

SUPREME COURT OF INDIA

Rakesh Malhotra

Vs.

Kamaljit Singh Sandhu

C.A.No.11070 of 2018

(Uday Umesh Lalit and M.R.Shah,JJ.,)

16.11.2018

JUDGMENT

M.R.Shah,J.,

SLP (C) No. 22667 of 2016

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.2.2016 passed in R.S.A. No. 4015 of 2011 by the High Court of Punjab and Haryana at Chandigarh, by which the High Court has allowed the said appeal preferred by the original defendant Nos. 2 and 3 by setting aside the judgment and order dated 10.8.2011 passed by the Additional District Judge, Gurgaon and, consequently, has dismissed the suit preferred by the appellant herein (original plaintiff). The original plaintiff (appellant herein) has preferred the present appeal.
3. The facts leading to this appeal in nutshell are as follows:

That the appellant herein (hereinafter referred to as 'the original plaintiff') instituted Civil Suit No. 159 of 2004 against the respondents herein (original defendants) seeking a declaration that the plaintiff is the owner and in possession of the suit property - Plot No. 336 (old) 548 (new), measuring 420 square meters at Block B in the residential colony known as Sushant Lok, Guugaon. It was also prayed to declare the sale deed dated 28.1.2002 executed in favour of the original defendant nos. 2 and 3 by original defendant no. 1 as illegal, null and void. In the alternate, it was also prayed for decree of possession of the suit property by directing the original defendant no. 1 to get the sale deed executed and registered in favour of the plaintiff in respect of the suit property, with consequential relief of permanent injunction restraining the original defendant nos. 2 and 3 from further selling /alienating /transferring the suit property in question to anyone else, except the plaintiff, in any manner whatsoever.

3.1 It was the case on behalf of the original plaintiff that the suit property was booked by the original defendant no. 1 with the developers - M/s Ansal Properties and Industries Pvt. Ltd. (hereinafter referred to as 'M/s Ansal Properties') However, by an Agreement to Sell dated 20.4.1987 executed by the original defendant no. 1 being the original allottee from M/s Ansal Properties in favour of the plaintiff, original defendant no. 1 sold/agreed to sell the suit property in favour of the plaintiff. It was the case on behalf of the original plaintiff that at the time of execution of the said written agreement dated 20.4.1987, the plaintiff paid the sale consideration. However, it was agreed to execute the sale deed as and when the developers M/s Ansal Properties fulfills its obligation and complete the formalities. It was further the case on behalf of the original plaintiff that simultaneously one General Power of Attorney was also executed in favour of the plaintiff by the original defendant no. 1 empowering the plaintiff to get the transfer in his favour as and when the plaintiff will deposit all installments of M/s Ansal Properties and desires to get transferred the suit property in his favour or in favour of his nominee. It was also the case on behalf of the original plaintiff that the plaintiff was also put in possession. It was also the case of the original plaintiff that thereafter the plaintiff paid the stamp duty. It was further the case on behalf of the original plaintiff that, despite the above fact, when the developers M/s Ansal Properties allotted the plot in question and executed the title deed in favour of original defendant no. 1 (being the original allottee), the original defendant no. 1 did not transfer the plot in question in his name and, in fact, illegally transferred the suit property in favour of defendant nos. 2 and 3 on a meagre amount of sale consideration by executing the sale deed dated 28.1.2002. With the above averments and prayers, the plaintiff instituted the aforesaid suit in the Court of the learned Additional Civil Judge (Senior Division), Gurgaon.

3.2 The suit was resisted to by the original defendant nos. 2 and 3 by filing the written statement. It was the case of original defendant nos. 2 & 3 that they are the bona fide purchasers of the suit property for consideration. It was also the case on behalf of the original defendant nos. 2 and 3 that the suit filed by the plaintiff seeking a decree of possession and permanent injunction shall not be maintainable unless there is a prayer for decree for specific performance. It was the case on behalf of defendant nos. 2 and 3 that unless the plaintiff renounces the plea of his title, he cannot seek decree of specific performance. It was further the case on behalf of defendant nos. 2 and 3 that the suit is collusive between the plaintiff and original defendant no. 1. It was further case on behalf of the defendant nos. 2 and 3 that the suit is not within the limitation. That, thereafter, original defendant nos. 2 and 3 also filed the written statement denying the allegations and averments in the plaint.

