IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.206 **Date of Decision: 24.01.2023**

1) RSA No.3254 of 2014 (O&M)

Om Parkash Shankla .... Appellant

Versus

Babu Ram and others ... Respondents

2) RSA No.2531 of 2014 (O&M)

Om Parkash Shankla .... Appellant

Versus

Babu Ram and others ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Satinder Khanna, Advocate
for the appellant.

Mr. Aseem Sharma, Advocate for
Ms. Sambodhi Kasni, Advocate
for respondents No.6 and 7.

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TRIBHUVAN DAHIYA, J.

By this common judgment, the aforesaid two appeals shall be decided as both of them have been filed impugning the common judgment dated 15.01.2014 passed by the lower appellate Court.

2. These are plaintiff's appeals in a suit for delivery of possession by way of specific performance of the agreement to sell dated 20.01.2003, for setting aside that part of the impugned decree which provides for refund of the earnest money.

3. The facts of the case in brief are, the appellant/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for delivery of possession by way of specific performance of an agreement to sell entered into with the respondents/defendants (hereinafter referred to as the 'defendants') dated 20.01.2003 for sale of a residential house measuring 32 sq.yards for a total sale consideration of ₹4.5 lakh. Out of this consideration, ₹2.5 lakh was paid as earnest money at the time of execution of the agreement, and an amount of ₹50,000 was paid later towards the remaining sale consideration, vide an endorsement on the rear side of the sale agreement. The sale deed was agreed to be executed on or before 20.12.2003. When the defendants refused to execute the sale deed and deliver possession of the property/the house, the suit in question was filed.

4. Upon notice the defendants pleaded that they never entered into the agreement to sell with the plaintiff as they themselves were not the owners of the property at the time when the alleged agreement to sell dated 20.01.2003 was executed. Therefore, the agreement cannot be performed.

5. Upon completion of pleadings, the following issues were settled by the trial court:

1. Whether the plaintiff is entitled to specific performance of the agreement and injunction?OPP
2. Whether the plaintiff is guilty for concealment?OPD
3. Relief.

6. In the evidence led, the plaintiff examined himself as PW-1 and stated that after receiving the sale consideration, the defendants had handed over sale deed of the house to him. He also examined the marginal witness to the agreement to sell Kishori Lal as PW-2,who stated that both the parties were known to him and the agreement was executed in his presence. The original agreement was tendered as Ex.P1, apart from other documentary evidence. The defendants, on the other hand, examined defendant No.3 Hari Ram, who stated that they were three brothers and were co-sharers in the suit property, which devolved upon them through natural succession on death of their mother Mohiri Devi. He categorically denied the factum of execution of the agreement to sell. Babu Ram himself stepped into the witness box as DW-2 and denied execution of the agreement to sell. Amarjit Kumar, another witness who was examined by defendants as DW-3, averred that defendants No.1 and 2 had raised a loan to the tune of ₹30,000 from the plaintiff and delivered title deed to him. The plaintiff had taken their signatures on blank papers. Although the amount was repaid, the plaintiff converted the said blank papers into a fake agreement to sell.

7. The trial Court while returning findings on Issue No.1 held that two of the defendants, i.e., Babu Ram and Rupa Ram/defendants No.1 and 2 had admitted their signatures on the agreement to sell (Ex.P1) though they averred that the same were obtained by the plaintiff on blank papers, and the third defendant, i.e., defendant No.3 Hari Ram denied his signatures on the ground that he did not know English and would sign only in Hindi. Therefore, the plaintiff was held to have discharged his onus regarding execution of the agreement to sell by the first and the second defendants only. Accordingly, the Issue was decided in favour of the plaintiff and

against first and second defendants only, who were directed to perform their part of the contract by execution of the sale deed in terms of the agreement to sell dated 20.01.2003 to the extent of their share only, i.e., 1/3rd each. On Issue No.2, it was held that no material facts were concealed by the plaintiff, accordingly, the issue was decided against defendants.

8. Against the judgment and decree of the trial Court dated 02.02.2012, both, the plaintiff and first and second defendant, filed appeals before lower appellate Court, which were jointly decided by the impugned judgment and decree dated 15.01.2014. The appeal filed by the two defendants was dismissed except for the modification, the defendants would be liable to pay an amount of ₹3 lakh with costs of the suit along with interest at the rate of 9% per annum from the date of advancement of the amount till the date of passing of the decree and 6% per annum thereafter till recovery. The plaintiff's appeal was allowed by granting the alternative relief of recovery of ₹3 lakh with costs along with interest at the rate of 9% per annum from the date of advancement of the amount till the date of passing of the decree and at the rate of 6% thereafter till recovery.

9. The lower appellate Court held that initially the defendants denied execution of the agreement to sell altogether and also passing of any sale consideration, but in the evidence, a totally different version was given by them that signatures of the first and second defendants were obtained on blank papers on account of some financial transactions which were later on converted into the agreement to sell (Ex.P1). There was no evidence *qua* any financial transaction on record nor was there any explanation for affixing signatures on blank papers by the first and second defendants. On the other hand, there was positive evidence of execution of the agreement and passing of sale consideration thereupon. Even if some documents were produced by

the third defendant to prove that he used to affix signatures in Hindi, that in itself was not sufficient to disprove execution of the agreement. All the three defendants, who are brothers, filed a joint written statement, and no financial dealings to establish their signatures having been obtained on blank papers could be proved on record. Therefore, there was no reason to believe that the agreement in question was not signed or executed by the third defendant. Findings of the trial Court to the contrary were found erroneous, and the agreement to sell (Ex.P1) was held duly proved to have been executed by the defendants on receipt of an amount of ₹2.5 lakh as earnest money and further an amount of ₹50,000 as part sale consideration on 27.03.2003.

