

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. RSA No.4542 of 2009 (O&M)
Date of decision : 12.10.2015

Sukhdev Singh

...Appellant

Versus

Gulab Singh

...Respondent

2. RSA No.727 of 2010 (O&M)
Date of decision : 12.10.2015

Gulab Singh

...Appellant

Versus

Sukhdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. OPS Tanwar, Advocate for the appellant.
(RSA No.4542 of 2009)
for the respondent (In RSA No.727 of 2010)

Mr. Arvind Singh, Advocate for the respondent.
(In RSA No.4542 of 2009)
for the appellant (In RSA No.727 of 2010)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two RSA bearing Nos.4542 of 2009 titled as Sukhdev Singh Vs. Gulab Singh filed on behalf of defendant and RSA No.727 of 2010 titled as Gulab Singh Vs. Sukhdev Singh, filed on behalf of Vendee.

Mr. O.P.S. Tanwar, learned counsel appearing on behalf of appellant submits, that respondent-plaintiff instituted a suit on 29.08.2003 in respect of alleged agreement to sell dated 27.06.2002 allegedly entered for sale of land measuring 8 kanals 8 marlas bearing khewat/khatoni No.51 Min/65 Min Khasra Nos.14//8/2 (5-12), 13/1 (5-12), 18/2 (5-12), as per the jamabandi for the year 1998-99 situated at Village Daudpur, Hadbast No.287, Tehsil and District Ambala, for total sale consideration of ₹2,85,000/- per acre. He further submits that though the appellant-defendant after filing of the written statement, was proceeded ex parte, but the fact remains that on perusal of the agreement to sell, the appellant-defendant was not owner of the land as alleged in the plaint but is the owner of 2 kanals. Even the receipt of the payment of ₹75,000/- (Ex.P4), dated 30.01.2003 has not been proved. The trial Court, on the basis of the evidence brought on record, decreed the suit vis-a-vis the land measuring 2 kanal 2 marla. Aggrieved against the aforementioned judgment and decree, respondent-plaintiff filed an appeal, which has been accepted by the lower Appellate Court and instead of 2 kanal 2 marla, suit had been decreed for 6 kanal 2 marla. Against the said judgment and decree, present regular second appeal has been filed. He further submits that there is illegality and perversity and,

therefore, appeal involves determination of substantial questions of law.

He has relied upon judgment rendered by High Court of Chhattisgarh in case titled as *Viseshar Yadav Vs. Govind Swami, AIR 2006 Chhattisgarh 149*, to contend that where agreement does not prescribe specific area of land, much less, description, decree for specific performance should not be granted.

Mr. Arvind Singh, learned counsel appearing on behalf of respondent-plaintiff submits, that RSA bearing No.4542 of 2009 is not maintainable, as the appellant-defendant did not assail the finding of the trial Court vis-a-vis the specific performance of agreement to sell of the land measuring 2 kanal 2 marla. He further submits that prior to the filing of the suit, legal notice Ex.P13 was sent, which was duly received by the appellant-defendant. The postal receipt and the receipt under the postal certificate Ex.P8 and Ex.P9 have duly been proved. Attesting witnesses to the agreement to sell i.e. Mukhtiar Singh and Mohinder Singh have proved the execution and as well as receipt of the earnest money i.e. sum of ₹2,10,000/- and Joginder Pal Singh, Deed Writer has also been examined as witness to the receipt dated 30.01.2003 (Ex.P4) of ₹75,000/-. The appellant-defendant has not denied the ownership of the land by replying to the categorical averments made in the plaint and the story of not owing the land has not been pressed in the present regular second appeal, which is not permissible in law.

He further submits that during the pendency of the suit, defendant-vendor, Sukhdev Singh has sold the land measuring 15 kanal 3 marla vide sale deed dated 03.11.2011 and as per the report of the Patwari,

it has been found that Sukhdev Singh along with his brother Harphool Singh was the owner of total land area measuring 16 kanal 16 marla, therefore, the plea of owing of land to the extent of 2 kanal 2 marla is totally contrary to the revenue record. Thus, there is no perversity and illegality in not challenging the impugned judgment and decree, much less, no substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book.

The plaint had been categoric in respect of area, much less, description of khasra numbers. However, defendant-Vendor did not deny the ownership, much less, description of khasra numbers and simply denied the execution of the agreement to sell under challenge.

