223 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

1. **RSA-3030-2015 (O&M)**

The State of Haryana and others ..... Appellants

Versus

Suresh Shah and others .... Respondents

RSA-147-2015 (O&M)

2.

Suleman ..... Appellant

Versus

Suresh Shah and others .... Respondents

Date of Decision: 09.05.2023

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. K.K.Chahal, Additional Advocate General, Haryana,
for the appellants (in RSA-3030-2015)
for respondents No.2 to 6 (in RSA-147-2015)

Mr. Sumit Sangwan, Advocate,
for the appellant (in RSA-147-2015)
for respondent No.3 (in RSA-3030-2015)

Mr. Randhir Singh Hooda, Advocate,
for respondent No.1 (in both appeals)

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<u>RAJBIR SEHRAWAT, J. (ORAL)</u>

This shall dispose of two appeals, i.e. RSA-3030-2015 and RSA-147-2015, because both of these are arising out of the same judgment and decree dated 20.10.2014 passed by the Additional District Judge, Mewat. However, for the sake of brevity, the main facts are being taken from RSA-3030-2015.

For the purpose of these present appeals, the parties would be referred to as they were described in the original plaints filed before the Trial Court.

The brief facts, as mentioned in the file, are that defendant No.6-Suleman has agreed to sell the land measuring 5 Kanals and 8 Marlas, as described in the plaint, in favour of the plaintiff-Suresh Shah for a sale consideration of Rs.18,00,000/- by way of executing agreement to sell dated 02.01.2012. An amount of Rs.2,70,000/- was received by the vendor. The said agreement to sell was presented before the Sub-Registrar, Nuh, by the vendor for execution of the sale deed in favour of the plaintiff, however, the Sub-Registrar, Nuh, had not registered the sale deed. The vendor sought the information from the Sub-Registrar as to why the sale deed was not being registered. Thereon he was intimated that the land was Shamlat Deh/Jumla Malkan, so it could not have been sold, and therefore, the sale deed could not be registered. It was also informed that there were instructions dated 02.12.2010 issued by the State Government in that regard; as well. Upon that the plaintiff-vendee of the agreement to sell filed a suit before the trial Court for a direction to the Sub-Registrar. However, the said suit was dismissed by the trial Court, vide judgment and decree dated 22.07.2014.

Feeling aggrieved against the said judgment and decree, plaintiff filed an appeal before the lower Appellate Court. The said appeal has been allowed. The lower Appellate Court reversed the judgment and decree passed by the trial Court and ordered the vendor to hand over the possession of the suit land by way of specific performance of the agreement to sell and directed the Sub-Registrar to register the sale deed as per the terms and conditions of the agreement, if the sale deed was presented in accordance with the provisions of the Indian Registration Act. It is challenging the said judgment and decree passed by the lower Appellate Court that the two separate appeals have been filed, one by the State of Haryana questioning the judgment and decree on the ground that the land was not even saleable being Shamlat Deh; and the other appeal has been filed by the vendor of the agreement to sell, firstly, on the ground that the land was not saleable being common land and, secondly, that the contract itself stood frustrated because of the instructions dated 02.12.2010 issued by the State of Haryana, which has been brought on record as Exhibit P-3.

Arguing the case, learned counsel for the appellant, in RSA3030-2015, has submitted that it is not even in dispute that the land is recorded in the revenue record as 'Shamlat Patti' land in possession of the proprietors. The land being Shamlat Patti land could not have been sold by any individual proprietor. The State of Haryana had even issued instructions dated 02.12.2010 in that regard. The said instructions have also been brought on record before the Court below. Accordingly the trial Court had rightly dismissed the suit filed by the plaintiff. The lower Appellate Court has gone wrong in law in directing the Sub-Registrar to register the sale deed despite the land being not saleable.

The learned counsel representing the appellant, in RSA-147-2015, has also argued, substantially the same thing qua land being not saleable. Additionally, the learned counsel for the appellant-vendor of the agreement to sell, has submitted that the earnest money received by him already stands deposited before the Executing Court pursuant to the interim order dated 19.03.2015 passed by this Court in the appeal. The plaintiff-vendee is free to withdraw that money. Learned counsel has further submitted that the land was not saleable and hence no sale deed could have been executed even as per the legal provisions created by the Government. Therefore, the contract itself stood frustrated. Hence, the lower Appellate Court has gone wrong in law in ordering the Sub-Registrar to register the sale deed and in directing the appellant to hand over the possession of suit land to the plaintiff.

