

(2015) 04 P&H CK 0324

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4031 of 2013 (O&M)

Surinder Singh and Others

APPELLANT

Vs

Chela Sunil Kumar and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Specific Relief Act, 1963 — Section 41(h)

Citation : (2015) 04 P&H CK 0324

Hon'ble Judges : Gurmit Ram, J

Bench : Single Bench

Advocate : Prem Nath Aggarwal, for the Appellant

Final Decision : Disposed off

Judgement

Gurmit Ram, J.—This regular second appeal has been preferred by the appellants (plaintiffs) against the judgment and decree dated 2.11.2010 passed by the learned Civil Judge (Junior Division), Abohar vide which their suit for mandatory injunction was dismissed and the judgment and decree dated 28.7.2012 passed by the Court of learned Additional District Judge, Ferozepur vide which the appeal preferred by them (appellants) against the above said judgment and decree dated 2.11.2010 was also dismissed.

2. As per the record, this suit was initially instituted by Kashmiri Lal who died during the pendency of the suit and as such his LRs were brought on the record. His claim before the learned trial Court in brief was that he was a tenant of Mahant Harnam Dass in respect of land measuring 145 Kanals 12 Marlas situated in village Khui Khera Rukan Pura and in respect of land measuring 96 Kanals 7 Marlas in village Kandhwala Amarkot as detailed in para No. 3 of the plaint. On 22.3.2001 with the intervention of the Panchayat and respectable of the family, an agreement was executed between the plaintiff and Mahant Harnam Dass (since deceased) in the form of a compromise. As per this compromise, it was settled that all the suits which are pending before different Courts are to be withdrawn by both the parties. He (plaintiff) performed his part of obligation as

per this agreement. Both the defendants stepped into the shoes of Mahant Harnam Dass (since deceased) and had inherited his movable and immovable properties. The plaintiff wanted to get the sale deed executed and registered in his favour in respect of the land measuring 145 Kanals 12 Marias, but the defendants had been delaying the same on one reason or the other. Hence, the instant suit.

3. On notice defendants appeared and filed joint written statement taking preliminary objections that the alleged agreement/compromise is a forged and fabricated document being unlawful and against the provisions of law, public policy and also without consideration and that suit for mandatory injunction is not maintainable as the alleged agreement is not legally enforceable. Locus-standi of the plaintiff as well as the cause of action to file the instant suit was also denied. It was further the case of the defendants that RSA No. 2424 of 1998 is still pending before this Court. Even Mahant Harnam Dass was not the owner of the land measuring 96 Kanals 7 Marlas situated in village Kandhwala Amarkot on 22.3.2001 and one Ashok Kumar son of Ram Narain is the owner of this land since 1.12.1999 and as such question of execution of the alleged agreement does not arise at all. Mahant Harnam Dass was in cultivating possession of the above-said land measuring 96 Kanals 7 Marias. Even khasra girdawari entries were also corrected qua this land in his favour by AC IInd Grade, Abohar on 19.11.1991 and appeal filed against this order was also dismissed by SDO (Civil)-cum-Collector, Abohar on 25.3.1992. Revision preferred against this order was also dismissed by Commissioner, Ferozepur on 10.10.1995. The plaintiff also filed a suit bearing No. 1262-W of 14.12.1991 for declaration on the plea that he had been in possession of 96 Kanals 7 Marlas land @ 1/3rd share of batai which was dismissed on 11.10.1995 by the Court of Civil Judge, Abohar. It was further the case of the defendants that the land measuring 96 Kanals 7 Marlas remained in self cultivating possession of Mahant Harnam Dass till his death and after his death the present defendants are cultivating the same as its owners. Neither the plaintiff nor his LRs had ever remained in possession of this land. The instant suit was also stated to be scandalous, frivolous as well as misuse of process of Court. Rest of the averments of the plaint were also denied.

4. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well dismissed the suit of the plaintiff vide the impugned judgment and decree dated 2.11.2010.

5. Feeling aggrieved against the said judgment and decree dated 2.11.2010, the plaintiff filed an appeal which was also dismissed by the Court of learned Additional District Judge, Ferozepur vide impugned judgment and decree dated 28.7.2012.

6. Being dissatisfied with the findings recorded by both the Courts below vide the impugned judgments and decrees, the appellants-plaintiffs have come up before this Court in the instant appeal.

7. The learned counsel for the appellants has contended that both the Courts below had dismissed the suit mainly on two grounds i.e. for want of sale consideration and that alternative remedy to file a suit for specific performance is available to the appellants and as such this suit for mandatory injunction was not maintainable.

