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(2014) 03 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 800 of 2013 (O and M)

Lakhbir Singh

APPELLANT

Vs

Darshan Singh

RESPONDENT

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**Date of Decision:** March 11, 2014

**Acts Referred:**

- Specific Relief Act, 1963 - Section 17

**Citation:** (2014) 175 PLR 264

**Hon'ble Judges:** Rakesh Kumar Jain, J

**Bench:** Single Bench

**Advocate:** L.S. Sidhu, Advocate for the Appellant; Amit Jain, Advocate for the Respondent

**Final Decision:** Dismissed

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### Judgement

Rakesh Kumar Jain, J.

This appeal is filed by defendant No. 1 against the judgment and decree of both the Courts below by which suit filed by the plaintiff for possession by way of specific performance of the contract has been decreed. The case set up by the plaintiff is that defendant No. 1 entered into agreement dated 09.04.2004 with him to sell plot No. 448, measuring 500 square yards, Phase-VIII, Focal Point, Industrial Area, Mohali for a sum of Rs. 9,75,000/- and received advance of Rs. 1,00,000/- on the same day. He paid Rs. 3,51,000/- to defendant No. 1 on 04.05.2004 and Rs. 20,000/- on 10.05.2004. Thus, out of the total sale consideration of Rs. 9,75,000/-, defendant No. 1 received Rs. 4,71,000/- as earnest money and agreed to execute the sale deed on 10.06.2005, after getting No Objection Certificate from the office of defendant No. 2. It is further alleged that the plaintiff was always ready and willing to perform his part of the agreement as his Attorney remained present at Tehsil Complex, Mohali on 10.06.2005 along with the balance sale consideration but defendant No. 1 did not turn up.

2. On the contrary, defendant No. 1 denied the execution of the agreement to sell dated 09.04.2004. He also denied receipt of Rs. 1,00,000/- and that the date for execution of

the sale deed as was ever fixed as 10.06.2005, rather it is alleged that in the month of January 2002, defendant No. 1 contacted Paramjit Singh, proprietor of M/s Sheetal Property, for availing a loan of Rs. 1,00,000/-. Paramjit Singh advanced the said loan, but he obtained his signatures on blank proforma of the agreement to sell. Though defendant No. 1 has allegedly returned the borrowed amount to Paramjit Singh but he retained the proforma and converted it into the present agreement to sell in connivance with the plaintiff and the witnesses. He also denied receipt of Rs. 3,51,000/- and Rs. 20,000/-, as alleged by the plaintiff.

3. Defendant No. 2 denied the agreement for want of knowledge. It is further alleged that as per policy, transfer of plot is allowed only after clearance of default pointed out by defendant No. 2, receipt of transfer documents and appearance of both the parties. It is also averred that defendant No. 1 never approached defendant No. 2 for seeking No Dues Certificate (NDC) and No Objection Certificate (NOC) to sell the plot in dispute. Thus, the transfer cannot take place without prior permission of defendant No. 2.

4. The plaintiff filed replication reiterating the contents of the plaint and denying those of the written statements. On the pleadings of the parties, following issues were framed by the Trial Court:-

1. Whether the plaintiff is entitled to possession as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff has not come to the Court with clean hands? OPD.
5. Whether Relief.

5. The plaintiff examined Ram Dutt, Junior Assistant, P.S.I.E.C. as PW1, Paramjit Singh as PW2 and himself appeared as PW3. He also brought on record agreement to sell dated 09.04.2004 (Ex.P1), receipt dated 09.04.2004 (Ex.P2), receipt dated 04.05.2005 (Ex.P3), receipt dated 16.05.2004 (Ex.P4) and copy of sub Power of Attorney (Ex.P5).

6. On the other hand, defendant No. 1 Lakhbir Singh himself appeared as DW1 and examined Vijay Gupta as DW2.

7. The Trial Court, after appreciation of evidence, decreed the suit of the plaintiff for possession on payment of balance sale consideration to defendant No. 1 who, after clearance of dues, would ask defendant No. 2 to transfer the plot in question in favour of the plaintiff within three months of the judgment and decree. Defendants No. 1 and 2 were further restrained from transferring the plot in question to anybody else except the plaintiff.

8. Aggrieved against the judgment and decree of the Trial Court, defendant No. 1 filed appeal which was dismissed by the lower Appellate Court on 30.07.2012. Hence, the present second appeal.

