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(2014) 12 P&H CK 0179

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4548 of 2012

Raj Singh — APPELLANT

Vs

Asha Gupta and Others — RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 2

Citation : (2015) 179 PLR 124

Hon'ble Judges : Bharat Bhushan Parsoon, J.

Bench : Single Bench

Advocate : Sudhir Aggarwal, for the Appellant; Rajesh Arora, for the Respondent

Final Decision : Allowed

Judgement

Dr. Bharat Bhushan Parsoon, J.?Plaintiff Smt. Asha Gupta, respondent No. 1 herein, had filed a suit on 26.5.2008 for specific performance of the agreement to sell dated 26.8.2004 qua HUDA plot No. 692, Sector 39, Gurgaon with consequential relief of permanent injunction restraining defendant No. 1-Raj Singh, petitioner herein, as also defendant No. 2 Smt. Savitri Devi, respondent No. 2 herein, from alienating the plot to any other person except the plaintiff. Defendants No. 4 and 5, respondents No. 4 and 5 herein, were also sought to be injuncted against granting of permission for transfer of the plot. The plot in question after the death of allottee Attar Singh had been re-allotted in the names of his legal heirs viz. defendants No. 1 to 3. The agreement had been executed only by defendant No. 1. Deceased Attar Singh or defendants No. 2 and 3 had never agreed to sell the plot in question to the plaintiff. On the request of the petitioner, names of respondents No. 2 and 3 were removed from the array of respondents vide order dated 29.8.2014. The lower court after considering these aspects had come to the conclusion that neither relief of specific performance of the agreement nor relief of permanent injunction was any further available to the plaintiff. The lower court had come to the further conclusion that decree for recovery of earnest money had not been sought despite order of the Court to this

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effect of 11.9.2006. The lower court, on application of the defendants under Order VII Rule 11 CPC (Annexure P-2), verdicting that the suit was not maintainable and accepting the application of applicant-defendant No. 1, the plaint was rejected (Annexure P-3).

2. Against order dated 11.2.2011 (Annexure P-3) rejecting the plaint, the plaintiff filed civil appeal. Vide order dated 19.5.2012 (Annexure P-4), the first Appellate Court remanded the case for fresh decision by the lower court. Order of the first Appellate Court of 19.5.2012 is under challenge in this revision petition.

3. It is claimed by the revisionist that provisions of Rule 11 of Order VII CPC did not engage the attention of the first Appellate Court to the extent those deserved. It is further claimed that the plaint could not have been rejected merely by observing among other things, that only refund of earnest money could be claimed.

4. Hearing has been provided to the counsel for the parties while going through the paper book.

5. For ready reference, Rule 11 of Order VII CPC is appended as below:

"Refection of plaint- The plaint shall be rejected in the following cases:--

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

6. It remains a fact that rejection of plaint under Order VII Rule 11 CPC results in drawing of a decree in terms of provision of sub-section 2 of Section 2 CPC. Once rejection of plaint is taken to be a decree in terms of sub-section 2 of Section 2

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CPC, order of the civil court dated 11.2.2011 was rightly taken to be appealable. Appeal was preferred on 30.5.2011 whereafter vide impugned order, the matter had been sent back to the court below.

7. Learned counsel for defendant No. 1, petitioner herein, has urged that while considering the application under Order VII Rule 11 CPC for rejection of plaint, only averments in the plaint could have been considered and the pleas taken by the defendant in his written statement were not to be considered. It is contended that while deciding the appeal, the first Appellate Court neither took cognizance of the provisions of subsection 2 of Section 2 CPC nor of Order VII Rule 11 CPC and thus, remand of the case vide impugned order is bad in law.

8. Perusal of the impugned order reveals that domain, sweep and impact of sub-section 2 of Section 2 of CPC was not studied in the interface of the facts and circumstances of the case. Similarly, provision of Order VII Rule 11 CPC whereby averments in the plaint were to be examined without looking at the averments in the written statement was also overlooked. Thus, the first Appellate Court while deciding the appeal vide impugned order of 19.5.2012 missed important aspects. The impugned order of 19.5.2012 having not considered the domain and sweep of the facts as also the provisions of law appropriately is to be set aside. Sequelly, setting aside the impugned order dated 19.5.2012 of the first Appellate Authority (Annexure P-4) and accepting this revision petition, the first Appellate Court is directed to decide the appeal afresh after taking into account the entire controversy and all the aspects involved as also the attending facts and circumstances keeping in view only the averments made in the plaint.

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