



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA-491-1994

Date of decision: 08.05.2024

SUKH DEVI & ORS.

..Appellants

Versus

LAL CHAND (DECEASED) THROUGH LRs & ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.S. Rana, Advocate
for the appellants.

Mr. Sandeep Vermani, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The defendants are in regular second appeal against the judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial Court.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Sh. Mansa Ram was owner of the property. He died leaving behind a widow (Smt. Sukh Devi), a daughter (Smt. Raj Miglani) and four sons (Sh. Parma Nand, Sh. Vasistha Nath, Sh. Aas Karan and Sh. Yash Batra). The suit property is situated in Village Malab, Tehsil Nuh, now District Nuh. On 11.05.1977, Smt. Sukh Devi, retired lieutenant Col. Parma Nand, Sh. Vasistha Nath and Smt. Raj Miglani entered into an agreement to sell in favour of the plaintiffs with respect to their share of the suit land for a total sale consideration of Rs.13,000/-, out of which, Rs.3,200/- was received in cash and the sale deed was to be executed within a period of one month

from the date of mutation of inheritance of Sh. Mansa Ram in favour of



proposed vendors. As per the evidence available on record, the mutation No.7238 dated 19.09.1980 was sanctioned in favour of heirs of Sh. Mansa Ram. On 08.01.1981, the defendants sent notice calling upon the plaintiffs to get the sale deed executed within a period of three days. Thereafter, the plaintiffs sent a telegram on 20.01.1981 that they are ready and willing to perform their part of the contract.

4. The plaintiffs alleged that the defendants did not come to the office of the Sub-Registrar. It is claimed by the plaintiffs that the defendants extended the period for execution and registration of the sale deed upto 31.10.1983. Sh. Sain Dass, husband of Smt. Raj Miglani informed the plaintiffs that Smt. Sukh Devi has appointed Sh. Radhey Shyam as her power of attorney to execute the sale deed on 30.04.1983 on receipt of Rs.12,000/- out of the total sale consideration of Rs.18,000/-. The plaintiffs are alleged to have filed suit for injunction on 06.05.1983, in which temporary injunction was granted. The plaintiffs filed the suit on 12.10.1983 claiming relief of specific performance of the agreement to sell. They also claimed to be in possession of the property as tenants. It was also alleged that defendant No.7 Sh. Radhey Shyam has sold the property in favour of defendant No.3 to 6, his children.

5. Defendant No.1 and 2 did not contest the suit. Defendant No.3 to 7 asserted that they have no knowledge of the agreement to sell and Smt. Sukh Devi and Sh. Vasistha Nath appointed Sh. Radhey Shyam as power of attorney on receipt of the part of sale consideration. Subsequently, Sh. Radhey Shyam sold the property in favour of his children.

6. The trial Court dismissed the suit while recording the following reasons:-



- i. Sh. Radhey Shyam, was not impleaded as party to the suit for permanent injunction.
- ii. The plaintiffs did not take any step for implementation of the agreement to sell between October, 1980 and April, 1983.
- iii. The plaintiffs were not ready and willing to perform their part of the contract.

7. The First Appellate Court has reversed the judgment of the trial Court on the following grounds:-

- i. Sh. Radhey Shyam-defendant No.7 being attorney of defendant No.1 and 2 is presumed to have knowledge of the agreement to sell. Hence, the power of attorney executed by defendant No.1 and 2 in favour of defendant No.7 is illegal.
- ii. The sale deed in favour of defendant No.3 to 7 was executed on 11.05.1983 and defendant No.7 will be deemed to be bound by the injunction order.
- iii. The injunction order was noted by the patwari in the daily diary report and it must have been in the knowledge of the defendant No.3 to 7.
- iv. The plaintiffs are in possession of the property as tenants and defendant No.3 to 6 are recorded as sub-tenants under the plaintiffs. Hence, they are presumed to have knowledge of the agreement to sell.
- v. Though, there is a complete silence on the part of the plaintiffs for a period of two years after receipt of notice



in January, 1981, sent by defendant No.1 and 2, however, that is not sufficient to deny the relief of specific performance.

vi. The trial Court has erred in exercising discretion in favour of defendants.

vii. The plaintiffs have proved that they visited the office of Sub-Registrar on 23.01.1981 and in order to prove that fact, they filed application before the Sub-Registrar on which, endorsement was made by the Sub-Registrar.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

9. The learned counsel representing the appellants submits that the First Appellate Court has erred in reversing the judgment of the trial Court. He submits that the plaintiffs were never ready and willing to perform their part of the contract and in fact, they were delaying the execution of the sale deed.

10. Per contra, the learned counsel representing the respondent submits that the plaintiffs have proved their readiness and willingness by producing Ex.P-3, which shows that the plaintiffs visited the office of the Sub-Registrar on 23.01.1981. He further submits that in the written statement, the defendants have not made any reference to the agreement to sell dated 30.04.1983.

11. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.



