

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

RSA No.3003 of 2010 (O&M)

Date of decision : 24.08.2015

Bhupinder Singh and ors.

...Appellants

Versus

Sukhdev Singh & another

...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. Avnish Mittal, Advocate for appellants.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The present appeal, at the instance of appellants-defendants, has challenged concurrent findings of facts & law, whereby suit for specific performance of agreement to sell dated 09.06.1993 has been decreed and the appellants-defendants have been called upon to deposit the balance sale consideration within a period of three months from the date of passing of the judgment and decree.

Mr. Avnish Mittal, learned counsel appearing on behalf of appellants-defendants in support of grounds of appeal has raised multifold arguments, which are summarized hereinbelow:-

- 1) Defendant No.2 allegedly on the date of agreement to sell was minor as his date of birth was 02.02.1976 and not 18.12.1974.
- 2) The plaintiff No.1 had become indigent and this fact has been admitted in the replication, therefore readiness was wanting.
- 3) The appellant-defendant No.1 denied the execution of the agreement to sell by stating that only signatures on blank papers were obtained and to that extent, he has specifically averred in the written statement, that plaintiff No.1 was helping hand in the litigation pending before Revenue Court and this fact has been admitted in the replication.

Since time was not essence of the agreement to sell and the sale deed was to be executed within one year from the date of decision of the matter pending before Revenue Court and that to calling upon defendant-plaintiff, by advance notice.

Mr. Sumeet Mahajan, learned Senior Counsel assisted by Mr. Amit Kohar submits that defendants have miserably, failed to prove the fact, that defendant No.2 was minor at the time of agreement to sell neither alleged minor has stepped into witness box. In fact, there has been a categoric assertion/statement in the evidence of the plaintiff that there was death of one of the sibling, who died within 15 days of the birth and taking the advantage of the same, such plea has been taken. The record from the Municipal Council which has been brought on record Ex. DW6/C does not bear the name of the child, whereas on the contrary from the record of the school, the date of birth of Kulwinder Singh-defendant No.2 was 18.12.1974 as he was admitted in school on 14.08.1991. In the replication, it

was stated that though plaintiff No.1 had become indigent but in the same breath, it has been mentioned that plaintiff No.2 was/is willing to pay entire sale consideration. He further submits that in pursuance to the judgment and decree, balance sale consideration has been deposited.

The plaintiffs have categorically complied with the provision of Section 16(c) of the Specific Relief Act vis-a-vis the pleadings of the readiness and willingness. Since defendant refused to execute and register the sale deed, the suit was filed on 20.11.2000 is within one year from the date of decision, which was decided on 07.02.2000. He further submits that no substantial questions of law arises for determination by this Court while exercising the power under Section 100 of the Code of Civil Procedure, much less, there is no illegality and perversity and the same are liable to be sustained.

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

After noticing the rival contention of the parties to the lis, I am of the view appeal is liable to be dismissed for the following reasons.

The appellant-defendant has not stepped into the witness box in proving the averments, that he was not major at the time of execution of the agreement to sell, in essence that he was minor.

The record of the Municipal Corporation Ex.DW6/C does not bear the name of the child born on 02.02.1976, whereas on the contrary, date of birth certificate from the concerned school, where, Kulwinder Singh-defendant No.2 was admitted by the appellants reflects that he was born on 18.12.1974, thus, for all intents and purposes, he was major at the time of

execution of the agreement to sell. It was unilaterally act on the part of the parents of Kulwinder Singh who had given the date of birth to the School Authority. There was no role of the plaintiff. Since the appellant-defendant has denied execution of the agreement to sell, therefore, cannot be permitted to raise the plea of readiness and willingness. Be that as it may. The fact remains that suit has been filed on 20.11.2000 within one year from the date of decision of the matter by the Revenue Court. Admittedly, Financial Commissioner has decided the matter on 13.01.1998 and writ filed against the same came to be decided on 07.02.2000.

Even there is no force in the contention that Sukhdev Singh was pauper and it was not proved from whom Sukhdev Singh had paid as ₹1 lac as earnest money for the reasons that plaintiff No.2 had always been ready and willing to pay the entire amount of the sale consideration. In the present case, two person had entered into agreement and fraud cannot be assumed to have been practiced and the fact that one of them turns pauper although other persons were ready to pay the executant entire sale consideration on his behalf and as well as on behalf of other persons.

In my view the capacity of both the appellants has to been seen for the purpose of payment of sale consideration and not one of them who is alleged to have turned pauper. Thus, for all intents and purposes, it cannot be assumed that fraud was practiced upon defendants at the time of execution of the agreement. It is admitted scene on record that Pirthipal Singh was in possession with entire sale consideration of agreement to sell and on this point alone, the financial capacity of plaintiff No.1 would not prove that agreement was result of fraud.

The contention that respondent-plaintiff was required to sent notices after adjudication of the matter is not tenable, inasmuch as, it has categorically been averred in paragraph 4 and 5 of the plaint, intention to execute and get the sale deed registered, the aforementioned pleadings have not been specifically denied in accordance with provision of Order 8 Rule 5.

On going through the cross-examination of the plaintiff No.2, it has surfaced that no specific question vis-a-vis specific mention about assertion that document Ex.DW6/C dated 02.02.1976 has been used because one of the brother of Kulwinder Singh-defendant No.2 had died within 15 days of the birth.

It is now settled law that in case no specific question put in cross-examination, the statement made in the examination-in-chief deemed to be admitted do not relied upon judgment of *Smt. Harnam Kaur Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar, 1992(1) RRR 135*.

As a upshot of the aforementioned observations, there is no illegality and perversity in the judgment impugned decreed herein, much less, no substantial questions of law arises for adjudication of the present appeal.

Accordingly, appeal is dismissed.

24.08.2015

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**(AMIT RAWAL)
JUDGE**