(2006) 08 P&H CK 0391

In the Punjab And Haryana At Chandigarh

Manga Singh APPELLANT

Vs

Guman Singh and Others RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:
Transfer of Property Act, 1882 — Section 41, 53A

Citation : (2006) 08 P&H CK 0391

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—The facts of the case, in brief, are that one Birkha son of Risal Singh was the owner of the land to the extent of 1/2 share of 361 kanals and 10 marlas. After his death, his share was inherited by his widow-Smt. Rumali (respondent No. 13) and his four minor daughters, namely, Bala, Bimla, Bohati and Kamla (respondent Nos. 14 to 17). Bala and Bohati have since died. Kehar Singh (respondent No. 12) was appointed as General Power of Attorney by Smt. Rumali to act on her behalf and on behalf of her minor daughters. Kehar Singh gave the suit land to one Santokh Singh, who was predecessor-in-interest of respondent Nos. 4 to 11 (respondent No. 4 has since died) for a period of ten years beginning from Kharif, 1965 to Kharif, 1975. Under the instructions of Smt. Rumali, Kehar Singh sold the suit land for Rs. 9000/- to Guman Singh, Nidhan Singh and Gujjar Singh (respondent Nos. 1 to 3 herein) and Santokh Singh. The sale deed was duly executed and Rs. 9000/- were to be paid before the Sub Registrar at the time of its registration, but on the anointed day, Kehar Singh came to them and asked them to pay Rs. 9000/- as he required the same for another transaction before the Sub Registrar. The amount was accordingly paid outside the office of the Sub Registrar. Thereafter, the sale deed remained unregistered. Santokh Singh was already in possession of the suit land as a lessee since 3.7.1965 and after the execution of the sale deed, he continued to be in possession as a prospective vendee. The sale deed could not be registered as Kehar Singh did not turn up to get the same registered.

2. On 11.2.1971, Kehar Singh sold the suit land to Manga Singh, defendant-appellant for an ostensible consideration of Rs. 90,000/- vide a registered sale deed. The other half share which was not in the share of Smt. Rumali and others was purchased from Man Singh and others by Guman Singh, Nidhan Singh and Gujjar Singh along with their brother Phoola vide registered sale deed dated 30.1.1969.

3. In their suit filed for declaration and consequential relief of permanent injunction, Guman Singh, Nidhan Singh, Gujjar Singh and legal representatives of Santokh Singh had pleaded that they were always ready and willing to perform their part of contract and Kehar Singh kept on telling them that they need not worry about the registration of sale deed. The plaintiffs-respondents claimed that they were entitled to the protection of the provisions of Section 53-A of the Transfer of Property Act (for short, `the Act''). The plaintiffs pleaded that the appellant had purchased the suit land with open eyes knowing fully well that Kehar Singh had already sold it and had received Rs. 9000/- and, therefore, he was not a bona fide purchaser for valuable consideration.

4. The defendant-appellant along with Kehar Singh contested the suit by filing one written statement, while Smt. Rumali and her daughters, Bimla, Bohati and Kamla filed separate written statement. The fourth daughter of Smt. Rumali, namely, Bala did not choose to contest the suit. In their written statement, the defendant-appellant and Kehar Singh alleged that the suit was collusive and has been filed at the behest of Smt. Rumali and her daughters and that the plaintiffs had no right on the suit property as neither the execution of the sale deed was established nor it was registered and that even if it is presumed that there was some contract between Smt. Rumali and the plaintiffs, then, they were estopped from filing the present suit by their own conduct as they never filed a suit for specific performance for enforcement of the contract in their favour. It was further contended that the appellant had purchased the suit land for a consideration of Rs. 90,000/- on the strength of a registered sale deed by paying the market value for the same and that he was bona fide purchaser for consideration without any notice and, therefore, the sale in his favour was protected by the provisions of Section 41 of the Act. The defendant-appellant and Kehar Singh also pleaded that the plaintiffs were bound to deliver the possession of the suit land to the appellant and they were not competent to retain the possession of the same.

