

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

**RSA No.2411 of 2010 (O&M)
Date of decision:27.11.2015**

Randhir Singh and others

... Appellants

Vs.

Kulwant Singh (died) through LRs and others ... Respondents

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. Vaibhav Narang, Advocate
for the appellants.

Ms. Avinash Mandla, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for specific performance of the agreement to sell dated 10.12.1993 in respect of land measuring 39 kanals 14 marlas against the total sale consideration of ₹5,50,000/-, has been decreed.

Mr. Vaibhav Narang, learned counsel appearing on behalf of the appellant-defendants has raised the following submissions:-

- i) As per the terms and conditions of the agreement to

sell, respondent-plaintiffs were to pay $\frac{1}{2}$ of amount on 15.06.1994 which was not paid and the remaining amount was to be paid on 01.12.1994. Before the next date, a legal notice dated 08.08.1994, was served upon the appellant-defendants, whereby, dispute with regard to title was raised, followed by another legal notice dated 16.11.1994, wherein, the plaintiffs admitted the possession of the suit land.

ii) In view of such situation, there was no readiness and willingness on the part of the respondent-plaintiffs, thus, both the Courts below have erroneously exercised the discretion under Section 20 of the Specific Relief Act.

Ms. Avinash Mandla, learned counsel appearing on behalf of the respondents submits that it is a matter of record that both the plaintiffs and defendants are co-sharers as the plaintiffs had already purchased the certain land from the other co-sharers in order to avoid dispute, wanted to buy the share of other co-sharers by entering into agreement to sell in question. She further submits that on 15.06.1994, they had appeared before the office of the Sub Registrar with $\frac{1}{2}$ share, i.e., ₹2,50,000/- but defendants refused to accept the same. DW2-Santokh Singh had admitted that he had accompanied the defendants for receipt of money before the office of the Sub Registrar, thus, it proved that readiness and willingness on the part of the defendants was wanting, whereas, plaintiffs were always ready and willing, as the suit aforementioned was filed on

10.05.1995.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

Both the Courts below concurrently held that agreement to sell, in question, has been proved through the testimony of the attesting witnesses. Ex.P3 is an affidavit dated 15.06.1994 sworn by the respondent-plaintiffs with regard to the readiness and willingness indicating being equipped with the 1/2 sale consideration as per the terms and conditions of the agreement to sell. DW2- Santokh Singh admitted that he had accompanied the defendants to receive balance sale consideration before the office of Sub Registrar. Once both the parties though not in writing had agreed to receive half sale consideration before the office of Sub Registrar, as a precautionary measure appeared before the office would not tantamount to deviation from the terms and conditions of the agreement to sell, much less, show that there was no readiness and willingness on the part of the respondent-plaintiffs. As regards, the contents of the legal notice dated 08.08.1994, the trial Court in paragraph 22 has already dealt with such proposition in extenso, which reads thus:-

“22. As per jamabandi Ex.P19 for the year 1991-92 the plaintiffs along with defendants are recorded to be joint owners in possession of the land measuring 63 kanals 8 marlas and the suit land is also part of the said joint land of the parties. It is proved from jamabandi Ex.P19 that

earlier to execution of agreement to sell Ex.P12, the plaintiffs and defendants were also co-sharers in joint possession of the entire suit land and the plaintiffs agreed to purchase the share of the defendants to the extent of 39 kanals 14 marlas. As per order Ex.P17 dated 22.11.1995 passed by the Court of Smt. Vinay Kumari Sharma, Assistant Collector 2nd Grade, the plaintiffs were held in possession of the entire suit land and the change in khasra girdawari from Sauni 1993 was held to be correct. The plaintiffs have also proved on record order Ex.PY dated 30.11.1999 passed by Mrs. Gurpreet Kaur Sapra, Sub Divisional Magistrate, exercising powers of Assistant Collector 1st Grade, Amritsar in a suit for Rendition of Accounts filed by the defendants against the plaintiffs admitting possession of the plaintiffs over the suit land on the ground that after execution of agreement to sell Ex.P2, the plaintiffs have forcibly occupied the land of their share. This document Ex.PY is sufficient to hold that the plaintiffs are in possession of the suit land because the defendants have themselves admitted their possession in a suit for rendition of accounts filed by them against the plaintiffs which has been decided by Mrs. Gurpreet Kaur Sapra, Assistant Collector 1st Grade, Amritsar vide judgment Ex.PY. There is also an order

Ex.PX dated 30.11.1999 passed by the Court of Shri Mukul Joshi, I.A.S., Commissioner (Appeals), Jalandhar Division, Jalandhar in which also the plaintiffs were held in possession of the suit land. On the other hand, defendants have not been able to wriggle out of their admission made by them while filing suit for rendition of accounts decided vide judgment Ex.PY dated 30.11.1999 in which they themselves admitted the possession of the plaintiffs over the suit land. Hence, the plaintiffs are held to be in possession of the suit land. Thus, this issue is also decided in favour of the plaintiffs.”

Keeping in view the aforementioned observations, I do not intend to differ with the findings render by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 27, 2015
savita