

(2009) 03 P&H CK 0275

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Jai Bhagwan and Others

APPELLANT

Vs

Raghbir Singh and Others

RESPONDENT

Date of Decision: March 26, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This appeal has been filed by defendants Nos. 3 and 4 challenging the judgment and decrees of the Courts below whereby suit of the plaintiff-respondents has been decreed for specific performance of agreement to sell.

2. Respondent No. 1 filed a suit for possession by way of specific performance of the agreement to sell dated 23.5.1990 executed by defendants Nos. 1 and 2. Smt. Chandrawali-defendant No. 1 who has since expired and is now being represented by defendant No. 2 Smt. Suresh Kumari (now respondent No. 2) alleging that defendant Nos. 1 and 2 had agreed jointly to sell the suit property vide written sale agreement which was executed on 23.5.1990 in favour of the plaintiff on receipt of Rs. 1,25,000/- in cash by way of earnest money and further agreeing to get the sale deed executed and registered upto 23.8.1990. Balance sale consideration was agreed to be paid at the time of registration of the sale deed. Defendants Nos. 1 and 2 had further undertaken to obtain Income Tax Clearance Certificate before the date fixed for registration of the sale deed under the agreement. It was further averred that on the same day i.e. 23.5.1990 defendants Nos. 1 and 2 also executed and got registered a general power of attorney in respect of the aforesaid properties in favour of the plaintiff and authorised him to deal with the property and to do all acts on their behalf by virtue of this document. Actual physical possession of the suit

property was also delivered to him. The plaintiff being General Power of Attorney in respect of the suit land on behalf of defendants Nos. 1 and 2 got executed and registered a sale deed in respect of 1/10 share in the land in favour of defendants Nos. 5 to 7 (now respondents Nos. 3 to 5). On 28.5.1990 for a consideration of Rs. 1,80,000/- which was received by defendants Nos. 1 and 2 from the plaintiff vide receipt Ex.PW5/1 duly executed and thumb marked by them as additional payment towards the sale consideration and after payment of the aforesaid sum of Rs. 1,80,000/-, the plaintiff was left with the liability to pay the balance sale consideration of Rs. 5,20,000/- to defendants Nos. 1 and 2 for execution and registration of the sale deed in respect of the remaining property. It was further averred that the plaintiff remained always ready and willing to get the sale deed effected in his favour in respect of the suit land but defendants Nos. 1 and 2 came under the influence of defendants Nos. 3 and 4 (now appellants) who were real nephew and brother of Shiv Lal deceased the husband of defendant Nos. 1 and father of defendant No. 2 and at their instigation, defendants Nos. 1 and 2 illegally got a notice issued to the plaintiff dated 1.6.1990 informing him that the General Power of Attorney dated 23.5.1990 in his favour has been got cancelled by them and asked the plaintiff not to effect any deal in respect of the property remained to be sold in favour of the plaintiff by virtue of sale agreement dated 23.5.1990. Defendants Nos. 1 and 2 also got effected two registered lease deeds for a period of 90 years each in favour of defendant No. 3 on 2.6.1990, one in respect of the remaining land in village Wazirabad for a fictitious sum of Rs. 1,00,000/- and second in respect of the land in village Haiderpur Viren for a fictitious sum of Rs. 10,000/- This act of defendants Nos. 1 and 2 was a breach of sale agreement on their part. Defendant No. 3 had full knowledge and notice of the above said agreement dated 23.5.1990 in favour of the plaintiff. It is averred that the plaintiff also came to know that after creating the lease deeds in respect of the suit land in favour of defendant No. 3, defendants Nos. 1 and 2 also effected a registered sale deed in respect of the whole remaining agricultural land in favour of defendant No. 4 vide sale deed dated 17.8.1990 even without obtaining the Income Tax Clearance Certificate for a fictitious sale consideration of Rs. 9,20,000/- and further committed a breach of the sale agreement in question. The aforesaid sale in favour of defendant No. 4 was illegal and without any authority on the part of defendants Nos. 1 and 2 and was not binding on the plaintiff. Defendant No. 4 was also having the full knowledge of the sale agreement in respect of the suit land in favour of the plaintiff being real brother of Shiv Lal deceased husband of defendant No. 1. The plaintiff remained ready and willing to perform his part of the sale agreement and was still ready and willing to perform the same and he was ready with the money at all relevant times to get the sale-deed effected in terms of the sale agreement dated 23.5.1990. The plaintiff is still entitled to get the sale deed registered in his favour from defendants Nos. 1 and 2 on payment of balance sale consideration of Rs. 5,20,000/- in respect of suit property except the area of the land covered by the sale deed dated 28.5.1990 sold in favour of defendants Nos. 5 to 7 and defendants Nos. 3 and 4 were liable to join