5. In their written statement, Smt. Rumali etc. admitted the appointment of Kehar Singh as their General Power of Attorney. They also admitted the factum of the land in question having been given on lease to Santokh Singh for a period of 10 years. It was also admitted that Kehar Singh had sold the land in question to the plaintiffs for a consideration of Rs. 9000/-. In short, the claim of the plaintiffs was admitted and it was denied that Kehar Singh was authorised to sell the suit land to the defendant-appellant.

6. On the pleadings of the parties, the following issues were framed and the

parties went to trial:

1. Whether the plaintiffs are entitled to remain in possession and are owners of the suit land? OPP

2. Whether the plaintiffs have no locus standi to file the present suit? OPD

3. Whether the suit has been filed with collusion and at the instance of defendants No. 3 to 7? OPD

4. Whether the suit is time barred? OPD

5. Whether the plaintiffs are estopped to file the present suit by their own act and conduct? OPD

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

7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

8. Relief.

7. Sub Judge Ist Class, Karnal (hereinafter described as `the trial Court''), after perusing the evidence led by the parties, dismissed the suit of the plaintiffs vide his judgment and decree dated 17.9.1985. Aggrieved by this, an appeal was preferred by the plaintiffs, which was accepted and the findings of the trial Court were reversed by Additional District Judge, Karnal (hereinafter described as `the lower Appellate Court'') vide his judgment and decree dated 12.11.1986.

8. Dis-satisfied with the judgment and decree of the lower Appellate Court, the appellant has filed the present Regular Second Appeal. Shri D.S. Bali, learned Senior Advocate appearing for the appellant argued that by no stretch of imagination, could it be said that the plaintiffs were in possession of the suit property as bona fide prospective purchasers in pursuance of the alleged sale deed dated 2.5.1966 which is an unregistered document even though the law required it to be compulsorily registered. He contended that no consideration was passed on and the story of Rs. 9000/- having been paid outside the office of the Sub Registrar to Kehar Singh is concocted one and had there been any substance in the plea set up by the plaintiffs, then they would have not kept silent for all these years, but would have filed a suit for specific performance for enforcement of the agreement and registration of the sale deed. Learned Counsel urged that since there was no valid agreement and no consideration was shown to have passed, therefore, the benefit of Section 53-A of the Act could not be given to the plaintiffs. Apart from this, Shri Bali argued that Kehar Singh had no right to alienate the property of the minors even if it is accepted that on 2.5.1966, some transaction had taken place. He contended that the appellant was the bona fide purchaser without any notice of the earlier agreement, if any, between the plaintiffs and Kehar Singh and, therefore, he was protected by the provisions of Section 41 of the Act. To strengthen the case of the appellant, he also placed reliance on a judgment reported as AIR 1950 Pepsu 34 Chanan Singh Mehar

Singh v. Sham Lal Ramji Dass and another wherein it has been held that a subsequent vendee for consideration of immovable property deriving his title under a registered sale deed has priority over a vendee, who is in possession of the same property under an unregistered sale deed which is compulsorily registerable.

9. In reply to the contentions raised by the learned Counsel for the appellant, Shri M.S. Jain, learned Senior Advocate argued that the plaintiffs were in possession of the suit property as Santokh Singh, predecessor-in interest of plaintiffs No. 4 to 11 was a lessee over the suit property for a period of ten years beginning from Kharif,1965 to Kharif, 1975 and subsequently, their possession became that of prospective vendees as the entire sale consideration of Rs. 9000/- had been paid to Kehar Singh, but somehow the sale deed could not be registered. Shri Jain then contended that Smt. Rumali and three of her daughters, who are now majors, had supported the case of the plaintiffs. He also contended that none of the daughters of Smt. Rumali had chosen to challenge the sale deed in favour of the plaintiffs and, therefore, a presumption should be drawn that they were satisfied with the sale as they had received the requisite consideration. Learned Counsel contended that in the circumstances of the case, the plaintiffs were entitled to the protection of the provisions of Section 53-A of the Act. In support of his contention, he relied upon the judgments reported as 1962 P.L.R. 731 Chaman Lal Vs. Surinder Kumari, - Teja Singh Vs. Ram Parkash Talwar and Others, - Maruti Gurappa and Another Vs. Krishna Bala and Another, - Sheth Maneklal Mansukhbhai Vs. Hormusji Jamshedji Ginwalla and Sons, - Nathulal Vs. Phoolchand, - Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, - Shrimant Shamrao Suryavanshi and Anr. v. Pralhad Bhairoba Suryavanshi (dead) by Lrs. and Ors.

