
(2010) 08 P&H CK 0333

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1707 of 2010 (O and M)

Pawan Kumar

APPELLANT

Vs

Mangal Sain Bansal

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35(A)
Specific Relief Act, 1963 — Section 28, 28(1)

Citation : (2010) 08 P&H CK 0333

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.

CM No. 5155-C of 2010

1. For the reasons mentioned, delay of two days in refiling this appeal is condoned.

CM disposed of.

RSA No. 1707 of 2010(O & M)

2. This is Defendant's second appeal challenging the judgment and decrees of the courts below whereby suit of the Plaintiff-Respondent for possession by way of specific performance of the agreement dated 13.03.2002 was decreed on deposit of balance sale consideration within two months with a further relief of permanent injunction restraining the Appellant from interfering into the possession of the Appellant over the suit property.

3. As per the averments made in the suit, the Appellant and the Respondent were co-owners in possession in equal share in the suit property. On 13.03.2002, Appellant entered into an agreement to sell the half share in the suit property in favour of Plaintiff-Respondent for a consideration of Rs. 7 lacs and received a

sum of Rs. 50,000/- as earnest money. An agreement to sell was reduced into writing and the DefendantAppellant had signed the same in token of its correctness. It was agreed that the possession of the half share in the suit property shall be delivered to the Plaintiff-Respondent by the Appellant on receipt of balance sale consideration. The stipulated date for execution of the sale deed was fixed as 31.05.2002. The Plaintiff-Respondent was having necessary expenses and the balance sale consideration on the stipulated date. He submitted application before the Sub-Registrar, Barnala. The Appellant also appeared in the office of Sub-Registrar, Barnala but Respondent refused the execution of the sale deed. Hence the present suit.

4. The Appellant contested the suit raising various preliminary objections. On merits, it was submitted that the alleged agreement to sell was got executed by playing fraud, misrepresentation and undue influence. It was further alleged that no agreement to sell was executed in favour of the Plaintiff-Respondent and no earnest money was paid by him. It was further alleged that value of the property in dispute was more than Rs. 29 lacs in which the Appellant was having half share, so there was no question to sell the house in question for a consideration of Rs. 7 lacs only. It was further alleged that Plaintiff-Respondent was not in possession of any portion of the house in dispute. Dismissal of the suit was prayed for.

5. From the pleadings of the parties, the following issues were framed:

1. Whether an agreement dated 13.03.2002 was executed between the parties?
OPP

2. Whether the Plaintiff is entitled to possession of 1/2 share of the house in dispute by way of specific performance of agreement dated 13.03.2002?OPP

3. Whether the Plaintiff is entitled to the relief of injunction as prayed for?OPP

4. Whether the Plaintiff has no locus standi to sue?OPD

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

6. Whether the agreement dated 13.03.2002 was executed by fraud and misrepresentation?OPD

7. Whether the Defendant is entitled to special costs u/s 35A CPC to the tune of Rs. 10,000/-?OPD

8. Relief.

6. The trial Court vide impugned judgment and decree dated 04.03.2006 decreed the suit in the following terms:

"In view of the my issue wise findings and above discussion, the suit of the Plaintiff succeeds and accordingly the same is decreed with costs and decree for possession by way of specific performance is passed in favour of the Plaintiff and against the Defendant, and the Plaintiff is directed to deposit the balance sale

consideration of Rs. 6,50,000/- within two months and the Defendant is directed to execute the sale deed in favour of the Plaintiff as per the agreement to sell dated 13.03.2002 Ex.P-1 within a period of two months on deposit of balance sale consideration in the court, failing which the Plaintiff shall have a right to get the sale deed executed through the agency of the court, and further decree for permanent injunction is passed in favour of the Plaintiff restraining the Defendant from interfering into the possession of the Plaintiff over the suit property and restraining the Defendant from interfering into the user of the suit property by the Plaintiff. Decree sheet be prepared and file be consigned to the record room."