3.3 It appears that, thereafter, the original plaintiff submitted an application to amend the plaint by seeking the prayer of specific performance of the agreement to sell dated 20.4.1987 submitted under Section 6 Rule 17 CPC. However, the same came to be dismissed by the learned trial Court and attained the finality.

3.4 On the basis of the averments in the plaint and the written statement, the

learned trial Court framed the following issues:

- “1. Whether the plaintiff is owner in possession of the suit property?
2. Whether the sale deed dated 28.1.2002 executed by defendant no. 1 in favour of defendant no. 2 and 3 is illegal, null and void on the ground alleged in plaint?
3. Whether the plaintiff is entitled to decree for possession in the alternative with consequential relief of permanent injunction as prayed for?
4. Whether the suit is within limitation?
- 4A. Whether the defendant no. 2 and 3 are bonafide purchasers as alleged?
5. Whether the plaintiff has no locus-standi to file the present suit?
6. Whether the suit has not been properly valued for the purpose of jurisdiction of court fee?”

3.5 Thereafter, both the parties adduced the evidence, both oral as well as the documentary. That, thereafter, on appreciation of evidence and considering the submissions made on behalf of the respective parties, by the judgment and decree dated 19.10.2010 the learned trial Court partly decreed the suit in favour of the original plaintiff. The learned trial Court passed the decree for recovery of Rs.2,46,645.50 with 9% interest throughout its realization. That the learned trial Court passed the aforesaid decree dated 19.10.2010 in favour of defendant no. 1 only. The suit and other reliefs came to be dismissed by the learned trial Court.

4. Feeling aggrieved and dissatisfied with the judgment and decree dated 19.10.2010 passed by the learned trial Court in Civil Suit No. 159 of 2004, the original plaintiff preferred Civil Appeal No. 109 of 2010 in the Court of learned District Judge, Gurgaon.

4.1 That the first Appellate Court allowed the said appeal by quashing and setting aside the judgment and decree passed by the learned trial Court and, consequently, decreed the suit by holding that the original plaintiff is entitled to decree of declaration to the effect that the sale deed dated 28.1.2002 executed by the original defendant no. 1 in favour of original defendant nos. 2 and 3 is illegal, null and void and that the original plaintiff is entitled to decree of specific performance of agreement to sell to execute the sale deed as per the agreement to sell dated 20.4.1987.

4.2 Feeling aggrieved and dissatisfied with the judgment and order of the learned first Appellate Court setting aside the order of the learned trial Court, original defendant nos. 2 and 3 preferred R.S.A. No. 4015 of 2011 before the High Court. By the impugned judgment and order dated 29.2.2016, the High Court has allowed the said appeal and consequently set aside the judgment and decree of the first Appellate

Court and dismissing the suit qua other reliefs and has restored the judgment and decree passed by the learned trial Court.

4.3 Feeling aggrieved and dissatisfied with the impugned judgment and order of the High Court, the original plaintiff has preferred the present appeal.

5. Heard Mr. Shyam Divan, learned senior counsel appearing on behalf of the appellant and Mr. Dhruv Mehta, learned senior counsel appearing on behalf of the respondents at length.

5.1 Learned counsel appearing on behalf of the appellant herein vehemently submitted that, in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside a well reasoned judgment passed by the first Appellate Court and, that too, in the second appeal. It is further submitted that, as such, the plaintiff paid the entire consideration at the time of execution of the agreement/agreement to sell dated 20.4.1987 and, even thereafter, the entire stamp duty was paid by the plaintiff and, therefore, as such, nothing further was pending to be done, except executing the deed in favour of the original plaintiff by original defendant no. 1. It is submitted that even the plaintiff was also put in possession at the time of execution of the agreement to sell dated 20.4.1987 and the General Power of Attorney by original defendant no. 1 in favour of the original plaintiff. It is submitted that, therefore, the sale was complete in favour of the plaintiff and, hence, the learned trial Court ought to have decreed the suit in toto and the learned first Appellate Court, therefore, rightly decreed the suit, which ought not to have been quashed and set aside by the High Court.

5.2 It is vehemently submitted by the learned counsel appearing on behalf of the appellant herein that the aforesaid vital/material aspects have not been considered in true spirit by the High Court and that the High Court has materially erred in quashing and setting aside a well reasoned judgment and order passed by the first Appellate Court.

