(2020) 07 RAJ CK 0180

In the Rajasthan High Court

Case No : Civil Revision Petition No. 44 Of 2020

Rajendra Kumar APPELLANT

Vs

Ashok Kumar And Ors RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Transfer Of Property Act, 1882 — Section 54
Specific Relief Act, 1963 — Section 19
Rajasthan Court Fees and Suits Valuation Act, 1961 — Section 6(1), 40
Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2020) 07 RAJ CK 0180

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Avin Chhangani, Apeksha Chhangani

Final Decision : Dismissed

Judgement

This revision petition is directed against the order dated 13.12.2019 passed by the trial court, whereby the application filed by the petitioner under Order VII, Rule 11 CPC has been rejected.

The respondent No.1 - plaintiff filed a suit for specific performance of contract dated 13.07.2009 and consequential cancellation of the sale deed dated 24.09.2009 executed in favour of the defendant Nos. 1 to 3.

The petitioner filed an application under Order VII, Rule 11 CPC, inter-alia, with the submissions that no cause of action is disclosed against the petitioner as there is only an agreement in favour of the plaintiff, he cannot seek cancellation of the registered sale deed in favour of the defendants. The plea pertaining to incorrect valuation of the suit and payment of court fees was also raised.

The trial court, after hearing the parties, rejected the application filed by the petitioner.

Learned counsel for the petitioner with reference to provisions of Section 54 of the Transfer of Property Act, 1882 ('the T.P. Act') submitted that a contract for the sale of immovable property, does not create any right or charge on such property and as admittedly, the plaintiff only has a contract for sale in his favour, he has no cause against the petitioner in seeking the cancellation of the registered sale deed.

Further submissions have been made that in a suit for specific performance other than the parties to the agreement no other party is a necessary party and therefore also, the impleadment of the petitioner was unnecessary and as such, no cause of action is disclosed.

Submissions have also been made that the market value of the property is huge, however, a nominal court fees has been paid by the plaintiff and therefore, the order passed by the trial court deserves to be set-aside.

Reliance has been placed on judgment in Gurmit Singh Bhatia v. Kiran Kant Robinson & Ors. : AIR 2019 SC 3577.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

The plea raised by learned counsel for the petitioner based on provisions of Section 54 of the T.P. Act and claiming that based on the agreement to sale no cause of action arises in favour of the plaintiff for seeking the relief against the subsequent transferee and that the subsequent transferee is not a necessary party to the suit is essential based on ignorance of provisions of Section 19 of the Specific Relief Act, 1963 ('the Act of 1963'), which inter-alia provides as under :-

"19. Relief against parties and persons claiming under them by subsequent title.- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) ....

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

...."

A bare look at above provisions reflect that a specific performance of contract may be enforced against any person claiming under the party to the agreement by a title arising subsequent to the contract and the exception provided is transferee for value, who has paid the money in good faith and without notice of the original contract.

The fact as to whether the petitioner's case would fall in exception, would have to be pleaded and proved by the petitioner and in view of the specific provision, the plea raised apparently has no substance.

So far as the reliance placed on judgment in the case of Gurmit Singh Bhatia (supra) is concerned, the said judgment, deals with the parties, who are alien to the agreement and not a subsequent purchaser, which aspect is governed by provisions of Section 19 of the Act of 1963, as such, the said judgment has no application to the facts of the present case.

In so far as the valuation of suit and payment of requisite court fees is concerned, the suit would be governed by provisions of Section 40 of the Rajasthan Court Fees and Suits Valuation Act, 1961 ('the Act of 1961'), which provides that in a suit for specific performance, whether with or without possession, fee shall be payable in the case of a contract of sale, computed on the amount of the consideration. Admittedly, in the present case, the consideration in the agreement is Rs.7,25,000/- and the court fees have been paid by valuing the suit at Rs.7,25,000/-, as such, it cannot be said that the valuation / court fees paid are insufficient.

In so far as the plea based on relief of cancellation of the sale deed is concerned, the said relief is only ancillary to the main relief of specific performance, which would be governed by proviso to Section 6(1) of the Act of 1961 and therefore, the plea in this regard that separate court fees is required to be paid for cancellation also has no basis.

In view of the above discussion, the order passed by the trial court, does not call for any interference. There is no substance in the revision petition, the same is, therefore, dismissed.