
(1997) 07 P&H CK 0167

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 756 of 1986

Shri Piara Singh

APPELLANT

Vs

Jagtar Singh and Another

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 31(1)

Citation : (1997) 117 PLR 258 : (1997) 4 RCR(Civil) 547 : (1998) 3 RCR(Criminal) 342

Hon'ble Judges : N.K. Kapoor, J;K.K. Srivastava, J

Bench : Division Bench

Advocate : Ashok Jindal, for the Appellant; Raman Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—Defendant-the Appellant seeks setting aside the judgment and decree of the learned Single Judge dated 6.8.1986.

2. Plaintiff filed a suit for possession of first and second floor of S.C.F. No. 71, Grain Market, Chandigarh and for recovery of Rs. 14,000/- as mesne profits and damages for the period 1.7.1973 to 30.6.1976, claiming the amount at an rate of Rs.4G0/- per month,

3. The claim of the plaintiff was resisted by the defendants who denied the execution of sale deed in favour of the plaintiff and otherwise also termed it to be void having contravened the provisions of India Stamp Act and also for the reason that the same was executed in contravention of Foreign Exchange Regulation Act (hereinafter to be referred to as "the Act"), thus, conforming no title upon the plaintiff. Besides it, the defendants took up a plea that the property infact had been sold for a sum of Rs.1,50,000/- whereas only a sum of Rs.75,000/- was paid at the time of registration of sale deed.

4. On the pleadings of the parties, the following issues were framed :-

(1) Whether the sale deed dated 22.11.1971 is void as alleged in Preliminary objections No. 1, 2, 6, 7, 10, 11, 13, 14 and 15 of the written statement ? OPD.

(2) Whether the plaintiffs have any locus standi to file the present suit as alleged, in preliminary objections Nos. 3, 4 and 5 of the written statement ? OPD.

(3) Whether the suit is time barred as alleged ? OPD.

(4) Whether the sale consideration was fixed for Rs.1,50,000/- if so its effect ? OPD.

(5) Whether the suit has not been properly valued for the purposes of Court fee, as alleged ? OPD.

(6) Whether the plaintiffs are entitled to the possession of the property in dispute, alleged ? OPP.

(7) Whether the plaintiffs are entitled to mesne profits, if so, to what extent ? OPP.

(8) Relief.

5. Trial Court on considering the oral as well as documentary evidence came to the conclusion that the plaintiff became owner of the suit property in view of the registered sale deed duly executed by the defendants in his favour. Court found no substance in the contention of the defendants that the sale was void or that some more amount was to be paid by the plaintiff to the defendants before the same could be given effect to. Accordingly, trial Court awarded mesne profits at the rate of Rs.400/- per month in all amounting to Rs.14,000/- as claimed by the plaintiff. Suit of the plaintiff was consequently decreed.

6. Matter was once again examined by the learned Single Judge on facts as well as law (it being the first appeal), but found no ground to vary or reverse the judgment and decree of the trial Court. Before the learned Single Judge the appellant tn-fact pressed two points, firstly, that another sum of Rs.75,000/- was to be paid by the plaintiff as vide writing duly executed in the regard, which claim has, however, not been allowed by the Court below, and secondly, sale deed being in contravention of Section 31(1) of the Act, it confers right upon the purchaser. Since it is admitted that plaintiff is not a resident of India, he could not enter into any such bargain unless a valid permission has been granted by the authorities in this regard. The learned Single Judge declined to place any reliance upon document mark "A"- the basis of the plea of the appellant that it was agreed between the parties that plaintiff would pay another sum of Rs.75,000/- over and above the sale consideration of Rs.75,000/- for the reasons that execution of this document is not properly established. Court further noticed that whereas, Prem Singh, father of the plaintiff, does not admits its execution Shri V.K. Sharma, the solitary attesting witness has not been examined by the defendants. The learned Single Judge declined to place any reliance upon the deposition of Shri Shanti Sarup, hand writing Expert, on the ground that science

of hand writing being imperfect, evidence of hand writing expert is to be received with great caution. Accordingly, document mark "A" was held not to be properly proved. Otherwise too, the Court held that since the same has not been executed by the plaintiff same does not bind him.

7. While examinmg the plea of the defendants-appellants regarding non-compliance of Section 31(1) of the Act, Court held that now since even a certificate issued by the Reserve Bank of India has also been placed on record, even this objection is devoid of any substance. Resultantly, the Court dismissed the appeal.

8. Before us, almost identical pleas have been raised which do not find favour with the learned Single Judge or before the trial Court. Execution of sale deed-the basis of the claim of the plaintiff to claim possession of the property has been proved according to law. Whether any infringement of the Act would deprive a purchaser of his rightful claim is the only point which needs some close scrutiny. Appellant has placed reliance upon Section 31(1) of the Act, which reads as :-

"No person who is not a citizen of India and no company (other than a banking company) which is not incorporated under any law in force in we India or in which the non-resident interest is more than forty per cent, shall, except with the previous general or special permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India;

Provided that nothing in this Sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years."

9. No doubt as per this section prior permission of Reserve Bank is essential in a case when a person is not a citizen of India. All the same, it cannot be inferred that in case somebody purchases a property in violation of this provision, the same does not clothe him with any right. At best such a person can be penalised under other relevant provisions of the Act, but no stretch of imagination a validly executed document can be termed to be void conferring no title upon the purchaser. No doubt in the instant case, plaintiff could get a certificate from the Reserve Bank of India in terms of Section 31(1) of the Act only on 10.9.1981 i.e. during the pendency of the appeal. Precisely to meet this objection plaintiff filed an application under Order 41 Rule 27 read with Section 151 CPC to place this certificate on record. The Court on considering the matter allowed it and so the original certificate was placed on record.

10. Matter can be examined from another angle also i.e. even if it be taken that the person has violated the provisions of the Act, appropriate course would be for the authorities to initiate proceedings and take such appropriate action as it deems fit/prescribed. In any case, this cannot be a ground to hold that the sale deed is void, conferring no title upon the plaintiff. No other point has been pressed or claimed. Appeal being devoid of merit is consequently dismissed.

No costs.