

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

RSA-317-1998 (O&M)
Date of decision: 02.02.2024

SAWINDER SINGH

..Appellant

Versus

HARDEV SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. G.K. Mann, Sr. Advocate
with Mr. Gursewak Singh, Advocate
and Mr. Sunil Kumar, Advocate
for the appellant.

Mr. Baldev Raj Mahajan, Sr. Advocate
with Mr. Prateek Mahajan, Advocate
and Mr. Daanish Mahajan, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs Vs. Chandrika and others, (2016) 6 SCC 157.**

2. In this regular second appeal, defendant No.1 assails the correctness of the judgment and decree passed by the First Appellate Court while decreeing the plaintiff's suit for grant of decree of declaration by way of specific performance of the agreement to sell. The trial Court held that defendant executed the agreement to sell in favour of the plaintiff with respect to land measuring 14 kanal and 16 marlas. However, the relief of specific performance was declined while granting alternative relief of refund

on the ground that defendant No.2 to 6 are bonafide purchasers. The First Appellate Court on reappreciation of evidence concluded that defendant No.2 to 6 are not bonafide purchasers and in fact they are close relatives of not only the plaintiff but also of the defendant No.1. They are also neighbours and co-villagers. Moreover, Sh. Karnail Singh-defendant No.2 has admitted that Sh. Sawinder Singh-defendant No.1 is his uncle, whereas, Sh. Hardev Singh-plaintiff is his cousin. Thus, the First Appellate Court held that defendant No.2 to 6 are not proved to be bonafide purchasers.

3. Defendant No.2 to 6 have not filed any second appeal. This appeal has been filed by defendant No.1 (the original vendor).

4. On 09.02.1998, the appeal was admitted on the following substantial question of law:-

“Whether in a suit for specific performance, the plaintiff seeks an alternative relief of the refund of earnest money and that relief has been granted by the trial Court, can the plaintiff file an appeal seeking the main relief of specific performance.”

5. The learned Senior counsel representing the respondent has submitted that a Full Bench of the Madras High Court in **Annapoorni Ammal (died) and others Vs. Ramaswami Naicker and others, AIR 1990 (Madras) 361**, held that the plaintiff is entitled to file an appeal against the judgment passed by the trial Court while refusing to grant him specific performance of the agreement to sell, even when the suit is decreed with alternative relief of refund of earnest money along with interest.

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

7. The learned Senior counsel representing the appellant submits that the First Appellate Court has erred in reversing the finding of the trial Court with respect to defendant No.2 to 6 being bonafide purchasers for valuable consideration. She submits that there is no evidence to prove that defendant No.2 to 6 had the knowledge of the agreement to sell at the time of registration in their favour. She further submits that even if defendant No.2 to 6 have not filed the appeal, still defendant No.1 is entitled to assail the correctness of the judgment passed by the First Appellate Court.

8. On the other hand, the learned Senior counsel representing the respondent while drawing the attention of the Court to the finding of fact arrived at by the First Appellate Court in para 12 of the judgment, submits that there is no scope for interference in this appeal.

9. This Court has considered the submission of the learned Senior counsel representing the parties.

10. The findings of fact arrived at by the First Appellate Court in para 12, reads as under:-

“The appellant-plaintiff and respondents No. 1 to 6 are not only co-villagers but they are close relative of each other. Hardev Singh, appellant-plaintiff tells in his statement that Savinder Singh and Dalbir Singh-respondents/defendants are his uncles and that respondents No. 2 to 5 are his cousins. Nishan Singh respondent No.5 is the son of Jarnail Singh, while respondent No.6 Beer Kaur is the widow of Jarnail Singh. He further states that the houses of the respondents are situated near to his house. Their land is joint. Savinder Singh respondent-defendant tells in his statement dated 17.12.1994 that respondents/defendants No.2 to 6 are the residents of his village and they are the cousin brother of Hardev Singh-appellant-plaintiff. Balkar Singh D.w. 2, who is the attesting witness of the sale deed Ex.D1 states in cross-examination that the respondents-defendants and Hardev Singh appellant-plaintiff reside in the same village. They have got

adjoining houses. Even, Karnail Singh, respondent-defendant No.2, one of the vendees has admitted as such in his cross examination. He states that Savinder Singh respondent/defendant is his uncle. Hardev Singh, appellant-plaintiff is his cousin, being son of another uncle. Their houses adjoin the house of Hardev Singh. They are in corcial terms with each other. The entire khata is joint with the appellant-plaintiff. However, according to him Hardev Singh was told that they were going to purchase the suit land from respondent No.1. According to him, he had also inquired from appellant-plaintiff regarding agreement but he had answered in negative. But the version of the respondents/defendants that the appellant plaintiff did not tell about the existence of the agreement in his favour is not acceptable at all. When the parties have got joint khata and are closely related to each other, it cannot be stated that the respondents/defendants have got no knowledge about the execution of the agreement by respondent No. 2 in favour of appellant-plaintiff. It is no where averred in the written statement that they had informed appellant-plaintiff that they were going to purchase land and that on enquiry about the agreement, he had answered in negative. When the agreement has been executed by the respondent No.1 in favour of appellant-plaintiff, the question of observing reticence or replying in the negative did not arise. In the written statement, it is asserted that Savinder Singh had executed the agreement to mortgage the land and not to sell the same. Be that as it may, the respondents-defendants were in the knowledge of the existence of the said agreement and despite that they have purchased the land at their own risk. By no stretch of reasoning it can be stated that they are the bonafide purchasers without notice.”

11. The learned Senior counsel representing the appellant has failed to draw the attention of the Court to any material which proves that such finding suffers from any error or perversity.

12. Keeping in view the aforesaid facts, the finding of the First Appellate Court to the effect that defendant No.2 to 6 are not bonafide purchasers does not require any interference.

13. This Bench now proceeds to decide the substantial question of law, which has already been extracted above.

14. Section 22 of the Specific Relief Act, 1963 (hereinafter referred to as the '1963 Act'), reads as under:-

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-
(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 4[made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21.”

15. It is evident that the aforesaid section starts with a *non obstante clause* and it enshrines the over-riding effect of this section over the provisions of the Code of Civil Procedure, 1908. This section was incorporated while enacting 1963 Act in order to overcome the difficulties faced by the Courts and the parties under the old Specific Relief Act, 1877. By incorporating Section 22, the statute enabled any person suing for specific performance of a contract to also seek additional relief of possession, partition and any other relief to which he may be entitled to including refund of earnest money or deposit, paid or made by him. Such alternative relief as discussed above does not in any way adversely impact

the primary relief i.e. specific performance of the agreement to sell. The

alternative relief is granted by the Court only in a case where the Court does not find it appropriate to grant the primary relief. However, the alternative relief does not substitute the primary relief. The language of Section 22 brings forth the clear intention of the legislature to enable the plaintiff to seek additional as well as alternative relief in the same suit.

16. The Full Bench of Madras High Court in Annapoorani Ammal's case (supra) has already opined that the plaintiff is not debarred from filing an appeal because he has been granted alternative relief of refund of earnest money by the Court. This Court concurs with the aforesaid view and proceeds to decide this appeal.

17. Keeping in view the aforesaid discussion, no ground to interfere is made out.

18. Dismissed accordingly.

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

February 02nd, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

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