5.3 It is further submitted that the High Court has materially erred in quashing and setting aside the judgment and order passed by the first Appellate Court on the ground that there was no prayer for specific performance of the agreement to sell dated 20.4.1987 and, therefore, the plaintiff was not entitled to any decree for specific performance which was granted by the learned first Appellate Court. It is submitted that, as such, there were necessary averments in the plaint and even the reliefs sought in the plaint can be said to be the relief for specific performance and even the issue no. 3 would cover the relief with respect to specific performance. It is submitted that, therefore, the High Court has committed a grave error in quashing and setting aside the order passed by the first Appellate Court and, consequently, dismissing the suit.

5.4 It is further submitted by the learned counsel for the appellant that the High Court has not properly appreciated the facts that not only the substantial amount was paid at the time of execution of the agreement/agreement to sell dated 20.4.1987, even the

subsequent installments were also paid by the plaintiff and all the notices of demand of installments and other expenses were directly between the plaintiff and the developer M/s Ansal Properties and that the plaintiff paid the entire installments up to 20.4.1990.

5.5 It is further submitted that the High Court has not properly appreciated the fact that after the title deed/sale deed was executed by the developers M/s Ansal Properties in favour of defendant no. 1 by the sale deed dated 31.3.1994, the original defendant no. 1 assured the plaintiff that he will get the sale deed executed in his favour. However, subsequently, the original defendant no. 1 did not execute the sale deed in favour of the original plaintiff and, on the contrary, superciliously sold the suit property in favour of the original defendant nos. 2 and 3 and, therefore, the plaintiff was constrained to file the suit. It is submitted that, therefore, the sale deed executed by original defendant no. 1 in favour of defendant nos. 2 and 3 was illegal, null and void and, therefore, the same was rightly declared to be illegal, null and void ab initio by the first Appellate Court.

5.6 By making the above submissions, it is requested to allow the present appeal and quash the impugned judgment and order passed by the High Court and consequently restoring the judgment and order passed by the first Appellate Court and to decree the suit.

6. The present appeal has been vehemently opposed by the learned counsel appearing for the original defendant nos. 2 and 3. It is vehemently submitted on behalf of the original defendant nos. 2 and 3 that the High Court has rightly allowed the appeal preferred by the original defendant nos. 2 and 3 and rightly quashed and set aside the judgment and order passed by the learned first Appellate Court granting relief for specific performance of agreement to sell dated 20.4.1987. It is submitted that in absence of any specific prayer in the plaint/suit asking the decree of specific performance of Agreement to Sell, as rightly observed by the High Court, the first Appellate Court was not justified in granting the relief of specific performance of agreement to sell dated 20.4.1987.

6.1 It is further submitted on behalf of the defendant nos. 2 and 3 that, even otherwise, the suit was barred by limitation. It is submitted that the original plaintiff claimed the reliefs on the basis of the agreement to sell dated 20.4.1987, however, the suit was instituted in the year 2004. It is further submitted that even the title deed/sale deed in favour of defendant no. 1 by the developers M/s Ansal Properties was executed in the year 1994 and that the original plaintiff was in knowledge of the same since the year 1994, still he instituted the suit in the year 2004 only, i.e. after a period of 10 years. It is submitted that, in the meantime, the original plaintiff did nothing to get the sale deed executed in his favour and/or in favour of his nominee. It is submitted that thereafter even the sale deed in favour of original defendant nos. 2 and 3 was executed by the original defendant no. 1 in the year 2002, which was a registered sale deed with value and on payment of full sale consideration and the original plaintiff instituted the suit in the year 2004 only. It is submitted that, therefore, on

consideration of evidence and in the circumstances of the case, the High Court has rightly interfered with the judgment and order passed by the first Appellate Court and, consequently, has rightly dismissed the suit.

6.2 Learned counsel appearing on behalf of defendant nos. 2 and 3 has submitted that, in the facts and circumstances of the case, and to buy the peace and to put an end to the entire litigation, they are even ready and willing to pay Rs.10,00,000/- to the original plaintiff as ex-gratia, which may be over and above the decretal to be paid by the original defendant no. 1 pursuant to the judgment and decree passed by the learned trial Court.

7. Heard the learned counsel for both the parties at length and perused the judgment and decree passed by the learned trial Court and the judgment and orders passed by the Courts below.