7. Not satisfied from the aforesaid judgment and decree of the trial court, the Defendant filed an appeal before the Lower Appellate Court. It may also be relevant to submit here that during the course of arguments before the Lower Appellate Court the Appellant moved an application for rescission of the agreement on the averments that the Plaintiff-Respondent had failed to deposit the balance sale consideration within the stipulated period and consequently as per provisions of Section 28 of the Specific Relief Act, the contract was liable to be rescinded. The aforesaid application was resisted by the Respondent and it was argued that he never avoided the payment of balance sale consideration and the Defendant- Appellant was himself not ready to execute the agreement as he had preferred appeal against the judgment and decree of the trial Court. The trial Court after considering the facts and circumstances of the case, extended the period to deposit the balance sale consideration and directed the Plaintiff-Respondent to deposit the same with interest and finding no irregularity in the findings of the trial Court, the appeal filed by the Defendant-Appellant was dismissed.

8. Still not satisfied, the Defendant is in appeal before this Court.

9. The only argument raised before this Court by the learned Counsel for the Appellant is that Section 28 of the Specific Relief Act had come into play in the case in hand and, therefore, the Lower Appellate Court was wrong while extending the time for deposit of balance sale consideration and dismissing the appeal filed by the Appellant.

10. In support of his argument, learned Counsel for the Appellant has relied upon a judgment of the Hon'ble Supreme Court in Ramankutty Guptan Vs. Avara, and Onkar Nath and Another Vs. Basheer and Others, , to contend that if decree holder fails to pay the balance sale consideration within the prescribed period and did not apply for extension of the period for doing so, the vendor becomes entitled to get the contract rescinded. Learned Counsel for the Appellant on the basis of Ramankutty Guptan(supra) has further contended that since the appeal is in continuation of the suit, therefore the application made by the Appellant before the Lower Appellate Court for rescission of contract should have been taken to be in the same suit and the Court have control over the decree and it was open to the court to exercise its powers u/s 28(1) of the Act to rescind the contract and the Court having failed to do so has erred at law and therefore the

following substantial questions of law arise in this appeal:

1. Whether the Lower Appellate Court can extend the time to deposit the balance sale consideration even without any application by the Plaintiff in this respect?
2. Whether non-deposit of the balance sale consideration within the period stipulated in the decree result in dismissal of the suit/recession of contract u/s 28 of the Act?
3. Whether any time can be granted for deposit of the balance sale consideration by the Lower Appellate Court while deciding the application u/s 28 of the Act?
4. Whether the extension of time for deposit of the balance sale consideration can be equated by awarding/granting interest in faovur of the Defendant/Appellant?
5. Whether the application u/s 28 of the Act has any concern with the extension of time for deposit of the balance sale consideration?
6. Whether it is imperative on the part of the Respondent/Plaintiff to prove a sufficient cause which prevented him for non-deposit of the balance sale consideration within stipulated period in compliance of the decree of the trial Court?
11. I have heard learned Counsel for the Appellant, perused the impugned judgment and decree and the judgments of the Hon"ble Supreme Court cited at the Bar.
12. It is well settled that after passing the decree for specific performance, the court does not cease to have any jurisdiction and the court retains control over the decree even after the same has been passed and it is open to the court to exercise the power u/s 28(1) of the Act either for extension of time or for rescinding the contract as claimed for. It is equally well settled that when the decree specifies time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the Court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay. Again, there is no dispute that an application for extension of time for payment of balance sale consideration may be filed even in the court of first instance or in the Appellate Court or in the same suit as the decree of the trial Court stands merged with that of the Appellate Court. It is not the case of the Appellant that no extension could be granted by the Court for making balance payment. Once that is so, no fault can be found with the impugned judgment and decree passed by the Lower Appellate Court, whereby Plaintiff-Respondent was granted extension of time to deposit the balance sale consideration.
13. In the case in hand, just and sufficient grounds are made out to extend the period for depositing the amount of balance sale consideration because the matter is still sub judice and it is the Defendant who has challenged the finality

of the judgment and decree by preferring an appeal. By way of preferring the appeal, the Defendant is seeking to dispute the correctness of the judgment and decree under appeal and at the same time by seeking rescission of the contract, he is making an attempt to derive benefit from the terms and conditions of the decree. Once that is so, no error can be found in the exercise of jurisdiction of the Lower Appellate Court whereby instead of accepting the application of the Appellant for rescission of the contract, the Lower Appellate Court has granted extension of time to the Plaintiff-Respondent for deposit of the balance sale consideration.

14. No other point has been argued.

15. No substantial question of law arises in this appeal. Thus, I find no merit in this appeal Dismissed.