

(2013) 08 P&H CK 0754

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1211 of 2012 (O and M)

Islam

APPELLANT

Vs

Aamin and Others

RESPONDENT

Date of Decision: Aug. 14, 2013**Acts Referred:**

- Specific Relief Act, 1963 - Section 12

Hon'ble Judges: Rakesh Kumar Garg, J**Bench:** Single Bench**Advocate:** N.D. Achint, for the Appellant; Sudhir Aggarwal, for the Respondent**Final Decision:** Dismissed

Judgement

Rakesh Kumar Garg, J.

As per the pleadings, respondent no. 1 Aamin filed a suit for possession by way of specific performance of an agreement to sell dated 21.6.2005 executed by defendant no. 1 Jafru (now respondent no. 2) whereby, he had agreed to sell 4 kanals of land being 80/1157 share as detailed in the plaint in favour of the plaintiff and defendant no. 3 (now appellant) for a total sale consideration of Rs. 2,40,000/-, out of which Rs. 68,000/- were paid jointly by the appellant as well as respondent no. 1. The sale deed was to be executed and registered up to 2.6.2006. Respondent no. 1 in his suit further pleaded that defendant Jafru/respondent no. 2 sold the suit property in favour of Smt. Rehmani, defendant no. 2 (now respondent no. 3) the real mother of appellant. It was further pleaded that respondent no. 1 had always been ready and willing to perform his part of the contract and was still ready to purchase the entire suit property as the defendant no. 3 (now appellant) had joined hands with the other defendant to defeat his legal rights. Upon notice, defendant no. 1 (now respondent no. 2) and defendant no. 3 (now appellant) were proceeded against ex parte and the suit was contested by defendant no. 2 (now respondent no. 3.) only.

2. In her written statement, respondent no. 3 alleged that defendant no. 1 (now respondent no. 2) had executed an agreement in her favour on 9.2.2005 prior to the impugned agreement dated 21.6.2005 executed in favour of the appellant as well as respondent no. 1 and thereafter respondent no. 2 executed and registered the sale deed in her favour vide Vasika No. 2007 dated 28.10.2005. Respondent no. 3 also put forth the plea of the bona fide purchaser for valuable consideration.

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

1. Whether the defendant no. 1 entered into an agreement into sell with plaintiff and defendant no. 3 in respect of land mentioned in para no. 1 of the plaint on 21.6.2005 and received amount of Rs. 68,000/- as earnest money from the plaintiff and defendant no. 3? OPP

2. Whether the decree of possession by way of specific performance of contract dated 21.6.2005 is liable to be passed in favour of the plaintiff on the grounds mentioned in the plaint? OPP

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

4. Whether the plaintiff has concealed true and material facts from the court, if so to what effect? OPD

5. Whether the plaintiff has no cause of action nor locus standi to file the present suit? OPD

6. Relief.

4. On consideration of the evidence, trial Court decreed the suit in favour of the plaintiff-respondent for specific performance of the agreement to sell in question on payment of balance amount by the plaintiff-respondent out of which Rs. 34,000/- were to be given to the appellant as he had not shown his willingness to perform his part of agreement and further has not joined the plaintiff in the suit. The said judgment and decree of the trial Court was challenged by Smt. Rehmani (Respondent No. 3) vide Civil Appeal No. 16 dated 30.4.2010 as well as appellant by filing Civil Appeal No. 15 dated 7.5.2010. Both these appeals were heard together and dismissed vide one common judgment dated 16.12.2011.

5. It may further be noticed that against the aforesaid judgment and decree of the lower Appellate Court Rehmani (respondent no. 3) has not filed any appeal and now the instant appeal has been filed by the appellant who was proceeded against ex parte in the trial Court and who has not contested the suit and led any evidence in support of his claim. In this appeal, the appellant has submitted that the following substantial questions of law arises in this appeal:

i. Whether the trial Court can decree the suit of Specific Performance in favour of one party by excluding the right of another party who both agreed to purchase the land by way of agreement to sell?

ii. Whether the courts below were justified in allowing the purchase of entire land in favour of respondent no. 1 in violation of the terms and conditions of agreement to sell as well as application of Section 12 of the Specific Relief Act of 1963?

iii. Whether the appellant was entitled to be afforded an opportunity of transposing himself as plaintiff by remanding the case in view of his detention in jail for about 1 year during which period he was proceeded against ex parte as the suit was instituted in 2006 and the appellant was proceeded against ex parte when he was unable to attend to the court?

iv Whether impugned decrees and judgments rendered by learned Courts below are against law and are liable to be reversed?