12. Ex.P-1 is the agreement to sell between Smt. Sukh Devi, Sh. Parma Nand, Sh. Vasistha Nath and Smt. Raj Miglani in favour of the plaintiffs. As per the aforesaid agreement to sell, the sale deed was to be executed within a period of one month from the date of mutation of inheritance, which was sanctioned on 19.09.1980. It is the defendants, who sent notice on 08.01.1981 to the plaintiffs for registration of the sale deed. The plaintiffs vide telegram dated 20.01.1981, stated that they are ready and willing to perform their part of the contract. On 23.01.1981, the plaintiffs visited the office of the Sub-Registrar, however, thereafter, there is a complete silence and inaction on the part of the plaintiffs from January, 1981 till 06.05.1983.

13. Although, the plaintiffs have claimed that the date for execution of the sale deed was extended, however, the plaintiffs have failed to produce any such document.

14. Smt. Raj Miglani has sold her share in favour of the plaintiffs on 30.05.1983. Despite repeated requests, the learned counsel representing the plaintiffs has failed to draw the attention of the Court to any document or endorsement showing an agreement to extend the period for execution of the sale deed. In fact, there is no document or endorsement dated 06.05.1983, extending the period for execution of the sale deed as claimed by the plaintiffs in the plaint. In clear absence of any document showing the extension of time for executing the sale deed, it is incorrect to presume such extension on the basis of only an averment.

15. It is also proved on the file that on 30.04.1983, on receipt of Rs.12,000/-, the total sale consideration, Smt. Sukh Devi, Smt. Raj Miglani, Sh. Parma Nand, Sh. Vasistha Nath, Sh. Aas Karan and Sh. Yash Batra,



executed a registered general power of attorney in favour of Sh. Radhey Shyam, authorizing him to deal with the property in any manner including sale thereof. It is the case of the plaintiffs that Sh. Sain Dass, husband of Smt. Raj Miglani informed the plaintiffs about the aforesaid power of attorney, however, while filing the suit for injunction, the plaintiffs did not implead Sh. Radhey Shyam as defendant.

16. The First Appellate Court has presumed that the defendants must have the knowledge of prior agreement to sell. Presumption of knowledge in this case cannot be a ground to declare that the defendants are not the bonafide purchasers. As per the **“Doctrine of Imputed Knowledge”**, any presumption regarding the knowledge of an agent acquired prior to his agency is bad in law, when it can not been clearly shown and proved that it was a material information which had to be in knowledge of such agent under every circumstance and is present in his mind and memory at the time of the transaction in question and that too will depend upon lapse of time and other circumstances.

17. Thus, the presumption asserted by the First Appellate Court regarding knowledge cannot be said to be correct in eyes of law as defendant No.7 in such circumstances and due to lapse of time cannot be presumed to be having knowledge of such transaction when there was complete silence on part of the plaintiffs.

18. Even if it is assumed to be correct, still the plaintiffs were required to prove that they were always ready and willing to perform their part of the contract. The First Appellate Court has held that there is complete silence on the part of the plaintiffs for a period of two years. In any case, the



plaintiffs have failed to prove that the period for execution of the sale deed was ever extended by defendant No.1 and 2.

19. This Court cannot overlook the fact that Smt. Raj Miglani sold her share in favour of the plaintiff on 30.05.1983, hence, there was no occasion for her to execute fresh agreement to sell on 28.09.1983, i.e. after a period of four months from the date of execution of the sale deed. In any case, defendant No.1 and 2 had after receipt of sale consideration executed a power of attorney in favour of Sh. Radhey Shyam on 30.04.1983. Hence, a right was created in favour of Sh. Radhey Shyam as provided under Section 202 of the Indian Contract Act, 1872, which could not be cancelled.

20. The First Appellate Court has erred in observing that defendant No.3 to 7 were bound by the temporary injunction order particularly when neither defendant No.7 was impleaded as party in the injunction suit nor he was informed of the injunction order. Even if the injunction order was brought to the notice of the Patwari, still in absence of concrete information that the aforesaid order was brought to the notice of defendant No.3 to 7, the First Appellate Court has erred in drawing presumption. Further the First Appellate Court has erred in presuming that defendant No.3 to 6 are presumed to have knowledge because they are sub-tenants under the plaintiffs.

21. For proving that the plaintiffs were always ready and willing to perform their part of contract, the plaintiffs were required to prove that they were taking active steps for execution and registration of the sale deed. Mutation of the land was sanctioned in favour of the heirs of Sh. Mansa Ram on 19.09.1980. Defendant No.1 and 2 sent a notice to the plaintiffs on 08.01.1981, which was replied on 20.01.1981. Thereafter, the plaintiff did



not take any step. There is no explanation on behalf of the plaintiffs either in the plaint or in his testimony about the inaction on their part for more than two years.

22. Thus, the trial Court correctly held that the plaintiffs were not ready and willing to perform their part of contract.

23. In such circumstances, there is no occasion for the First Appellate Court to hold that the trial Court erred in refusing to exercise jurisdiction in favour of the plaintiffs.

24. Consequently, the appeal is allowed and the judgment passed by the First Appellate Court is set aside, whereas, that of the trial Court is restored.

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

May 08th, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No