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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-6369-2014 (O&M)
Date of Decision: November 17, 2023

GURNAM SINGH and ORS. ..... Appellants

Versus

PAL SINGH and ORS. ..... Respondents

RSA-6329-2014 (O&M)

GURNAM SINGH and ORS. ..... Appellants

Versus

ANUJ SHARMA and ORS. ..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.V. Sharma, Sr. Advocate with
Ms. Sunder Kumari, Advocate for appellants.

Mr. Kanwaljit Singh Sr. Advocate with
Mr. Robin Gill, Advocate for respondent No.1.

Mr. Nand Lal Sammi, Advocate for respondent No.1 in RSA-6369-2014 and for respondent No.7 in RSA-6329-2015.

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HARKESH MANUJA, J. (ORAL)

This order of mine shall decide above-mentioned two appeals which arise out of common judgment and decree dated 25.08.2024, passed by the First Appellate Court and involve common question of law and facts. For convenience, facts are being drawn from RSA-6369-2014.

2. By way of present appeals, challenge has been laid to the judgment and decree dated 25.08.2014 passed by the First Appellate Court whereby, a suit for possession by way of specific performance, as

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well as permanent injunction, filed at the instance of appellants-plaintiffs stood dismissed on an appeal filed by respondent No.1, claiming himself to be legal heir of deceased-vendor namely, Hazara Singh.

3. Very briefly, based on an agreement to sell dated 24.11.1993 pertaining to land measuring 24 kanal and 8 marla comprised in Khata No.135/183, Khasra No.26//16, 17/1, 24, 25, 33//4,5/1 situated in Village Jainpur, Tehsil and District Ludhiana, the appellants/plaintiffs, filed a suit for possession by way of specific performance. It was averred in the plaint that the agreement was entered into between Harnam Singh i.e. plaintiff No.2 and Hazara Singh @ Rs.4.10 lakhs per acre with 16.08.1994 being the target date and a sum of Rs.1,00,000/- was paid as earnest money. It was further alleged that on 30.11.1993 another sum of Rs.1,00,000/- was paid to vendor-Hazara Singh and the possession of land in question was handed over the appellants-vendees. In the plaint, it was also mentioned that on account of some threat at the hands of Hazara Singh, about alienation of the property in question, a suit for permanent injunction was filed against him on 02.04.1994. In the said suit, Hazara Singh, appeared and filed the written statement on 25.07.1994, disputing the factum of execution of agreement to sell dated 24.11.1993 and later, the said suit was withdrawn on 06.08.1994, seeking liberty to file another suit for possession by way of specific performance and that is how the present suit was filed on 09.08.1994, seeking relief for possession by way of specific performance based on agreement to sell dated 24.11.1993, besides, claiming permanent injunction as well.

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4. Originally the suit was filed only against Hazara Singh whereas, later, during pendency, the property in question having been sold in favour of respondent No.9 vide registered sale deeds dated 14.05.1999 and 18.05.1999, he was impleaded as a party-defendant.

5. In the present case separate written statement was filed, one on behalf of Hazara Singh, denying the factum of execution of agreement to sell dated 24.11.1993 as well as the receipt of earnest money from the appellants-plaintiffs. The maintainability of suit was also questioned being barred by Order 2 Rule 2 CPC. In his separate written statement, respondent No.9/defendant No.9 claimed himself to be a bona fide purchaser based on sale deeds dated 14.05.1999 and 18.09.1999,against valid sale consideration.

6. The trial Court vide judgment and decree dated 29.08.2011 decreed the suit in favour of appellants-plaintiffs granting relief of possession by way of specific performance in their favour while holding the valid execution of agreement to sell dated 24.11.1993 as well as the endorsement, (Ex. P2) besides, finding them to be ready and willing to perform their part of the said agreement. It was further held that the suit was not barred under Order 2 Rule 2 CPC and the respondent No.9/defendant No.9 failed to prove himself being bona fide purchaser. Aggrieved thereof, two separate sets of appeals were filed by two separate sets of respondents i.e. one by the legal heir of Hazara Singh and other one by the subsequent purchaser i.e. Anuj Sharma. The First Appellate Court vide judgment and decree dated 25.08.2014 disposed of both the said appeals. The First Appellate Court though, upheld the

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findings regarding the valid execution of agreement to sell dated 24.11.1993 (Ex. P-1) besides, even upholding the readiness and willingness in favour of appellants-plaintiffs yet, non-suiting them on the ground of suit being hit by Order 2 Rule 2 CPC while relying upon the previous suit for permanent injunction filed on 02.04.1994, the same having been withdrawn vide order dated 06.08.1994 wherein, no liberty was granted for the purpose of filing of any fresh suit.