8. Regarding consideration, the learned counsel for the appellants has contended that it is not required that consideration in any agreement in the shape of compromise is to be in terms of money. If any transfer is made in consideration of services rendered, then there is nothing wrong in it. In support of his contention, he has referred to case law as laid down in Beni Madho and others Vs. Major A.U. John and others . In this case law, it has been held that a transfer is valid if it is for consideration and there may be valuable considerations other than payments of money or promises to pay money. There would be nothing invalid in a transfer, say, in consideration of services rendered. So far the legal proposition laid down in this case law is concerned, there is no dispute about the same.

9. Now let me see the facts of the case in hand. As above-said in the case in hand, it was the case of the plaintiff that he was in cultivating possession in respect of land measuring 145 Kanals 12 Marlas situated in village Khui Khera Rukan Pura and in respect of land measuring 96 Kanals 7 Marlas in village Kandhwala Amarkot as a tenant of Mahant Harnam Dass. Then on the intervention of Panchayat and respectables of the family, an agreement in the shape of compromise was executed between the plaintiff and said Mahant Harnam Dass. As per this compromise, he surrendered his tenancy rights in respect of the above said land measuring 96 Kanals 7 Marlas in favour of Mahant Harnam Dass and in lieu thereof, a sale deed in respect of the above-said land measuring 145 Kanals 12 Marlas was agreed to be executed in his favour by said Mahant Harnam Dass. It is not the case of the plaintiff that he was the owner of any of these lands. So in lieu of surrendering his said tenancy rights in respect of the land measuring 96 Kanals 7 Marlas in favour of Mahant Harnam Dass, it is difficult to believe that said Mahant Harnam Dass will execute the sale deed in his favour in respect of his land measuring 145 Kanals 12 Marlas. Both the Courts below have held that the alleged agreement/compromise was executed between the parties but it could not be executed for various reasons such as being against public policy, unlawful etc. etc. The transfer of the land by way of compromise on the basis of exchange is certainly possible if parties to exchange-deed are the owners of their respective lands. In the case in hand as above said, the plaintiff is expecting the execution and registration of sale deed in his favour in respect of the land measuring 145 Kanals 12 Marlas in lieu of his tenancy rights allegedly surrendered by him in respect of land measuring 96 Kanals 7 Marlas above-said in favour of Mahant Harnam Dass.

10. Then it has also come on the file that RSA No. 2424 of 1998 is still pending between the parties in this Court. Then there is nothing on the file to say that the

plaintiff was in cultivating possession of the land measuring 96 Kanals 7 Marlas of village Kandhwala Amarkot, tenancy rights of which were allegedly surrendered by him in favour of Mahant Harnam Dass. So, the alleged agreement/compromise Ex. P2 is held to be without any consideration either in terms of money or in lieu of any services rendered. Then it is also settled law that if an alternative efficacious remedy is available to the aggrieved party then the suit for injunction is certainly not maintainable being barred by the provisions of Section 41(h) of the Specific Relief Act. In the case in hand, the present appellants were having efficacious remedy to file the suit for specific performance on the basis of alleged agreement Ex. P2 other than the instant suit which they did not avail. There are some case laws on this point which are discussed as under:-

(i) Sh. S.K. Dhadwal Versus Sh. Prem Singh and anr., 1991 (1) R.R.R. 253.

In this case a party had entered into an agreement to sell qua the plot in dispute. Suit for injunction was filed for restraining the defendants from selling or alienating the plot in dispute to any other person except the plaintiff. It was held that in view of the provisions of Section 41(h) of Specific Relief Act, the present suit for injunction is not maintainable as equally efficacious remedy by way of filing a suit for specific performance of agreement to sell is available.

(ii) Teja Singh and Others Vs. Balwant Singh, (2011) 1 RCR(Civil) 8

In this case law also, it has been held that suit for injunction is barred in view of the provisions of Section 41(h) of the Specific Relief Act, when equally efficacious remedy to file a suit for specific performance of agreement to sell is available to the plaintiff.

Similar principle was also followed in the case law

(iii) Jagtar Singh Vs. Rajinder Kumar and another, (2012) 167 PLR 1

(iv) Amrik Singh Vs. N. K. Srivastava and Others

In this case, simple suit for injunction for restraining defendants No. 1 to 3 from disbursing the amount of firm to the other defendant was filed. It was held that the plaintiff had efficacious remedy to seek dissolution of partnership firm and rendition of accounts and also recovery of the amount due. So suit for injunction was held to be not maintainable.

11. In view of the above discussion, this appeal is held to be bereft of any merit. So it stands dismissed and disposed of accordingly. The judgments and decrees of both the Courts below in the appeal are affirmed.

Since the main appeal has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered in fructuous.