10. Despite holding that the agreement to sell was validly executed, the lower appellate Court did not decree the suit by ordering execution of the sale deed; instead the alternative relief of recovery of earnest money was granted on the ground that the decree for specific performance of contract could not be enforced. The defendants only own 3/4th share in the suit property/residential house, i.e., 1/4th each, along with their Mohiri Devi, who owned the remaining 1/4th share. It was also observed that as per recital in the agreement to sell (Ex.P1), the defendants were to take necessary steps for getting the sale deed executed by successors of their mother Mohiri Devi, who, apart from the defendants, had other legal heirs also but the same were not impleaded as party to the suit, nor is there any evidence with regard to inheritance and succession of the deceased Mohiri Devi.

11. Only the plaintiff has come in regular second appeal before this Court challenging the judgment and decree passed by the lower appellate Court in both the appeals before it, granting the alternate relief of recovery. The defendants have not challenged the judgment and decree of the lower appellate Court.

12. In this background, the following substantial question of law arises for consideration in the instant regular second appeal:

> Whether specific performance of the agreement to sell, that has been duly proved on record as having been executed by the defendants, can be denied on account of the defendants' failure to obtain absolute title of the suit property?

13. It is a case where the Courts below on due appreciation of evidence have held that the agreement to sell dated 20.01.2003 (Ex.P1) has been duly executed between the parties with respect to the residential house measuring 32 sq. yards. It is also an admitted fact on record, as testified by the third defendant Hari Ram, that the three defendants were co-sharers in the suit property to the extent of $1/4^{th}$ share each. It devolved upon them through natural succession on the death of their mother Mohiri Devi. The recital in the agreement to sell is that the defendants are to take necessary steps for getting the sale deed executed by successors of their mother Mohiri Devi, who is shown owner of the house property to the extent of $1/4^{th}$ share in the record of ownership. For a suit of specific performance, the recitals in the agreement, its due execution and passing of consideration for the *bona fide* purpose are to be seen. It is the settled law that no vendor can sell property beyond his share. At the same time, he remains bound to execute the sale deed to the extent of his share, even if the property is joint and other co-sharer(s) have not joined the agreement. Further, whenever the share in property is transferred to the vendee, he has a right to seek partition and get his share demarcated. The Court is not to go into the question of inheritance or title of the suit property, and/or decline relief of specific performance on that account. Issues relating to title of the suit property are beyond the scope of specific performance of a valid agreement to sell.

14. The law in this regard is well settled. A reference can be made to judgment of the Supreme Court in *Kammana Sambamurthy (Dead) by LRs v. Kalipatnapu Atchutamma (Dead) and others* 2011 (11) SCC 153, wherein it was held as under:

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> 25. In *A.Abdul Rashid Khan v. P.A.K.A. Shahul Hamid (2000) 10 SCC 636*, this Court held that
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> (a) "even where any property is held jointly, and once any party to the contract has agreed to sell such joint property by agreement, then, even if the other co-sharer has not joined, at least to the extent of his share", the party to the contract is bound to execute the sale deed. In that case, the suit property originally belonged to one Aziz Khan. On his death, his heirs under the Muslim law- nine sons and two daughters inherited that property.
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> (b) The sons agreed to sell that property to the first respondent therein. However, some dispute arose between the parties and that necessitated the first respondent therein to file the suit for specific performance in which the executants of the agreement as well as the two daughters of Aziz Khan were impleaded as defendants.
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> 26. It was the admitted case in Rashid Khan case that the daughters of Aziz Khan had not joined in the agreement of sale. The trial court dismissed the suit by holding that the agreement was indivisible and could only be enforced if the daughters of Aziz Khan agreed.

The first respondent therein preferred an appeal before the High Court against the judgment and decree of the trial court. The High Court held that he had not pleaded and proved that the daughters of Aziz Khan had agreed to sell the suit property and hence, it cannot be held that the said agreement was by all the heirs of Aziz Khan. The two daughters of Aziz Khan were held not bound by the agreement. However, the High Court held that insofar as the executants of the agreement (sons of Aziz Khan) were concerned they were bound by it and valid and enforceable contract existed between the first respondent and the sons of Aziz Khan. The High Court, accordingly, granted decree for specific performance to the extent of $5/6^{th}$ share which Aziz Khan's sons had in the property. This Court affirmed the decree of the High Court and it was held that the plaintiff's suit for specific performance to the extent of $5/6^{th}$ share was rightly decreed by the High Court warranting no interference. While holding so, this Court relied upon an earlier decision in *Manzoor Ahmed Magray v. Ghulam Hassan Aram*, (1999) 7 SCC 703.

27. In view of the above decisions of this Court and the facts and circumstances which have already been noticed by us, in our opinion, there is no impediment for enforcement of the agreement against the vendor to the extent of his half-share in the property.

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15. In view of the aforesaid facts as well as the settled position in law, there can be no hindrance in granting the decree for specific performance of the agreement with respect to the suit property to the extent of the three defendants' share in it, i.e., 1/4th each. The substantial question of law stands answered accordingly.

16. The present appeals are allowed, and the suit of the plaintiff is decreed by holding that defendants No.1, 2 and 3 shall perform their part of the contract by execution of the sale deed in terms of the agreement to sell dated 20.01.2003 to the extent of their share only, i.e., 1/4th each, within a period of three months, failing which the plaintiff shall be entitled to get the sale deed executed and registered through the process of law. The judgments and decree of the Courts below shall stand modified to the extent aforestated.

17. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

18. A photocopy of this order be placed on the connected file.

(TRIBHUVAN DAHIYA)
JUDGE

24.01.2023
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes