

(2012) 08 SHI CK 0042

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 187 of 2009-C

Sh. Chander Kant

APPELLANT

Vs

Smt. Mahima Bholla, Ms. Yogita, Ms. Mamta and Smt. Hem
Lata

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Specific Relief Act, 1963 — Section 16(c)

Citation : (2012) 08 SHI CK 0042

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Virender Singh Chauhan, for the Appellant; Neeraj Gupta, Advocate for Respondent No. 1 and Ms. Sheetal Kimta, Advocate for Respondents No. 2 to 4, for the Respondent

Judgement

Dev Darshan Sud, J.—This is the defendant's appeal against the concurrent findings of the learned two Courts below, decreeing the suit of the respondent/plaintiffs granting a decree for specific performance as prayed for. In appeal preferred by the appellant/defendant herein before the learned first Appellate Court, the judgment of the learned trial Court has been affirmed. This case was taken up for hearing in view of the fact that notice in this appeal was issued on 24.9.2009 and thereafter the case was put up before the Court first time only on 12.7.2012. I am quite surprised at the fact that the case remained pending in the Registry for more than three years. Be that as it may, I proceed to consider the case of the parties.

2. The plaintiff/respondent instituted the suit for specific performance of contract on the pleadings that the defendants along with proforma-defendant Puran Chand were the co-owner of the suit land comprised in khasra No. 451, measuring 198 sq. meters situated in Mauja Saproon, District Solan, H.P. It was pleaded that this land is in the exclusive possession of the contesting defendants No. 1 to 4 (appellant and proforma respondents No. 2, 3 and 4 herein). They

agreed to sell the land to the plaintiff to the extent of 119 sq. meters comprised in khasra No. 451/1, the defendants were the owners of 2074 sq. meters of land of the entire khata (holding), which was joint between the defendants, proforma defendant and the plaintiff. The plaintiff pleaded that the land was agreed to be sold for a sum of Rs. 70,200/- out of which the plaintiff has paid a sum of Rs. 45,000/- to the defendant at the time of execution of the agreement, Ex. PW1/A on 21.12.1998 in the presence of the witnesses and the balance amount of Rs. 25,200/- was to be paid by the plaintiff to these defendants at the time of the execution and registration of the sale deed. The agreement stipulated that the plaintiff was to obtain permission from the State Government u/s 118 of the Himachal Pradesh Tenancy and Land Reforms Act, which was given from time to time and extended to enable the execution of the sale deed. It is pleaded that the plaintiff has always been ready and willing to perform her part of the contract. Sale deed Ex. PW/B was also prepared on the stamp papers worth Rs. 8500/- on 6.10.1999 but it was executed on 4.7.2000 in presence of witnesses. Another sum of Rs. 15,000/- was paid to the defendants through advocates S/ Sh. Subhash Barmani and Lalit Sharma at Solan and the balance amount of Rs. 10,200/- was to be paid before the Sub Registrar, Solan. The case of the plaintiff is that on 4.7.2000 the sale deed was presented for registration but there was an objection that it was required to be accompanied by an approved site plan etc., which objections were removed. The averment is that the plaintiff is ready and willing to perform her part of contract by making payment of the balance amount but the defendants have resiled from their promise and therefore, the suit was instituted.

3. The learned trial Court on these pleadings settled five issues. Issue Nos. 1 and 2 being crucial, the first related to the fact as to whether the plaintiff was ready willing to perform her part of contract and the second as to whether the plaintiff is entitled for decree of specific performance in terms of the agreement to sell Ex. PW2/A dated 22.12.1998. Plaintiff examined three witnesses, the defendants submitted their evidence. On the evidence, the learned trial Court holds that the plaintiff was ready and willing to perform their part of contract and balance amount of Rs. 15,000/- was to be paid before the Sub Registrar. The suit was decreed as prayed for.

4. The defendants appealed. The learned Appellate Court on the evidence on record, affirmed the findings of the learned trial Court holding that what was urged in appeal was the fact that the plaintiffs were never ready and willing to perform their part of contract. The appeal was dismissed on a thorough re-appreciation of facts.

5. Defendant Chander Kant is now in second appeal. The other defendants have been arrayed as proforma-respondents. Learned counsel appearing for the appellant submits that the appeal involves substantial questions of law because on the basis of the evidence on record, the learned Courts below were not correct in holding that the respondents/plaintiffs were ready and willing to

perform their part of contract since no notice etc., has been issued. Learned counsel relies upon the decision of the Supreme Court in J.P. Builders and Another Vs. A. Ramadas Rao and Another, and in principle relies inter alia holding:

25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26. It has been rightly considered by this Court in R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others, that "readiness and willingness" cannot be treated as straitjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

(p. 443)

He submits that there is no evidence of any notice having been sent to the respondents and, therefore, the question of readiness and willingness on the part of the plaintiffs/respondents does not arise. He then urges that there is no permission which has been granted by the State Government or in any event there was no permission existing on the date when the sale deed was sought to be executed.

6. Adverting to the first point, I do not find any perversity in the finding rendered by both the learned Courts below that the plaintiffs were ready and willing to perform their part of contract. These are findings of fact in favour of the plaintiffs. On the second point what all I need say is that the permission has been granted, but even in case no permission was granted, it would not be a bar for grant of decree for specific performance of contract. In Civil Suit No. 27 of 2011, titled Ltd. Col. S.j. Chaudhri versus Mr. Rajkumar Brijendra Singh (deceased through his legal Representatives, decided on 26th September, 2008, wherein entirety of the case law has been discussed by this Court following the judgment of the Supreme Court as also various other High Courts in Mrs. Chandnee Widya Vati Madden Vs. Dr. C.L. Katial and Others, , Ajit Prasad Jain Vs. N.K. Widhani and Others, , Anjali Dass v. Bidyut Sarkar, AIR 1992 Calcutta 47, K.

Raheja Constructions Ltd. Vs. Alliance Ministries and others, , Raghunath Rai and Another Vs. Jageshwar Prashad Sharma and Another,

7. There is no question of law much less a substantial question of law arises for determination in this appeal. The appeal dismissed. No order as to the costs. All pending applications also stand disposed of.