7. Impugning the aforementioned judgment and decree dated 25.08.2014, learned Senior counsel representing the appellants submits that the suit for possession by way of specific performance, filed at the instance of appellants-plaintiffs on 06.08.1994 was never hit by Order 2 Rule 2 CPC as the cause of action in both the suits i.e. suit for permanent injunction as well as suit for possession by way of specific performance was wholly separate and distinct. He further submits that even at the time of seeking withdrawal of previous suit for permanent injunction, the appellants-plaintiffs sought permission from the trial Court so as to file a fresh suit for possession by way of specific performance and thus, the proposition of law as laid down by Hon'ble Apex Court in case of "**M/s Virgo Industries (Eng) P.Ltd Vs. M/s Venturetech Solutions P. Ltd. 2012(4) R.C.R. (Civil) 372"** was duly followed. Learned Senior counsel further submits that once the findings regarding valid execution of agreement in question were recorded, the same having been proved on record as Ex.P-1; one of the appellants-plaintiffs namely, Sham Singh having appeared as PW-1 and proved the readiness and willingness on their part, suit was required to be

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decreed. He further points out that even in the absence of there being any cross-appeal or cross-objections filed at the instance of respondents-defendants, qua the findings regarding readiness and willingness, they were stopped from questioning the same in the present appeal.

8. Furthermore, learned Senior counsel points out that respondent No.9/defendant No.9 having failed to appear in the witness-box except through his attorney was even stopped from raising the plea of he being a bona fide purchaser besides, rebutting the readiness and willingness duly proved by the appellants-plaintiffs. Learned Senior counsel also points out that even two of the legal heirs of vendor-Harnam Singh executed sale deeds dated 26.03.1996 (Ex.P-6) and 06.04.1999 (Ex.P-28) in favour of the appellants-plaintiffs thereby admitting the execution of agreement to sell dated 24.11.1993 by their father, Hazara Singh.

9. On the other hand, learned Senior counsel representing respondent No.9/defendant No.9 submits that in the present case the agreement in question dated 24.11.1993 (Ex.P-1) was never proved on record. He points out that the agreement was signed by Harnam Singh/appellant No.2-plaintiff No.2 as vendee-purchaser, however, neither he appeared in the witness-box, nor even the same was proved through the scribe. Learned Senior counsel further submits that neither the payment of earnest money was established on record, nor even the readiness and willingness on the part of appellants-plaintiffs was proved. He further points out that for the purpose of establishing

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readiness and willingness, statement of account (Ex.P-4) was produced on record, which pertained to Gurnam Singh/appellant No.1-plaintiff No.1 though, he never signed the agreement in question being purchaser, nor he even appeared in the witness-box and even the said statement of account was illegible as regards the date of deposit and thus, in the absence of there being any witness having appeared from the concerned Bank, the same could not have been relied upon.

10. Learned Senior counsel further points out that the findings recorded by the First Appellate Court warrants no interference as regards the suit been dismissed being barred by Order 2 Rule 2 CPC. He points out that even in the original plaint dated 02.04.1994, the appellants-plaintiffs made specific averments regarding refusal by the seller qua the agreement in question as well as the denial about execution of the sale deed in their favour and therefore, once the cause of action for the purpose of filing of suit for specific performance accrued in their favour on 02.04.1994 itself, the present suit, filed on 06.08.1994 was clearly hit by the Order 2 Rule 2 CPC, in terms of law laid down by the Hon'ble Apex Court in case of "**M/s Virgo Industries (Supra)"** and decision in case of "**Sucha Singh Sodhi (deceased) through LRs Vs. Baldev Raj Walia and Anr. 2014(2) Civil Court Cases 318 (Delhi)".**

11. Learned Senior counsel further submits that the Appellate Court went wrong to the extent of holding that the readiness and willingness on the part of appellants-plaintiffs was not required to be gone into in terms of denial of agreement in question by the vendor