10. I have considered the arguments of the learned Counsel for the parties and have minutely perused the entire record.

11. The questions of law that arise for consideration in this appeal are,-

1. Whether a prospective vendee, who enters in possession of the suit property in pursuance to the part performance of a contract or agreement is entitled to the protection of the provisions of Section 53-A of the Act?

2. Whether a sale in favour of the bona fide purchase is protected by the provisions of Section 41 of the Act?

12. Admittedly, Kehar Singh was the General Attorney of Smt. Rumali and he is said to have executed sale deed dated 2.5.1966. In this sale deed, it was stipulated that Rs. 9000/- was the sale consideration which was to be paid before the Sub Registrar at the time of registration of the sale deed. Later on, a story was propounded that whole consideration was paid outside the office of the Sub Registrar as Kehar Singh required it for some other transaction and thereafter, Kehar Singh did not get the sale deed registered and it remained as such, but Santokh Singh and his legal representatives continued to be in possession of the

suit property as one of the prospective vendees.

13. On examination of the whole record, it transpires that there is absolutely no evidence to show that Rs. 9000/- were paid to Kehar Singh outside the office of the Sub Registrar. It is not conceivable that a person would part with the entire sale consideration and would not get the sale deed registered even though all the parties were present in the office of the Sub Registrar. The only plea that is sought to be set up is that the sale deed could not be registered as the Sub Registrar was busy on that day and he declared that no further sale deed would be registered. The conduct of the plaintiffs is not that of a prudent person. Even if they were confronted with a situation where the Sub Registrar did not register the sale deed on account of pre-occupation, then also it is not believable that the parties would remain silent without getting the same registered subsequently either by persuading the concerned party to get the deed registered or by filing a suit for specific performance. Another thing which is not to be lost sight of is that Kehar Singh is related to the plaintiffs. The fact that sale deed dated 2.5.1966 is not registered, coupled with above mentioned circumstances, goes a long way to establish that Smt. Rumali, Kehar Singh and the plaintiffs, who are relations, had inter-woven a web of deceit and intrigue. Now, the next question that is to be determined is as to what would be the effect of unregistered sale deed dated 2.5.1966. The sale deeds are required to be compulsorily registered as per the provisions of Section 17 of the Registration Act, 1908, the relevant portion of which is reproduced below:

17. Documents of which registration is compulsory.- (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

(a) xx xx xx xx xx

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) no-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) & (e) xx xx xx xx xx

(1-A), (2) and (3) xx xx xx xx

14. That being so, the status of this document, at best, can be at par with that of a contract or an agreement to sell wherein right was proposed to be transferred to the plaintiffs.

15. In the above back-drop, the question that would arise is as to whether it was acted upon or whether the plaintiffs were in possession of the suit property as prospective vendees.

16. The case of the plaintiffs themselves is that Santokh Singh was in possession of the suit property as a lessee. Subsequently, Guman Singh etc. had purchased the other 1/2 share of the land from Man Singh and others. In the absence of any evidence of consideration of Rs. 9000/- or otherwise having passed on to Kehar Singh, it cannot be said that sale deed dated 2.5.1966 was ever acted upon. The possession of the Santokh Singh and thereafter, his successors-in-interest was already there on the suit property as lessee and, therefore, it cannot be said that their possession at any point of time was that of a prospective vendee. In view of this, the plea of the sale being protected under the provisions of Section 53-A of the Act would fall flat. Section 53-A reads thus:

53-A. Part performance.- Where any person contracts to transfer for consideration any Immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

17. A perusal of the above quoted provisions shows that for granting protection under them, a number of conditions enumerated therein have to be satisfied. The above provisions were examined by their Lordships of the Supreme Court in Shrimant Shamrao Suryavanshi and Anr. v. Pralhad Bhairoba Suryavanshi (dead_) by Lrs. and Ors. (supra), wherein it was observed as under:

But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession u/s 53-A of the Act. The necessary conditions are - 1) there must be a contract to transfer for consideration any immovable property, 2) the contract must in writing, signed by the transferor, or by someone on his behalf; 3) in writing must be in such words from which the terms necessary to construe the transfer can be ascertained; 4) the transferee must in part performance of the contract take possession of the property, or of any part thereof; 5) the transferee must have done some act in furtherance of the contract; and 6) the transferee must have performed or be willing to perform his part of the contract.

