defendants No.2 to 4, vis-a-vis, agreement dated 13.01.2014, the relief, as such, now sought, in the suit, cannot be asserted qua defendants No.2 to 4.

Learned lower Appellate Court, in the impugned judgment, had made observations about the cheques, mention whereof, has been made in the endorsement dated 28.02.2014, on the agreement dated 07.06.2008 and concluded about the amount of balance sale consideration to be not

matching with the amount of cheques and on this account, having concluded that it does not relate to the sale consideration of the agreement to sell in question, but however, suffice to consider the last three lines of this endorsement dated 28.02.2014, on the basis whereof, it is specifically mentioned that Vikram Singh can get the sale deed registered, after clearing of the aforesaid cheques, on one month's notice. This, sufficiently connects with the **consideration** of the said agreement. In pursuance thereof, notices were issued, copies whereof, have been placed on record as Annexures P-3 to P-5. Though, it is asserted that they were never received but however, the handing over of the said cheques to defendants No.2 to 4 has been admitted by defendant No.1, in the suit for declaration filed by him claiming adverse possession, copy whereof is Annexure P-8.

Suffice to consider that in this suit, besides issuance of said cheques, there is also mention made about said cheques to have remained unpaid. If it be so, this is enough to conclude about the consideration amount having not been fulfilled. There is nothing, as such, coming on record, about the attempt made thereafter also, to make the payment of the residue amount. As such, defendant No.1 has slept over his rights to sue for specific performance. There was long silence on his part, which establish about non-performance of his part of contract.

Though, learned lower Appellate Court had also made an observation about the cancellation clause to be not there, but however, this observation is erroneous, as in the agreement dated 07.06.2008, there is recital of the manner of cancellation of the agreement to sell. Likewise, suffice to consider that in this agreement, there was no clause of 'no

objection certificate' to be obtained by defendants No.2 to 4. Even though, this clause finds mention in the agreement dated 13.01.2014, but however, this recital has no effect upon the rights of defendants No.2 to 4, as there was no privity of contract of these defendants with the plaintiff.

In the light of the aforesaid observations, in any case, defendant No.1 had not claimed any right of specific performance, on the basis of agreement to sell dated 07.06.2008 and precisely on this account, no rider can be placed upon defendants No.2 to 4, vis-a-vis, alienation of the suit land, of which, they are the owner and relating to which, the agreement had been executed by defendant No.1 in favour of the plaintiff.

In these circumstances, the rights of defendants No.2 to 4, cannot be circumscribed by way of issuance of injunction.

Consequently, the present revision petition is accepted and the impugned judgment dated 06.10.2021 is hereby set aside and resultantly, as ordered by learned Civil Judge (Jr. Divn.), the application under Order 39 Rule 1 and 2 CPC, stands dismissed.

April 21, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No