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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4280-2019 (O&M)
Reserved on : 29.02.2024
Date of Decision : 20.03.2024

Sodagar SinghAppellant

VERSUS

Parshotam Kumar and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Parvinder Singh, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant aggrieved by the judgments and decrees dated 30.09.2015 and 10.07.2019 passed by the Trial Court and the First Appellate Court, respectively.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of agreement to sell dated 30.08.1995 of Shop-cum-Flat No.8, New Anaj Mandi, Kharar ad measuring 15 feet x 80 feet partially built executed by the predecessor-in-interest of the defendant-respondents - Ramji Dass - who subsequently died on 21.03.1996, after executing sale deed of the suit property in favour of the plaintiff-appellant on payment of balance sale consideration after deducting Rs.1,00,000/- already paid by the plaintiff-

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appellant to Ramji Dass and in the alternative a decree for Rs.2,00,000/- with interest. It was the case set up by the plaintiff-appellant that no final date was set for the execution of the sale deed, rather it was settled that Ramji Dass would procure no objection certificate (NOC) and thereafter the sale deed would be executed. It was further the case that Ramji Dass predecessor-in-interest of the defendant-respondents kept postponing the procurement of NOC, hence, the sale deed could not be executed. After his death, the plaintiff-appellant approached the legal heirs of Ramji Dass who again promised to get NOC and execute the sale deed. Further amount of Rs.70,000/- was alleged to have been received by defendant-respondent No.1 and a receipt was also alleged to have been executed. It was further averred that the plaintiff-appellant was always ready and willing to perform his part of the contract. On notice, the defendant-respondents filed their written statement and denied the execution of the agreement to sell. It was further stated that in the year 1995 the value of the suit property was Rs.10 Lacs and that there was no reason for them to have agreed to sell the suit property for Rs.1,23,000/-. It was further the stand taken that the suit was time-barred. It was further averred that at the time of filing of the suit i.e. in the year 2008, the value of the suit property was more than Rs.One crore. Replication was filed wherein the contents of the written statement were denied and those of the plaint were reiterated.

3. On the basis of the pleadings of the parties the following issues were framed :

I. Whether the plaintiff is entitled to the relief of

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possession as owner by way of specific performance of agreement to sell dated 30.8.1995 ? OPP

1A. Whether the suit is within limitation ? OPP

II. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP

IIA. Whether the plaintiff is entitled for the recovery of Rs.2,00,000/- i.e. double of the earnest money of Rs.1 lac with interest from the defendants ? OPP

III. Whether the suit is not maintainable in the present form ? OPD

IV. Relief.

4. The Trial Court vide judgment and decree dated 30.09.2015 held the plaintiff-appellant entitled to the alternate relief of recovery of Rs.1,00,000/-. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant before the First Appellate Court which appeal was dismissed vide judgment and decree dated 10.07.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that once the defendant-respondents had denied the agreement to sell they could not have questioned the readiness and willingness of the plaintiff-appellant. It is further the contention that the findings of both the Courts that the plaintiff-appellant was not ready and willing to perform his part of the agreement to sell are illegal and perverse. In support of his contentions he has relied on **Sant Singh vs. Amarjit Singh [2015(2) PLR 497]** to contend

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that once the execution of agreement to sell was denied, the defendant could not have raised the plea of readiness and willingness. Further reliance has been placed upon the judgment of **Lal Chand vs. Tek Chand [2012 (3) PLR 736]** on the same proposition of law. The learned counsel has further argued that the discretion to be exercised by the Court has to be in accordance with sound and reasonable judicial principles. In support of his arguments, reliance has been placed on the judgment of the Supreme Court in the case of **Zarina Siddiqui Vs. A. Ramalingam @ R. Amarnathan [2015 (1) SCC 705]**.

