
(1988) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1287 of 1978

Ajit Singh and others

APPELLANT

Vs

Hardyal Singh (Deceased) Represented By His Legal
Representatives and others

RESPONDENT

Date of Decision : 15-01-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 2

Citation : (1988) 01 P&H CK 0016

Hon'ble Judges : S.D. Bajaj, J

Bench : Single Bench

Advocate : H.L. Sarin and Miss Ritu Bahri, for the Appellant; A.N. Mittal and Mr. V.K Mittal, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Bajaj, J.—Faqiria Respondent No. 6 in this regular second appeal No. 1287 of 1978 agreed to sell his 8 Kanals 16 Marlas of agricultural land comprised in Khewat No. 32/33 Khatauni Nos. 42, 43, Khasra Nos 284 (0 8 , 286 (1-9). 287 (2-8), 288 (0-14) and 290 (3-17) situated in village Chockran, tehsil Philaur district Jalandhar. with all rights appertant thereto to Ajit Singh and Sadhu Singh, both brothers inter se and sons of Ishar Singh of the same village for Rs. 19,000/-vide agreement of sale Exhibit P. 1 dated 13th January, 1972. A sum of Rs. 5,000/- was secured as advance and the deed of sale was agreed to be executed till 14th June, 1972 the end of the month of Jeth Samat 2029.

2. Twelve days before 14th June, 1972 viz. on 2nd June. 1972 Faqiria aforesaid sold the agricultural lands covered by the agreement of sale to Defendant Nos. 2 to 6 before the learned trial court for Rs. 25,000/- vide registered sale deed Exhibit D.1. Alleging the sale deed Exhibit D. 1 to be a sham transaction which had come about as a result of collusion between Defendant-Respondent. Faqiria and the vendees ; who had purchased the land with full knowledge of the agreement of sale Exhibit P. 1 executed between Faqiria and the Plaintiffs only to

cause wrongful loss to the Plaintiffs, the Plaintiff Appellant filed before the learned trial court a suit for specific performance of the agreement of sale Exhibit P.1 and in the alternative claimed Rs. 19,000/- made up of Rs. 5,000/- as refund of earnest money paid by them to Faqiria at the time of the execution of the agreement of sale and further amount of Rs. 14,000/- as damages for breach of the agreement of sale aforesaid.

3. Defendant-Respondents urged before the learned trial court that they were bona fide purchasers of the disputed lands for valuable consideration from Respondent No. 6 without notice of the agreement of sale Exhibit P.1 dated 13th January, 1972 in favour of Plaintiff Appellants. Defendant-Respondent No. 6 Faqiria stated that he had neither executed the agreement dated 13th January, 1972 nor received any earnest money and that the land in suit had validly been sold by him to Defendant-Respondents on 2nd June, 1972.

4. Learned trial court decreed the suit with costs vide judgment and decree dated 16th October, 1973. In appeal, learned Additional District Judge, Jalandhar, vide his judgment dated 14th April, 1978, reversed the findings of the learned trial court in regard to Defendant-Respondents having purchased the land in suit with knowledge of earlier agreement of sale Exhibit P.I executed by the vendor in favour of Plaintiff Appellants and held that Defendant-Respondent-vendees were bona fide purchasers of the land in suit for value without notice of the agreement of sale dated 13th January, 1972 made by their vendor Faqiria in favour of Plaintiff Appellants and dismissed the suit for specific performance of the agreement of sale Claim made against Faqiria Respondent No. 6 for return of earnest money amounting to Rs. 5,000/- was, however, decreed along with interest at the rate of 6 per cent per annum and proportionate costs. Remaining parties to the suit were, however, left to bear their own costs of it. Feeling aggrieved from the assailed judgment and decree dated 24th April, 1978 of the learned first Appellate Court, Plaintiffs have come up in second appeal to this Court.

5. It has been urged on behalf of Plaintiff Appellants by their learned Counsel Shri H. L. Sarin, Senior Advocate that Bhajan Singh, one of the Defendant-Respondents, who was a co-Appellant alongwith Defendant-Respondents before the learned first Appellate Court having died on 8th December, 1974 and his legal representatives having not been brought on the record within three months thereafter, the appeal before the learned court of first appeal abated on 7th March, 1975 and ought to have been dismissed by it as such. The argument is wholly fallacious. Order XXII Rule 2 of the CPC reads, "Where there are more Plaintiffs or Defendants than one, and any of them dies, and where the right to sue survives to the surviving Plaintiff or Plaintiffs alone, or against the surviving Defendant or Defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants." Since the appeal filed before the learned court of first appeal was on behalf of all the

joint purchasers mentioned in sale deed Exhibit D. 1 dated 2nd June, 1972 and the purchase of the land in suit made by them being joint and indivisible, the right to sue survived to the remaining joint and indivisible purchasers, already on record before the learned court of first appeal as co-Appellants and consequently the appeal did not abate.