The learned counsel for the plaintiff-vendee has submitted that the vendor had, undisputedly, entered into an agreement to sell. Not only that, he had even approached the Sub-Registrar for execution of the sale deed in favour of the plaintiff. It is only because of the refusal of the Sub-Registrar to register the sale deed that the sale deed could not be registered despite both the parties being ready and willing to execute the sale deed. Now the vendor cannot take a turn-around and start claiming invalidity or the frustration of the contract. Learned counsel has further submitted that the plaintiff purchased the land from the vendor, who himself was not a proprietor of the village, rather, was himself the purchaser from another proprietor of the village. Therefore, the vendor cannot take a plea that the land was not saleable. Still further, learned counsel has submitted that the basis of the State to make a claim qua the property is the fact that the land is Shamlat Deh. However, as per Section 2(g)(5)(v) of the Punjab Village Common Land Act, the land is not included in Shamlat Deh. Rather, the land is excluded from the definition of Shamlat Deh and it is mandated to revert back to the proprietors of the village. Therefore, the assertion of the State that the land was not saleable is non-sustainable. Learned counsel has submitted that the enough material has been led on file in the form of Exhibits P-8 to P-23, which are the Jamabandies and Mutations showing that the land has been repeatedly sold by various proprietors of the village. Hence, the land was rightly sold by the vendor and was rightly purchased by the plaintiff. The objections raised by the State is totally irrelevant. Learned counsel for the plaintiff has also submitted that in the execution process, the sale deed has already been executed in favour of the plaintiff. Therefore, the decree itself stands fully satisfied. Hence, both the appeals deserve to be dismissed.

Having heard the learned counsel for the parties and having perused the material on record, this Court finds substance in the arguments of learned counsel for the State in RSA-3030-2015 and the learned counsel for the appellant in RSA-147-2015. It is not even in dispute that the land, as recorded in the revenue record is; a Shamlat Patti land, though being cultivated by the proprietors. Once the land is recorded in the ownership of a Shamlat Patti, then it could not have been sold by any proprietor individually except after getting the said land partitioned by determining shares of individual proprietors, even that, if the partition was possible and permissible under the law. In any case, in the present case, there is nothing on record to show that the land in question was ever partitioned by the proprietors of the Patti as per their shares. There is no material on record to show that the proprietors were in possession of the land only as per their shares. Hence, the land being 'Shamlat' could not have been sold by any individual proprietor as per his will or as per his possession; which might not be even commensurate with his share in Shamlat land. Accordingly, since the vendor was not competent to transfer the title, therefore, the Sub-Registrar had rightly declined the registration of the sale deed.

Otherwise also, the instructions issued by the State of Haryana, which has been proved on record as Exhibit P-3, clearly stipulate that no sale deed shall be registered qua the common land of any nature. Therefore, the Sub-Registrar was not even authorised for registration of the sale deed of the land in question. So far as the assessment of the lower Appellate Court that the land is not included in the definition of Shamlat Deh as per Section 2(g)(5)(v) of the Punjab Village Common Land (Regulation) Act, 1961 is concerned, a bare perusal of the said Section also shows that though it is not included in the Shamlat Deh, however, still it would be a Shamlat Patti land; as such. In any case, the land remains common and unpartitioned land, though within a Patti only. Moreover, the State of Haryana has amended the Punjab Village Common Land (Regulation) Act, 1961, vide the amendment Act of 1992, under which all kind of common lands were vested in the Gram Panchayat. The said amendment has even been upheld by the Supreme Court in **Civil Appeal No.6990 of 2014** titled as **'The State of Haryana through Secretary to Government of Haryana Vs. Jai Singh and others'**, vide judgment dated 07.04.2022. Even on that count, the land could not have been sold by any proprietor individually.

In view of the above, the findings recorded by the lower Appellate Court qua the land being saleable, and accordingly, the decree directing the Sub-Registrar to register the sale deed and directing the vendor to hand over the possession of the suit land to the plaintiff, are totally non-sustainable, and hence, are set aside.

Although, the learned counsel for the plaintiff has submitted that even the sale deed has been executed in execution of the impugned decree, however, the validity of any such sale deed is dependent upon the decree being upheld by the Court. Since the findings recorded by the lower Appellate Court and the decree passed by it; itself has been found to be non-sustainable, therefore, the said sale deed has also to be declared as ineffective and non-consequential. Ordered accordingly. The Sub-Registrar is directed to de-register the said sale deed.

Still further; since the land is non-saleable, but the vendor also claims to be in possession of the said land only through the purchase, therefore, even his possession is not in accordance with law. Even the vendor-defendant No.6 cannot retain the possession; as such. Accordingly, the State/Gram Panchayat can take the possession of the said land.

The appeals are disposed of in the above-said terms. However, the plaintiff would be at liberty to withdraw the money deposited by the vendor before the Executing Court.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

09.05.2023
adhikari

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No