in that sale deed ignoring the two lease deeds dated 2.6.1990 and sale deed dated 17.8.1990 in their favour as illegal and void at the expenses of the plaintiff by a decree of specific performance of the sale agreement. It was also averred that during the pendency of this suit land measuring 10 bighas 13 biswansi pukhta was acquired by the State Government vide award No. 2 dated 3.5.2000 pronounced by Lower Appellate Court, Gurgaon and on account of this subsequent event, the plaintiff was entitled to a decree for possession by way of specific performance of sale agreement in respect of the remaining land and also entitled to receive the compensation for acquisition.

3. Upon notice, defendants Nos. 5 to 7 were proceeded against ex parte.

4. Defendants Nos. 1 and 2 filed written statement raising various preliminary objections. On merits, it was admitted that defendants Nos. 1 and 2 were owners in possession of the suit property but execution of the agreement to sell was denied. It was pleaded that execution of agreement to sell the suit property was acquired by playing a fraud and misrepresentation with defendants Nos. 1 and 2. There was a family dispute between defendants Nos. 1 to 4. Defendants Nos. 3 and 4 wanted to purchase the land in question from defendants Nos. 1 and 2 who were under the impression that defendants Nos. 3 and 4 may grab their sale consideration if the suit land is sold to defendants Nos. 3 and 4 and to avoid this, defendant Nos. 1 and 2 executed a power of attorney in favour of the plaintiff who belongs to the same village and was a Sarpanch of village Wazirabad. The plaintiff assured defendants Nos. 1 and 2 that he will act according to their wishes and directions and defendants Nos. 1 and 2 said to the plaintiff that the plaintiff would execute sale deed of the land in question in favour of defendants Nos. 3 and 4 but the plaintiff played fraud with defendants Nos. 1 and 2. It was averred that the defendants executed a power of attorney on 23.5.1990 in favour of the plaintiff and nothing else. The plaintiff by taking advantage of illiteracy of defendants Nos. 1 and 2, forged agreement to sell and after 3-4 days, the defendants came to know about forging of agreement in his favour and sale deed in favour of his son and nephew. The plaintiff took thumb impression on several blank papers under misrepresentation and by virtue thereof, the defendants went to police station but of no use, the plaintiff being an influential person and having influence on the local police. The plaintiff had obtained thumb impressions of defendants Nos. 1 and 2 on several papers. Delivery of physical possession to the plaintiff was denied. It was further stated that defendants Nos. 1 and 2 had cancelled the attorney on 1.6.1990 vide registered cancellation deed. Execution of receipt of Rs. 1,80,000/- of 28.5.1990 was denied and it was alleged that the same is false and fabricated. Since defendants Nos. 1 and 2 realized that they had been cheated by the plaintiff by fraudulent misrepresentation they had cancelled the alleged attorney. It was prayed that the suit be dismissed.

5. Defendants Nos. 3 and 4 contested the suit and filed written statement controverting the averments of the plaintiff. They also raised various preliminary