6. I have heard the learned counsel for the plaintiff-appellant.

7. In the present case the agreement to sell itself was entered into on 30.08.1995 and the suit was filed on 17.12.2008. The argument of the learned counsel that the discretion exercised by the Courts ought to have been based on reasonable judicial principles and that the discretion exercised by both the Courts was not an exercise in accordance with sound and reasonable judicial principle deserves to be rejected. There can be no quarrel with the proposition of law as laid down in the case of **Zarina Siddiqui** (supra). However, in the present case it needs to be seen that the agreement to sell pertains to the year 1995 and the suit itself was filed in the year 2008 i.e. after more than 13 years of the execution of the agreement. The ground given for not filing the suit for such a long time was that the defendant-respondents had not obtained an NOC from the concerned Department. It has come on the record that it was admitted by the plaintiff-appellant in his cross-examination that he never sent any notice to the defendant-respondents

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qua obtaining an NOC from the concerned Department and calling upon them to execute the sale deed in his favour. At the time of passing of the judgment and decree by the First Appellate Court, 25 years had elapsed since the execution of the agreement. The Supreme Court in the case of **Saradamani Kandappan vs. S. Rajalakshmi & Ors. [2011 (4) RCR (Civil) 130]** has held as under :

“24. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a

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rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

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Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.”

8. Both the Courts have exercised the discretion while granting the alternative relief. This Court does not find any reason to interfere in the discretion exercised by both the Courts. The argument of the learned counsel that since the agreement to sell had been denied by the defendant-respondents, hence, there was no necessity to prove readiness and willingness also deserves to be rejected. This Court in the case of **Gurmail Singh & Anr. vs. Jagdishpal Singh [2018 (2) PLR 418]** has held as under :

“15. The reasons assigned by the learned first appellate court is against the provisions of section 16C of the Specific Relief Act. Section 16C of the Specific Relief Act specifically provides that the plaintiff must assert and

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prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. Merely because the defendants has denied the execution of the agreement to sell does not absolve the plaintiff from the duty to assert and prove that he was always ready and willing to perform his part of the contract. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court reported as Saradamani Kandappan v. S. Rajalakshmi and others, (2011) 12 Supreme Court Cases, 18. Paragraph 43 of the judgment is extracted as under:-

"43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam :

(i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for

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example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

16. In the considered opinion of this court, it was for the plaintiff to plead and prove that he was always ready and willing to perform his part of the contract.

17. Learned counsel for the plaintiff-respondent has vehemently argued that the conduct of the defendants be examined. He has submitted that execution of the agreement to sell is denied by the defendants. He has further submitted that purchase of the mini bus for which the alleged loan was taken, has not been proved.

18. In the considered opinion of this court, the conduct of the defendants can only be seen, once the plaintiff is able to establish his case. Plaintiff in the present case has failed to fulfill the requirements of section 16C of the Specific Relief Act.

19. In view thereof, the question of law framed earlier is answered in favour of the appellants. The judgment passed by the learned first appellate court is set aside and the judgment and decree passed by the trial court is restored."

9. The learned counsel for the plaintiff-appellant has not been able to show as to how the plaintiff-appellant was ready and willing to perform his part of the contract. A perusal of both the judgments and decrees reveals that only an amount of earnest money i.e. Rs.30,000/- + Rs.70,000/- has been mentioned and then there is a mention of the balance sale consideration. Neither is the amount mentioned anywhere nor has the plaintiff-appellant proved his readiness and willingness. The argument of the

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learned counsel that the readiness and willingness was not required to be proved in view the fact that the agreement to sell itself was denied, cannot be accepted. As discussed in the case of **Gurmail Singh** (supra), it is incumbent on the plaintiff-appellant to comply with the provisions of Section 16(C) of the Specific Relief Act, 1963. In the present case the Court cannot lose sight of the fact that for 13 long years the plaintiff-appellant chose to keep quiet and it is only thereafter that the plaintiff-appellant filed the present suit. The conduct of the plaintiff-appellant goes a long way to show that the plaintiff-appellant was never ready and willing to perform his part of the contract. There was no effort made by the plaintiff-appellant to ever approach the defendant-respondents calling upon them to get NOC and to execute the sale deed. In the absence of having proved readiness and willingness, the Courts have rightly exercised the discretion in granting the alternate relief. This Court finds no reason to differ from the findings returned by both the Courts.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The present appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(**ALKA SARIN**)
JUDGE

20.03.2024

Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO