

2024:PHHC:095891



120 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6769-2023 (O&M)
Decided on:-29.07.2024

Captainpreet Singh and another

....Petitioners..

VS.

Inderjit Singh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Arora, Advocate,
for the petitioners.

HARKESH MANUJA J. (Oral)

CM-11748-CII-2024

Application is allowed as prayed for. Copy of plaint (Annexure P-7) is taken on record.

Main case

1. By way of present revision petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 10.07.2023 (Annexure P-5), passed by the Court of Civil Judge (Junior Division), Tarn Taran, District Tarn Taran, whereby, an application moved under Order 6 Rule 17 CPC, at the instance of respondent No.1-plaintiff, seeking amendment of plaint, stands allowed.

2. Briefly stating, based on an agreement to sell dated 26.08.2020,

respondent No.1-plaintiff filed a suit for specific performance against respondent No.2-defendant No.1. In the plaint, petitioners were impleaded as defendants No.2 and 3, being the purchasers from respondent No.2-defendant No.1 in terms of sale deed dated 22.03.2021. As per the agreement to sell dated 26.08.2020, the target date fixed for execution of the sale deed between the parties to the contract was 25.11.2021. The suit for possession by way of specific performance was filed at the instance of respondent No.1-plaintiff on 27.12.2021.

After framing of issues, respondent No.1-plaintiff moved an application invoking Order 6 Rule 17 CPC, seeking amendment of plaint, so as to include prayer for declaration, assailing the sale deed dated 22.03.2021, executed by respondent No.2-defendant No.1 in favour of petitioners-defendants No.2 and 3. The aforesaid application was opposed at the instance of petitioners-defendants, however, the trial Court vide its order dated 10.07.2023, allowed the same.

3. Impugning the aforementioned order, learned counsel for the petitioners submits that the factum of execution of sale deed dated 22.03.2021 by respondent No.2/defendant No.1 in favour of petitioners-defendants No.2 and 3 was already within the knowledge of respondent No.1-plaintiff at the time of filing of his original suit and thus, being not diligent enough to seek declaration qua the said alienation, application moved at his instance, seeking amendment of plaint while the suit was at the stage of filing of written statement by respondent No.2/defendant No.1, was required to be declined.

4. I have heard learned counsel for the petitioners and gone

through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

5. In the present case, the agreement between respondent No.1-plaintiff and respondent No.2/defendants No.1 (vendor) was executed on 26.08.2020 with 25.11.2021 being the target date and during this period, respondent No.2/defendant No.1(vendor) alienated the suit property in favour of petitioners-defendants No.2 & 3, by virtue of sale deed dated 22.03.2021. Having filed a suit for possession by way of specific performance on 27.12.2021, though, respondent No.1-plaintiff impleaded the petitioners/defendants No.2 and 3 being purchasers, however, did not sought declaration qua annulment of their sale deed dated 22.03.2021. Later by way of an application under Order 6 Rule 17 CPC, respondent No.1-plaintiff prayed for amendment of plaint so as to include the relief of declaration with regard to the sale deed dated 22.03.2021.

Although, in view of law settled by Honb'ble Apex Court in ***“Maharaj Singh and others vs. Karan Singh (dead) thr. Lrs. and others”***, **2024 SCC OnLine SC 1668**, respondent No.1-plaintiff having impleaded the subsequent purchasers as defendants was not required to assail the validity of their sale deed, the same having been executed after the date of agreement between the owner/vendor i.e. respondent No.2-defendant No.1 with respondent No.1-plaintiff, however, yet, as a matter of abandoned caution in the present set of facts, in case relief of declaration impugning the said sale deed dated 22.03.2021 by the vendor/respondent No.2-defendant No.1 in favour of petitioners-defendants No.2 and 3 after having entered into an agreement to sell dated 26.08.2020 in favour of respondent No.1-plaintiff

was prayer for to be included and granted by the trial Court through amendment of plaint, no illegality or perversity can be found with the discretion exercised by the trial Court in this regard. Relevant para 16 of **Maharaj Singh’s** case (supra) is reproduced hereunder for reference.

“16. Clause (a) to (c) of Section 19 of the Specific Relief Act read thus:

“19. Relief against parties and persons claiming under them by subsequent title.—

*Except as otherwise provided by this Chapter, **specific performance of a contract may be enforced against—***

- (a) either party thereto;*
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;***
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;*
- (d).....*
- (e).....”*

(emphasis added)

In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona-fide purchasers without the notice of the original contract. When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent

purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds.”

6. Furthermore, in terms of Section 19(b) of the Specific Relief Act, 1963, respondent No.1-plaintiff has right to claim specific performance even against the persons claiming title arising subsequent to the agreement in his favour except in case of proof of transfer being for valuable consideration, the same being made in good faith and without notice of the original contract. Undisputedly, the question of alienation dated 22.03.2021 in favour of petitioners/defendants No.2 and 3 being for valuable consideration and without notice of the original agreement to sell dated 26.08.2020 in favour of respondent No.1-plaintiff at the hands of respondent No.2-defendant No.1 (vendor) needs to be proved during trial and shall always be subject to evidence and final adjudication thereupon by the Court concerned in the suit.

7. In view of the discussion made herein above and finding no illegality or perversity in the impugned order dated 10.07.2023 passed by the Trial Court, the present petition is hereby dismissed.

8. Pending application, if any, also stands disposed of.

29.07.2024

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No