7.1 At the outset, it is required to be noted that in the suit the original plaintiff sought the relief of declaration and permanent injunction only and there was no specific prayer of specific performance of the agreement to sell dated 20.4.1987. It is also required to be noted that even the original plaintiff submitted the application under Order 6 Rule 17 CPC to amend the plaint by seeking relief of specific performance of the agreement to sell dated 20.4.1987. However, the same came to be dismissed and the same has attained the finality. Even there was no specific issue framed by the learned trial Court for specific performance with respect to the agreement to sell dated 20.4.1987. Nothing is on record that, at any point of time, the original plaintiff made any grievance with respect to the non-framing of the issue with respect to specific performance of the agreement to sell dated 20.4.1987. Even no effort was made before the learned trial Court to re-frame the issue. Therefore, as such, there was no specific prayer for specific performance of the agreement to sell dated 20.4.1987. Despite the above, the first Appellate Court granted relief of specific performance of the agreement to sell dated 20.4.1987 for which there was no prayer in the plaint. Therefore, the High Court was justified in reversing the judgment and order passed by the first Appellate Court granting relief for specific performance of the agreement to sell dated 20.4.1987.

7.2 Even the High Court is justified in not granting the other reliefs prayed in the suit, namely, the declaration that the original plaintiff is the owner and in possession of the suit property and even the suit for permanent injunction. It is also required to be noted that the original plaintiff claimed reliefs on the basis of the agreement to sell dated 20.4.1987 and the general power of attorney executed in the year 1987. The agreement dated 20.4.1987 is rightly considered to be the agreement to sell only. The case on behalf of the original plaintiff that the agreement to sell dated 20.4.1987 was a complete sale and it was a sale deed cannot be accepted for the simple reason that the said agreement/agreement to sell dated 20.4.1987 was not a registered one and even the same was not on the proper stamp duty and, therefore, as such, the same is not admitted in evidence and the same can be used only for the collateral purpose.

Therefore, the agreement to sell dated 20.4.1987 is rightly considered to be the agreement to sell only. Even considering the submissions made by the learned counsel appearing on behalf of the plaintiff and even considering the averments made in the agreement to sell dated 20.4.1987, the same can be said to be an agreement to sell only, as even the title deed/sale deed in favour of the original defendant no. 1 was executed in the year 1994. Therefore, both the learned trial Court and the High Court are justified in refusing to grant of declaration as sought in the plaint.

7.3 Even otherwise, the plaintiff is not entitled to the reliefs sought in the plaint even on the ground of limitation also. It is required to be noted that the agreement/agreement to sell and the general power of attorney were executed in the year 1987, on the basis of which the plaintiff had sought for the reliefs in the year 2004. Even, according to the plaintiff also, the title deed/sale deed in favour of the original defendant no.1 executed by the developers M/s Ansal Properties was in the year 1994. Considering the evidence on record and even considering the case on behalf of the plaintiff, it appears that throughout the plaintiff was aware of the execution of the title deed/sale deed in favour of the original defendant no. 1 executed in the year 1994, still the suit has been instituted in the year 2004 only, i.e. after a period of 10 years. Nothing is on record that any steps were taken by the original plaintiff to get the sale deed executed in his favour and/or in favour of his nominee. Therefore, the suit has been instituted after a period of 17 years after the execution of the agreement/agreement to sell dated 20.4.1987 and after a period of 10 years from the date of the title deed/sale deed in favour of the original defendant no. 1. Considering the aforementioned facts and circumstances of the case, the plaintiff is not entitled such reliefs, except of decree of recovery of amount paid to the original defendant no. 1.

7.4 In the aforesaid facts and circumstances of the case, we are in complete agreement with the view taken by the learned trial Court as well as that of the High Court, in not granting the other reliefs and granting the decree of recovery of the amount paid by the original plaintiff to the original defendant no. 1 only. In view of the reasons stated above, we see no reason to interfere with the judgment and order passed by the High Court and, consequently, the present appeal deserves to be dismissed and is accordingly dismissed.

8. However, as agreed, the original defendant nos. 2 and 3 are directed to pay a sum of Rs.10,00,000/- to the original plaintiff ex-gratia, which they have agreed to pay to put an end to the litigation and to buy a peace, to be paid to the original plaintiff within a period of six weeks from today. On payment of the aforesaid amount of Rs.10,00,000/- to the original plaintiff by original defendant nos. 2 and 3, any proceedings pending between the parties, if any, shall stand terminated.

9. With the above observations and directions, the present appeal stands dismissed, however, with no costs. I.A., if any, stands disposed of.