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Hazara Singh in his written statement. He points out that *de hors* the denial of agreement in question, the readiness and willingness was required to be established by the appellants-plaintiffs as enjoined under Section 16(c) of the Specific Relief Act, 1963 (hereinafter referred to as '1963 Act') as a statutory obligation. Learned Senior counsel further submits that in the present case, agreement to sell was executed on 24.11.1993 thus, the statutory relief being discretionary in nature was not required to be granted at this stage after expiry of almost 30 years. He further points out that there was no substance in the submissions made on behalf of appellants-plaintiffs as regards non-filing of cross-objections qua the findings recorded in favour of appellants-plaintiffs on the point of valid execution of agreement in question, besides they being ready and willing to perform their part of the same as respondent No.9/defendant no.9 was having every right to support the decree passed by the First Appellate Court and seeking appropriate relief in terms of Order 41 Rule 33 CPC. The arguments addressed by learned counsel for respondent No.9/defendant No.9 have been adopted by the learned counsel representing the other respondents-defendants.

12. I have heard learned counsel for the parties and gone through the paper-book as well as records. I find substance in the submissions made on behalf of appellants-plaintiffs.

13. In the present case, the suit for possession by way of specific performance has been filed on the basis of agreement to sell dated 24.11.1993 (Ex.P-1). Though, the execution of agreement in question came to be denied by Harnam Singh-defendant No.1,

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however, the same was duly proved on record by one of the plaintiffs i.e. Sham Singh who appeared as PW-1 besides, one of marginal witness Sukhdev Singh s/o Kahla Singh while appearing as PW-2. Still further, three of the legal heirs of vendor-Hazara Singh, namely, Nirmal Singh, Bhag Singh and Mohinder Singh executed two separate sale deeds qua their share in the suit property, in favour of appellants-defendants on 26.03.1996 and 06.04.1999 vide Ex. P-6 and Ex.P-28 respectively, admitting and reinforcing the factum of execution of agreement to sell dated 24.11.1993 at the hands of their father-Hazara Singh in favour of appellants-plaintiffs. In addition, a concurrent finding of fact has been recorded by both the Courts below regarding valid execution of agreement in question dated 24.11.1993 (Ex.P-1) which needs no interference at the instance of respondents, there being no misreading of any material evidence or the pleadings on the aspect.

14. Further, there is merit in the contention on behalf of respondent No.9/defendant No.9 to the effect that despite there being denial of agreement to sell on the part of vendor, the appellants-plaintiffs were under statutory obligation to prove their readiness and willingness in terms of Section 16(c) of the '1963 Act'. Considering the said Government entries on merits, in the given facts and circumstances, though plaintiff No.2-appellant No.2 Harnam Singh who signed the agreement in question did not appear to prove the same, however, upon a perusal thereof it comes out that the deal was struck in favour of all the three brothers i.e. appellants-plaintiffs though, the document was signed only by one of them, namely, Harnam Singh.

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The filing of suit seeking specific performance of agreement to sell dated 24.11.1993 jointly by all the three brothers further fortified the intent of the agreement that the transaction was entered on behalf of of them and once one of them, namely, Sant Singh appeared as PW1 having produced the statement of account of the other brother, namely, Gurnam Singh as Ex. PW-4 showing adequate amount available towards the balance sale consideration, their readiness and willingness was duly established on record, particularly when no rebuttal qua the said statement of account was ever put forth to Gurnam Singh in his lengthy cross-examination. Even the promptness in filing of the suit at the instance of the appellants-plaintiffs also further their cause towards establishing their willingness to perform their part of the agreement dated 24.11.1993.

15. Having said that, the point of law for consideration of this Court, in the present appeal is the following:-

(i) Whether having recorded the finding qua the valid execution of agreement to sell dated 24.11.1993 besides, the appellants-plaintiffs being ready and willing to perform the part of the same, the First Appellate Court could have non-suited them while holding the suit being barred by Order 2 Rule 2 CPC?