18. Reverting back to the facts of the present case, it is clear that there was no evidence to show that the transferees, who were the plaintiffs, had , in part performance of the contract, taken possession of the suit property or any part thereof or that the they had done some act in furtherance of the contract or that they have performed or were willing to perform their part of contract. There was neither any conclusive evidence to show that the sale consideration had been paid pursuant to sale deed dated 2.5.1966 nor the possession of the suit property was handed over in pursuance to that contract or that the plaintiffs had done anything in furtherance of the performance of their part of contract. In view of this, it cannot be said that the provisions of Section 53-A of the Act would be attracted.

19. In a judgment reported as AIR 1977 S.C. 1517 Ranchhoddas Chhaganlal v. Devaji Supdu Dorik and Ors. their Lordships of the Supreme Court has held as under:

One of the limbs of part performance is that the transferee has in the part performance of the contract taken possession of the property. The most important consideration is the contract. The true principle of the operation of the acts of part performance seems to require that the acts in question must be referred to some contract and must be referred to the alleged one; that they prove the existence of some contract, and are consistent with the contract alleged. The doctrine of part performance is a defence. Its a sword and not a shield. It is right to protect his possession against any challenge to it by the transferor contrary to the terms of contract.

20. In view of the law laid down by the Apex Court in Ranchhoddas Chhaganlal''s case (supra) , the doctrine of part performance is to be used as a sword and not a shield and, therefore, there has to be substantial and cogent evidence on record to show that part performance was carried out in execution of a valid contract between the parties. The evidence in the present case in this regard is woefully short.

21. Apart from the above, the most glaring aspect is that Kehar Singh, General Attorney of Smt. Rumali has denied the receipt of Rs. 9000/- as sale consideration from the plaintiffs. He rather went on to say when he appeared as DW1 that the plaintiffs were persisting with the registration of the sale deed, but the amount shall be paid subsequently after one or two months.

22. As far as the defendant-appellant is concerned, there was a registered sale deed in his favour which was executed for a valid consideration of Rs. 90,000/-

by Kehar Singh, who has accepted this fact in his statement while testifying as DW1. The appellant had acted in good faith and, therefore, was the bona fide purchaser of the suit property. He is, therefore, entitled to the protection of the provisions of Section 41 of the Act, which read as under:

41. Transfer by ostensible owner.- Where, with the consent, express or implied, of the persons interested in Immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it; provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

23. Looking at the evidence on record, it is clear that the appellant was not having any knowledge of any previous sale deed which was an unregistered document and not reflected in the revenue records and, therefore, he is held to be the bona fide purchaser of the suit property and entitled to protection of the provisions of Section 41 of the Act.

24. The judgment in Chanan Singh Mehar Singh''s case (supra) relied upon by the learned Counsel for the appellant is partly attracted to the facts of this case, in the sense, that a vendee for consideration certainly has a better title over a prospective vendee, but, in the instant case, the case of the appellant is still on a better footing as the plaintiffs had failed to show as to whether they were in possession of the property as prospective vendees.

25. In view of the above, the judgments relied upon by the learned Counsel for the plaintiffs-respondents are not attracted to the facts of the present case.

26. On the basis of the foregoing discussion, the questions of law formulated hereinabove stand answered and it is held that,-

(i) the plaintiffs-respondents were not in possession of the suit property as prospective vendees and no part of the contract was acted upon and hence, they are not entitled to the benefit of Section 53-A of the Act; and

(ii) that the appellant is a bona fide purchaser without notice and the sale in his favour is protected u/s 41 of the Act.

27. Accordingly, the appeal is allowed. The judgment and decree passed by the lower Appellate Court are set aside and the sale in favour of the appellant of the suit property is held to be valid for consideration and he is held entitled to the possession thereof.