6. In Punjab, Haryana and Union Territory of Chandigarh rules 2A and 2B have been inserted after Rule 2 of Order XXII of the CPC on 17th March, 1973 as follows:-

2A. Every Advocate appearing in a case who becomes aware of the death of a party to the litigation (whether he appeared for him or not) must give intimation about the death of that party to the Court and to the person who is dominus litis.

2B. The duty to bring on record the legal representatives of the deceased Defendant shall be of the heirs of the deceased and not of the person who is dominus litis.

Rule 2B ibid casts a duty and obligation on heirs of deceased Bhajan Singh alone to get themselves impleaded on record in place of deceased Appellant. They moved before the learned court of first appeal an application to this effect which is recorded to have been drafted on 28th January, 1975 and is stated to have been filed on 28th January, 1976. Plaintiff-Appellants cannot, therefore, make any grievance of it now nor can the Defendant-Respondents be penalised for it. This view of the matter is based on the observations made in *The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others*, ., which read, "(A) Civil P C. (1908), Order 22, Rr 2,4 Joint petition under payment of Wages Act by Respondents-Order in their favour by one judgment-Appeal to Supreme Court All Respondents made parties-One of them dying during pendency of appeal but his name continuing to appear in array of Respondents-Legal representative not brought on record -Appeal held did not abate."

7. Secondly it has been urged with reference to the observations made in *Dr. Govinddas and Another Vs. Shrimati Shantibai and Others*, , that all the parties to the contract of sale Exhibit P.1 as also the sale deed Exhibit D. 1 are residents of the same village Chookran which is a small locality and, therefore, it is not probable that Defendant Respondents did not know of the execution of the original agreement of sale Exhibit P. 1 in favour of Plaintiff-Appellants. Further more, Faqiria vendor himself stated as D W 7 that before he sold the land to Hardy Singh and his brothers, Hardy Singh enquired from him at village Chookran as to whether he had made any agreement in favour of the Plaintiffs. From this admission it was concluded by the learned trial court that Hardy Singh felt the need to make enquiry from Faqiria about the agreement in favour of Plaintiff-Appellants only because he had knowledge of the same. On the basis of the probability and presumption ; one adverted to in the Supreme Court judgment described as probability of general nature and the other drawn by the learned trial court from the conduct of Hardy Singh in making the enquiry from

Faqiria, it has been asserted that Defendant-Respondents having purchased the land in suit from Faqiria with full Knowledge of the previous agreement of sale Exhibit P. 1 executed by Faqiria in favour of Plaintiff-Appellants, Defendant-Respondents cannot be termed as bona fide purchasers for value without notice of original contract and, therefore, the judgment and decree dated 24th April, 1978 of the learned court of first appeal deserve to be reversed on this score.

8. This argument again is wholly bereft of merit. Faqiria Defendant-Respondent has been dubbed as incredible by both the learned courts below while disbelieving him for everything he deposed before the learned trial court. In the course of his statement as D W 7 Faqiria denied the execution of agreement Exhibit P. 1 and the receipt of earnest money thereunder but the finding of the learned two courts below on both these counts has gone against him. Acting presumably on the principle of caveat emptor Hardyal Singh may have asked Faqiria if he had any deal or may be an agreement in respect of the land in dispute with someone else. A person who had denied the execution of agreement Exhibit P 1 in court, could not possibly be expected to speak the truth to Hardyal Singh about it. Presumption raised by the learned trial Court in this regard is a mere surmise and conjecture without basis. Finding based therein was rightly reversed by the learned first Appellate Court. Finding recorded by the learned court of first appeal in this regard is consequently affirmed.

9. Hon'ble the Supreme Court has itself observed in the authority cited in support of the argument advanced by the learned Counsel for the Plaintiff-Appellants, "under Section 19 (b) of the Specific Relief Act a contract cannot be specifically performed against a transferee for value who paid his money in good faith and without notice of the original contract." The whole question thus revolves around the fact whether Defendant-Respondents had notice of Exhibit P. 1 while getting the sale deed Exhibit D. 1 executed in their favour. Mere probability cannot take the place of proof. Three out of the four purchasers mentioned in sale deed Exhibit D. 1 dated 2nd June, 1972 were in United Kingdom and not in village Chookran. Hardyal Singh solitary Defendant-Respondent made enquiries from the vendor and the vendor, as already observed, must have given him a negative reply in line with the stand taken by him in court. Agreement Exhibit P.1 was not registered and, therefore, Defendant-Respondents cannot be presumed in law to have notice of it. Circumstances of the Supreme Court case being wholly different, the probability adverted to therein cannot be regarded to have any bearing on the peculiar facts and circumstances of the present case. In this view of the matter, the appeal fails and is dismissed with costs.