6. Learned counsel for the appellant has vehemently argued that appellant was entitled to a decree of specific performance of the agreement to sell dated 21.6.2005 to the extent of half share in his favour being a co-beneficiary along with plaintiff-respondent no. 1 Amin and thus, the findings of the Courts below to the aforesaid extent are liable to be set aside.

7. At this stage it is relevant to note the observations of the lower Appellate Court which reads as under:

20. In the present case, it is admittedly on record that Islam, defendant No. 3/appellant is the son of Smt. Rehmani, defendant No. 2/appellant. Before the learned trial Court, after appearance the defendant No. 1 Jafru, respondent and Islam, proforma defendant No. 3/appellant did not prefer to contest the suit of the respondent/plaintiff Amin and were proceeded against ex parte. Islam had entered into agreement to purchase 4 Kanals alongwith Amin, respondent/plaintiff with Jafru vide agreement dated 21.06.2005, the basis of the suit. Non-joining with Amin, plaintiff-respondent of Islam in suing Jafru for the specific performance of the contract, shows that he was not interest for specific performance of the contract. Further when he after putting appearance, did not appear later on and was proceeded against ex-parte, It also reflects that he is colluded with Smt. Rehmani. Defendant No. 2/appellant, his mother and Jafru. Since he was proceeded against exparte, how he could be transposed as plaintiff as he did not prefer to contest the suit or to appear in the suit. By any stretch of imagination, it can said that he was not interested in the specific performance of the contract alongwith Amin, plaintiff/respondent. Now coming in the appeal by him and to seek his half share as like that of Amin, plaintiff-respondent, shows that since he has not claimed his relief before the learned trial Court in any way either being transposed as plaintiff or by filing counter claim, how he (ISLAM) can claim the relief or can ask for remand of the case. The plaintiff-respondent Amin has sought the specific performance of the entire agreement Ex. P-1 and Jafru with whom the agreement was entered into, did not prefer to contest it and Islam, appellant/defendant who was co-beneficiary alongwith Amin to inter into an agreement with Jafru also did not prefer to seek

relief and plaintiff Amin is showing his willingness to purchase the entire suit land, the subject matter of the agreement, therefore, in the considered opinion of the Court, the learned trial Court has rightly ordered for execution of the sale deed of 4 kanals in favour of Amin, respondent/plaintiff after receiving the balance sale consideration. The evidence on the file clearly does not inspire the confidence that Smt. Rehmani is the bonafide purchaser of the suit land and the learned trial Court has rightly held that she is not proved to be a bonafide purchaser, therefore, in the considered opinion of the Court, there is no illegality in the findings of the learned trial Court on issues No. 1 to 3 and therefore, the finding on the issues No. 1 to 3 is affirmed. The findings on issues No. 4 and 5 were not assailed during the course of arguments.

8. Learned counsel appearing on behalf of the appellant could not find fault with the findings of the lower Appellate Court as noticed above. It is a matter of record that appellant had not claimed any relief before the trial Court in any manner either being transposed as plaintiff or by filing counter claim. The plaintiff-respondent Amin had sought specific performance of the entire agreement but appellant did not prefer to contest it though he was a co-beneficiary along with Amin.

9. Not only this, admittedly, appellant is the son of respondent no. 3, Rehmani (defendant no. 2 in the suit) and, therefore, obviously, he was not in a position to claim any relief along with plaintiff in the trial Court against his own mother who had contested the claim of the plaintiff-respondent, Amin. It is only after Rehmani had chosen not to file any appeal against judgments and decrees of the Courts below, the appellant has come forward staking his claim which shows clearly the mala fides and connivance with Rehmani on his part.

10. In this view of the matter, this Court is of the view that no interference is called for in the judgments and decrees of the Courts below.

11. No substantial question of law, as raised in the grounds of appeal arises for consideration in this appeal. Dismissed.