9. Counsel for defendant No. 1-appellant has argued that the plot in question was allotted to defendant No. 1 on 99 years" leasehold basis for manufacturing wooden furniture. As per terms and conditions of the lease deed, he could have been transferred letter of intent under any circumstance. It is also submitted that defendant No. 2 had the first and paramount charge over the plot in question and without prior consent of the Corporation, defendant No. 1 had no right to transfer or mortgage his leasehold rights by way of sale or otherwise. It is thus submitted that the plot in question could not have been sold at any cost and as such, the agreement has been frustrated because defendant No. 1 had no title in the suit property for the purpose of transfer. In this regard, he has invoked the provisions of Section 17 of the Specific Relief Act, 1963 (hereinafter referred to as the "Act"), which reads as under:-

77. Contract to sell or let property by one who has no title, not specifically enforceable.-

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor-

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

10. On the other hand, counsel for respondent No. 1-plaintiff has submitted that defendant No. 1-appellant had completely denied the execution of the agreement and has pleaded fraud. It is the case set up by defendant No. 1 that he had obtained loan of Rs. 1,00,000/- from Paramjit Singh and signed the blank proforma of the agreement to sell and though he had returned the said amount to him but still the said Paramjit Singh along with the plaintiff and attesting witnesses converted the signed blank proforma into the agreement to sell. These allegations of defendant No. 1 have not been accepted by the Courts below and were found to be false. Counsel for defendant No. 1-appellant, even in this appeal, has not raised this plea rather it has been argued that since the plot in dispute was on 99 years" lease, and could not have been transferred, therefore, in the absence of any title to the property, the agreement cannot be enforced. It is further stated by counsel for respondent No. 1 that Section 17 of the Act is not applicable in the given facts and circumstances because it applies in a case where the vendor or the lessor files a suit for enforcement of the contract to sell or letting out the property. In this regard, he

has relied upon a judgment of the Andhra Pradesh High Court in the case of [Abdul Hakeem Khan Vs. Abdul Mannan Khadri](#),

11. Counsel for respondent No. 1-plaintiff has further argued that the plaintiff would acquire rights of defendant No. 1 by way of sale and would seek permission from defendant No. 2 as there is no bar of sale because in the written statement filed by defendant No. 2, it is categorically averred that "as per the policy of the answering defendant, a transfer of plot is allowed in favour of a purchaser only after clearance of default pointed out/to be pointed by the answering defendant, receipt of transfer documents from both the parties and personal appearance of transferor/seller after taking his free unconditional and undisputed consent for the transfer of plot". It is also averred in the said written statement that defendant No. 1 did not approach defendant No. 2 for seeking NDC/NOC to sell the property in dispute, which obviously means that defendant No. 1 never wanted to sell the property in dispute by performing his part of the contract, otherwise had he applied for NDC/NOC, it could have been granted by defendant No. 2 and the objection, which is being raised now, would not have been raised.

12. Counsel for defendant No. 1-appellant next argued that the agreement to sell was not duly stamped and could not have been taken into consideration.

13. In this regard, counsel for respondent No. 1-plaintiff has submitted that if the agreement was not properly stamped, it should have been objected to by defendant No. 1 at that time when it was exhibited and in the absence of any objection, now it cannot be objected to insofar as its admissibility is concerned. In this regard, he has relied upon a judgment of the Supreme Court in the case of [Shyamal Kumar Roy Vs. Sushil Kumar Agarwal](#).

14. I have heard counsel for the parties and examined the record.

15. Insofar as Section 17 of the Act is concerned, it talks of enforceability of a contract at the instance of vendor or lessor and not against them but it is prohibited u/s 17 of the Act if the vendor or the lessor knows himself that he had no title to the property or let the property but still enters into the agreement to sell or enters into the contract believing that he had a good title to the property but cannot, at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt. Thus, Section 17 of the Act cannot be invoked by defendant No. 1-vendor.

16. In Mir Abdul Hakeem Khan's case (supra), it is held that "it is settled law that if a person executes an agreement to sell property, the vendor is not entitled to put forward, in a suit for specific performance by the purchaser the defence that the vendor had no title. It is open to the purchaser to set up a defence that the vendor had no title or has defective title in a suit for specific performance by the vendor. But the vendor cannot set up defect in his own title as a defence in a suit for specific performance by the purchaser".

17. Insofar as the insufficiency of stamp on the agreement to sell is concerned, it has been held by the Supreme Court in Shyamal Kumar Roy"s case (supra) that if the instrument is insufficiently stamped, admitted in evidence and marked as exhibit without objection by the opposite party, the said party cannot subsequently raise objection with regard to admissibility on the ground of insufficiency of stamp duty.

18. It is also held by the Supreme Court in the case of [Shri Vishwa Nath Sharma Vs. Shyam Shankar Goela and Another](#), that if there is an embargo on sale of property without prior sanction of authority, the vendor can sell the property and execute the sale deed despite embargo because the sanction can be obtained subsequent to execution of sale deed.

19. In the present case, it has been categorically mentioned in para No. 1 of the written statement filed by defendant No. 2 that it is their policy that a plot can be transferred by the purchaser after clearance of default point out/to be pointed out by defendant No. 2. It is also mentioned that defendant No. 1 did not approach defendant No. 2 for seeking NDC/NOC to sell the plot in dispute. Defendant No. 1 has thus tried his level best to wriggle out of the agreement but the agreement has been ordered to be performed by both the Courts below without any error in the appreciation of evidence. Since no question of law much-less substantial is found to have been involved in favour of the appellant, therefore, the present appeal is hereby dismissed being denuded of any merit.