objections. It was further pleaded that defendants Nos. 1 and 2 executed an agreement to sell in favour of defendant No. 4 on 11.4.1990 for a consideration of Rs. 11,00,000/- and received a sum of Rs. 2,00,000/- as earnest money. The sale deed was to be executed on or before 15.9.1990. The plaintiff had misrepresented defendants Nos. 1 and 2 and believing his representation defendants Nos. 1 and 2 had agreed to thumb mark the power of attorney in his favour. Subsequently it transpired that intention of the plaintiff was not bona fide and he wanted to obtain wrongful gain to the prejudice of defendant No. 4. The plaintiff, with an ulterior motive to obtain wrongful gain, got thumb marked several blank papers, stamp papers and registers etc. from defendants Nos. 1 and 2 by mis-representing the facts and misleading them. Had defendants Nos. 1 and 2 known the mala fide intention of the plaintiff they would not have thumb marked those papers and registers. To the utter disappointment and shock of defendants Nos. 1 and 2 they learnt that the plaintiff had executed sale deed in favour of his nephew Abhey Singh and Satbir Singh to the extent of 1/2 share and his son Dharambir to the extent of remaining 1/2 share in respect of the land measuring 7 biswa 14 biswansi pukhta, situated in revenue estate of Wazirabad vide registered sale deed dated 28.5.1990. Defendants Nos. 1 and 2 approached the plaintiff complaining him that he had indulged in dishonesty and it was not fair on his part and they would have to lodge criminal complaint against him and having faced with such a situation, the plaintiff told defendants Nos. 1 and 2 that they should not agitate the matter any further and cancel the power of attorney executed by them in his favour and vide registered cancellation deed dated 1.6.1990, defendant Nos. 1 and 2 cancelled power of the attorney dated 23.5.1990 in favour of the plaintiff and notice under registered post through Advocate was also sent to him. Defendant No. 4 who wanted to purchase the property owned and possessed by defendants Nos. 1 and 2 apprehended a suit for possession by pre-emption from other co-sharers and therefore, to avoid any such suit being filed and to deter the prospective pre-emptors in respect of property in question, defendant No. 4 had got the lease deeds executed in favour of defendant No. 3 his son for a period of 90 years and a sum of Rs. 1,00,000/- was paid to defendants Nos. 1 and 2 in respect of lease hold rights relating to the land situated in village Wazirabad while a sum of Rs. 10,000/- was paid to them with regard to the land situated in village Haiderpur Viran and both these lease deeds dated 2.6.1990 were got registered. All other material allegations were denied and it was prayed that the suit of the plaintiff had dismissed.

6. After perusing the evidence on record and hearing the learned counsel for the parties, the trial Court accepted the claim of the plaintiff. Since during the pendency of the suit, part of the suit land was acquired by the State Government and compensation in respect of the said land amounting to Rs. 2,15,000/- was determined by the Land Acquisition Collector, therefore a decree for specific performance in respect of the suit land, except the land which was acquired and was sold to defendants No. 5 to 7, was passed in favour of the plaintiff and against the

defendants and the defendants were directed to get the sale deed executed in respect of the said land in favour of the plaintiff or his nominee.

7. Feeling aggrieved from the aforesaid judgment and decree of the trial Court, the appellants (defendants Nos. 3 and 4) who allegedly had purchased the suit land vide sale deed dated 17.8.1990 (Ex.D-8) on the basis of a prior agreement dated 11.4.1990 (Ex.D-4) executed in their favour by defendants Nos. 1 and 2, filed an appeal in the Lower Appellate Court being bona fide purchasers for consideration and without notice. The aforesaid appeal filed by defendants Nos. 3 and 4 was also dismissed by the Additional District Judge, Gurgaon vide impugned judgment and decree dated 31.7.2008.

8. While dismissing the appeal, the Lower Appellate Court on appreciation of evidence held that execution of the agreement to sell in question (Ex.P-1) by defendants Nos. 1 and 2 in favour of the plaintiff is duly proved and alleged agreement to sell dated 11.4.1990 Ex.D-4 executed by defendants Nos. 1 and 2 in favour of defendant No. 4 (appellant) was a created document with a view to defeat the rights of the plaintiff. In support of its findings, the Lower Appellate Court took into consideration many facts established on record of the case and as discussed in para No. 13 of the judgment. The Lower Appellate Court also noticed that defendants Nos. 3 and 4 are none else but the nephew and brother of husband of defendants No. 1 and father of defendant No. 2 and it cannot be accepted that they were not having any notice of the agreement Ex.P-1 dated 23.5.1990 and got executed the sale deed on 17.8.1990 in their favour.

9. Thus, from the above discussion it cannot be made out that the findings of the Courts below are perverse. It is also relevant to point out at this stage that despite the fact that the appellants, who claim themselves to be bona fide purchasers for value, have not raised any question or argument in their favour before the Lower Appellate Court. In Bachhaj Nahar Vs. Nilima Mandal and Another, the Hon'ble Supreme Court has authoritatively laid down that while exercising its jurisdiction u/s 100 CPC on a question/issue which was not raised before the Courts below, this Court is not obliged to decide the same. Even otherwise before this Court, no argument in support of the case of the appellants being bona fide purchasers for value and without notice has been raised. Learned Counsel for the appellants was in fact unable to point out from the judgment of the Lower Appellate Court any such discrepancy or argument which was raised by the appellants in their favour and was not answered by the Lower Appellate Court. Thus, I find no merit in this appeal.

10. No substantial question of law arises.

11. Dismissed.