

Rajinder Singh Vs. Sushil Kumar and ors.

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Court : Himachal Pradesh

Decided On : May-09-2006

Reported in : AIR2007HP1,2006(2)ShimLC326

Judge : Surjit Singh, J.

Acts : [Specific Relief Act, 1963](#) - Section 19

Appeal No. : R.S.A. No. 558 of 2004

Appellant : Rajinder Singh

Respondent : Sushil Kumar and ors.

Advocate for Def. : Ashok Sood, Adv. for Respondent Nos. 1 and 2 and; R.K. Bawa, Sr. Adv. and;

Advocate for Pet/Ap. : Onkar Jairath, Adv.

Disposition : Appeal dismissed

Judgement :

Surjit Singh, J.

1. Heard and gone through the record. Appellant Rajinder Singh is aggrieved by the judgment and decree of the trial Court as affirmed by the First Appellate Court whereby a suit for specific performance, instituted by respondents Sushil Kumar

and Jagdish Ram Sharma initially against Nand Lal and, in which the present appellant was later on impleaded as defendant No. 2, has been decreed.

2. The facts, in brief, may be noticed. Respondent Nand Lal, hereinafter referred to as 'defendant No. 1' was owner of certain property. He entered into an agreement with the plaintiffs to sell the said property on 11th October, 1988. The plaintiffs were already in possession of the property as tenants. They continued to be in possession even after the execution of the agreement. In the year 1989, the plaintiffs filed a suit for specific performance arraying proforma respondent Nand Lal as the defendant. Nand Lal took the plea that he had already sold the suit property to the present appellant Rajinder Singh. Then Rajinder Singh was impleaded as defendant No. 2. He was duly served notice but did not put in appearance and was, therefore, ordered to proceed against ex parte. The plaintiff did not lead his evidence despite various opportunities granted to him and the trial Court, therefore, dismissed the suit. Appeal was carried to the District Court. The District Judge set aside the decree of the trial Court and remanded the case for decision afresh after affording another opportunity to the plaintiffs to lead evidence in respect of their claim. The present appellant then put in appearance. However, he did not apply for setting aside the order of ex parte proceedings passed against him earlier nor did he lead any evidence, though he did join the proceedings and cross examined the witnesses of the plaintiffs and also appeared as his own witness. At the end of the trial, the suit was decreed and decree for specific performance of the contract was passed in favour of the plaintiffs, i.e. respondents No. 1 and 2 and against proforma respondent Nand Lal who was impleaded as defendant No. 1 and the present appellant who was subsequently impleaded as defendant No. 2.

3. Appellant felt aggrieved by the decree of the trial Court and preferred an appeal in the Court of District Judge. The District Judge has dismissed the appeal holding that the appellant being a transferee subsequent to the execution of the agreement to sell executed by proforma respondent Nand Lal in favour of the plaintiffs, the sale in favour of the appellant does not bind the plaintiffs.

4. I have heard the learned Counsel for the appellant. The main contention raised by the learned Counsel is that no prayer having been made by the plaintiffs for the cancellation of the sale deed made by Nand Lal in favour of the appellant, the suit could not have been decreed against the present appellant. The matter has been dealt with by the First Appellate Court. Section 19(a)(b) of the [Specific Relief Act, 1963](#) says that the specific performance of a contract may be enforced against either party thereto or 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. The aforesaid provision is clear. The present appellant being a transferee subsequent to the making of the agreement by Nand Lal with the plaintiffs, decree for specific performance is executable against him even without seeking the cancellation of the sale made in his favour by Nand Lal.

5. As already noticed, the appellant did not file any written statement and, therefore, he cannot be heard to say that he is transferee for value and has paid the money in good faith without notice of the agreement to sell between the plaintiffs and defendant Nand Lal. In any case, Nand Lal, while in the witness box stated that at the time of execution of the sale deed in favour of the appellant he had shown to the appellant the agreement to sell executed by him in favour of the plaintiffs.

6. In view of the above stated position, the appeal is dismissed as no question of law, much less a substantial question of law, arises.

CMP No. 1116 of 2004:

Infructuous. Interim, order dated 15.12.2004 stands vacated.

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