

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

**RSA No.4577 of 2010 (O&M)
Date of decision: 03.09.2015**

Kulwant Kaur

... Appellant

Vs.

Ujjagar Singh (deceased) through LRs & 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. Deepak Bhardwaj, Advocate
for the appellant.

Mr. G.S.Nagra, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees of both the Courts below, whereby, the suit for specific performance of agreement to sell dated 19.10.2001 executed by defendant No.1, in favour of the plaintiff has been decreed and he has been called upon to execute and register the sale deed on receipt of balance sale consideration.

Mr. Deepak Bhardwaj, learned counsel appearing on behalf of the appellant-defendant No.1 submits that agreement to sell dated 19.10.2001 though entered into between the appellant/defendant No.1, Kulwant Kaur and respondent No.1/plaintiff-Ujjagar Singh, but yet during the pendency of the

agreement to sell and before the target date, i.e, 18.10.2002, out of total land measuring 13 kanals, vide sale deed dated 7.11.2001, 8 kanals had been sold to Harjinder Singh, who, is none else but grandson of Ujagar Singh. Since agreement to sell in question could not be acted upon, there was no obligation to execute the agreement to sell for specific performance against the total sale consideration of ₹ 5,28,125/-. It has been stated that in the agreement to sell, earnest money of ₹1,00,000/- was received by the appellant-Kulwant Kaur/vendor. He further submits that both the Courts below have not appreciated this fact and committed illegality and perversity, therefore, substantial questions of law arise for determination by this Court. He also submits that vide application bearing No.C.M.No.1495-C of 2014, permission of the Court has been sought to place on record the affidavit dated 24.04.2003, Annexure A-1, of Harjinder Singh, by way of additional evidence, wherein, Harjinder Singh, unequivocally admitted that sale deed dated 7.11.2001 has been executed in favour of Harjinder Singh by Kulwant Kaur in lieu of agreement to sell dated 19.10.2001.

Mr. G.S.Nagra, learned counsel appearing on behalf of respondent No.1 submits that the agreement to sell has been proved through the testimony of two witnesses, much less, Scribe. Even payment of earnest money has also been proved. Appellant-defendant No.1 did not perform her part of the agreement, though the respondent-plaintiff was ready and willing to perform his part. Defendant did not appear before the office of the Sub Registrar,

Morinda on 18.10.2002 and, thereafter, the suit was filed on 28.03.2003. Thus, there was no need to seek execution of the agreement to sell. He further submits that both the Courts below have not committed illegality and perversity, much less, no substantial question of law arises for adjudication of the present appeal. He further submits that during the cross-examination, Kulwant Kaur admitted the execution of the agreement to sell, though the same was denied in the written statement.

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

The discretion as envisaged under Section 20 of the Specific Relief Act, in my view, has rightly been exercised by both the Courts below, for the reason that story coined by the appellant/defendant No.1, regarding agreement to sell dated 19.10.2001 which was in respect of land measuring 13 kanals and the sale deed dated 7.11.2001 qua 8 kanals had been executed in favour of Harjinder Singh, i.e, grand son of Ujagar Singh and therefore, the agreement to sell dated 19.10.2001 became inexecutable, in my view, is not tenable, for the reason that vide judgment and decree dated 22.5.2009, Kulwant Kaur again became owner of total land, as per the averments made in the written statement. The execution of the agreement to sell has been proved through the testimony of both the witnesses, much less, since the appellant/defendant No.1, had denied the execution of the agreement cannot be permitted to take plea of readiness and

willingness. However, in cross-examination, the lower Appellate Court has observed that the appellant had admitted the execution of the agreement. But on going through the cross-examination, it has been found that Kulwant Kaur had executed the sale deed in favour of Harjinder Singh not in favour of Ujagar Singh.

Be that as it may, but the fact remains that existence of the agreement to sale has been admitted, signatory to the agreement to sell cannot be changed with the mere admission but can only be ascertained on perusal of the documents.

In view of what has been observed above, I do not find any illegality or infirmity, much less, perversity in the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence. Even the affidavit sought to be placed on record by way of additional evidence would not of no significance in adjudication of the matter to lis between the parties as the same is executed in the month of April, 2003 and the suit had been decided in the year 2009. The appellant had sufficient time to produce the same during the pendency of the suit.

No substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 03, 2015
savita