For the sake of brevity, para No.4 of the plaint and written statement are extracted hereinbelow:-

Para No.4 of the plaint:-

“4. That the defendant approached the plaintiff to sell his land measuring 8K-8M being ½ share out of the total land measuring 16K-16M bearing khewat/khatauni No.51 Min/65 Min khasra nos.14//8/2 (5-12), 13/1 (5-12), 18/2 (5-12), according to the jamabandi of the year 1998-99 situated at village Daudpur H.B. No.287 Teh. and Distt. Ambala which is fully detailed in the heading of the plaint also.”

Para No.4 of the written statement:-

“4. That para No.4 of the plaint is absolutely wrong, incorrect, hence denied. The defendant has never approached to the plaintiff for sale of his land, as alleged in this para of the

plaint. Neither he is in need for sale of the land in question. Rest of this para of the plaint is wrong, incorrect, hence denied.”

Even while taking up preliminary objections, it has been stated by the Vendor that the property in dispute was/is in his possession and the suit was not maintainable. The aforementioned averments leads to an irresistible conclusion that the Vendor-defendant was owner of the land.

There is another aspect of the matter. The defendant has not chosen to file the appeal against the ex parte judgment and decree, whereby decree for specific performance vis-a-vis land measuring 2 kanal 2 marla had been granted. There is force in the arguments of Mr. Arvind Singh, that both trial Court and lower Appellate Court have committed illegality and perversity in not arriving at a conclusion, whereas, on the contrary from perusal of clauses of the agreement to sell, it is ex facie proved that Sukhdev Singh alongwith his brother Harphool Singh was owner of land measuring 16 kanal 16 marla in respect of aforementioned khasra numbers, thus, lower Appellate Court ought to have granted the decree of specific performance vis-a-vis the entire land and not with regard to 6 kanal.

It is a settled law that denial has to be specific and categoric. On perusal of the contents of the written statement, the denial is evasive and vague. Had there been any truth in the submission or averments, nothing prevented the vendor to reply to the legal notice, which was sent by the registered post which carries a presumption, as per the provision of Section 27 of the General Clauses Act. Both the witnesses Mukhtiar Singh and

Mohinder Singh have remained unfazed during the cross-examination, in essence, withstood the cross-examination, Joginder Pal Singh has proved the execution of the agreement to sell. I am not in agreement with the arguments of Mr. Tanwar, Advocate, because there has been specific dimension of the area owned by the Sukhdev Singh along with his brother Harphool Singh, therefore, ratio decidendi culled out by the Court of Chhattisgarh is not applicable to the facts and circumstances of the case.

No contrary evidence has been brought on record to prove that agreement did not bear the thumb impression, rather appellant-defendant chose to remain absent after filing of the written statement. Thus, following substantial questions of law which had arise for determination are answered in favour of plaintiff namely Gulab Singh and against the defendant Sukhdev Singh:-

- 1) That whether both the courts below have rightly calculated the share of the respondent-defendant being owner of 1/4th share from the land measuring 195K-5M?
- 2) That whether the Ld. Lower Courts below have correctly passed by the judgments and decrees dated 22.12.2008 and 1.10.2009 respectively?
- 3) That whether both the Courts below were justified in not granting the relief of specific performance of land measuring 8K-8M as per the agreement to sell dated 27.6.2002?
- 4) That whether the appellant-plaintiff is entitled for decree of specific performance for land measuring 8K-8M?

I do not find any illegality and perversity in RSA bearing No.4542 of 2009, filed by Sukhdev Singh-Vendor, much less, no substantial questions of law arises for adjudication of the present appeal. Accordingly, same is dismissed.

In view of aforementioned observations, RSA bearing No.727 of 2010, titled as Gulab Singh Vs. Sukhdev Singh, is hereby allowed and the decree of the lower Appellate Court is accordingly modified and decree for specific performance of agreement to sell in respect of land measuring 8 kanals 8 marlas bearing khewat/khatoni No.51 Min/65 Min Khasra Nos.14//8/2 (5-12), 13/1 (5-12), 18/2 (5-12), as per the jamabandi for the year 1998-99 situated at Village Daudpur, Hadbast No.287, Tehsil and District Ambala, is hereby granted in his favour and RSA No.4542 of 2009 is dismissed.

12.10.2015

pawan

**(AMIT RAWAL)
JUDGE**