16. In the given facts, the agreement to sell in question was executed on 24.11.1993 with 16.08.1994 being the target date. A suit for permanent injunction was filed on behalf of the appellants-plaintiffs on 02.04.1994 with a prayer for restraining vendor-Hazara Singh from

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alienating the suit property, though expressing positive apprehension about denial of the execution of the sale deed. The said suit was withdrawn by moving an application dated 06.08.1994 (Ex.PW-3/B) wherein, a specific permission was sought from the trial Court so as to file a fresh suit for the appellants-plaintiffs to withdraw the suit for permanent injunction. Though, the trial Court, vide order dated 06.08.1994 (Ex>p-27) permitted the appellants-plaintiffs to withdraw the suit for permanent injunction, yet failed to grant any express permission to file fresh suit for possession by way of specific performance. The order dated 06.08.1994 passed in the previous suit being relevant is reproduced hereunder:-

> "Shri Kamaljit Singh Gill counsel for the plaintiff moved an application on which the present case taken up today. In the application, it is stated that as the plaintiff files to another suit as cause of action arose to him to file the suit for specific performance and he showed his attention to withdraw the suit.
>
> Statement of counsel for the plaintiff recorded, in view of which the present suit is, hereby dismissed as withdrawn. File be consigned to record room."

17. Once the trial Court, vide order dated 06.08.1994 permitted the appellants to withdraw the suit for permanent injunction on an application filed by them wherein, the permission to file fresh suit for possession by way of specific performance was sought for at their instance, it resulted into deemed permission, allowing the appellants-plaintiffs to file fresh suit for possession by way of specific performance and thus Order 2 Rule 2 CPC was not applicable. Support can be drawn in this regard from a decision rendered by Hon'ble Apex Court in case of **"Gurinderpal Vs. Jamittar Singh 2004(11) SCC-219,** relevant para No.6 is reproduced hereunder:-

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> *"Having heard the learned counsel for the parties, we are satisfied that the judgment of the High Court as also of the First Appellate Court cannot be sustained to the extent to which the bar enacted under Order 2 Rule 2 C.P.C. has been applied. The provisions of Order 2 Rule 2 of C.P.C. bar the remedy of plaintiff-appellant and, therefore, must be strictly construed. The order of the trial court dated 15th June, 1994 passed in the earlier suit, extracted and reproduced hereinabove, has to be read in the light of the statement of the plaintiff-appellant recorded by the Court on that very date. The plaintiff-appellant had clearly stated that he was seeking leave to withdraw the suit with the liberty of filing a fresh suit. The trial court recorded that the suit was being dismissed as withdrawn 'in view of statement of plaintiff. A conjoint reading of the order of the Court and the statement of the plaintiff, clearly suggests that the suit was dismissed as withdrawn because the plaintiff wanted to file a fresh suit obviously wherein the plaintiff would seek the decree of specific performance and not of a mere injunction as was prayed for in the suit which was sought to be withdrawn. In the subsequent suit, the First Appellate Court was not right in forming an opinion that liberty to file the fresh suit was not given to the plaintiff in the order dated 15th June, 1994. That finding of the First Appellate Court ought not to have been sustained by the High Court."*

Accordingly, the point of law posed is answered in the aforesaid manner.

18. Furthermore, no merits can be found in the submissions made on behalf of the subsequent purchaser i.e. respondent/defendant No.9 while he seeking relief of declaration qua him as that of a bona fide purchaser. Once the sale deeds dated 14.05.1999 and 18.05.1999 (Ex. DW3/1 and DW/4/1) were executed during pendency of the suit for possession by way of specific performance, filed on 06.08.1994, the same being hit by the principle of lis pendens, thus, respondent No.9/defendant No.9 could not be treated as a bona fide purchaser.

19. Lastly, in the humble opinion of this Court, the appellants-plaintiffs who have been pursuing their rights under the agreement to sell dated 24.11.1993 since the date of filing of first suit on 02.04.1994, having proved the execution of agreement to sell in question besides, having established their readiness and willingness, cannot be non-suited merely on the ground that the adjudication of lis between the

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parties has taken 30 years, resultantly, though the relief of specific performance being a discretionary relief, the same cannot be denied to the appellants-plaintiffs merely on account of delay in adjudication of the legal remedies availed by them.

20. Finally, for the reasons recorded hereinabove, the present appeal is allowed, the judgment and decree dated 25.08.2014 passed by the Appellate Court is hereby set aside and the suit filed at the instance of appellants-plaintiffs as regards grant of decree for possession by way of specific performance is allowed in their favour subject to deposit of the balance sale consideration with the trial Court within a period of two months from today with the observations that the sale deeds dated 14.05.1999 and 18.09.1999, executed in favour of respondent No.9/defendant No.9 shall affect the right of the appellants-plaintiffs.

Decree-sheet be prepared accordingly.

A photocopy of this order be placed on connected case file.

All pending applications shall stand disposed of.

17.11.2023 (**HARKESH MANUJA**)
tejwinder **JUDGE**

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

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