

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

RSA No.512 of 2010 (O&M)

Date of decision : 01.12.2015

Amarjit Singh

...Appellant

Versus

Jagjit 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. Vivek K. Thakur, Advocate for the appellant.

Mr. Anil Kumar Rana, Advocate for respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the findings rendered by the lower Appellate Court, whereby the lower Appellate Court has declined the relief of specific performance of agreement to sell dated 17.10.2000 on the following grounds:-

- i) That appellant-plaintiff has not been ready and willing to perform his part of the agreement.
- ii) Not entitled to refund of earnest money of ₹1,30,000/- as the claim is time barred for the reasons that suit had been filed on 09.01.2004, whereas aforementioned amount was paid on

17.10.2000.

Mr. Thakur, learned counsel appearing on behalf of appellant submits, that the respondent-defendant has not challenged the findings rendered by the lower Appellate Court, vis-a-vis the execution of the agreement to sell, thus, the findings for the same need not be interfere with.

He further submits that agreement to sell was executed on 17.10.2000. The stipulated date for execution and registration of the sale deed was 30.03.2003 which was extended to 09.10.2003. However, the respondent-defendant did not appear before the Registrar accordingly the suit was filed on 09.01.2004, preceded by the legal notice dated 13.10.2003, thus, there could not be any scope for not exercising the discretionary relief under Section 20 of the Specific Relief Act and further submits that following substantial question of law arises for determination:-

- 1) Whether the appellant-plaintiff has been ready and willing to perform his part of performance of the agreement to sell.
- 2) Whether finding rendered by the lower Appellate Court is perverse and erroneous.

Mr. Anil Kumar Rana, learned counsel appearing on behalf of respondent submits, that respondent during the pendency of the appeal has died. It is settled law that estate of the respondent is always being represented by LRs. Even otherwise as per the agreement to sell, in case vendor dies, his LRs would be bound by the terms and conditions of the agreement. There is no illegality and perversity, much less, no substantial question of law arises. The agreement to sell was specifically denied and it was stated that it was forged and fabricated documents. The market value of

the property in dispute i.e. shop was more than ₹10 lacs, therefore, it could not be sold for paltry amount of ₹1,50,000/-.

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

The lower Appellate Court though returned the findings vis-a-vis proving of agreement to sell in favour of the appellant-plaintiff but declined the exercise of discretionary relief under Section 20 of the Act on the ground that appellant-plaintiff was not ready and willing. In my view, such findings is not only erroneous, but fallacious & perverse for the reasons that suit had been filed on 09.01.2004 whereas the stipulated & extended date for execution and registration of the sale deed was 09.10.2003 which was preceded by legal notice dated 13.10.2003. Since, the agreement to sell has been proved, the lower Appellate Court ought to have granted the relief of specific performance as the appellant-plaintiff has been ready and willing throughout from the date of execution of the agreement during the currency of the agreement till the filing of the suit and passing of the decree. Even otherwise, the appellant-plaintiff is entitled for refund of earnest money as limitation would start from the date of breach and not from the date of payment, thus, said findings of the lower Appellate Court in my view is not correct.

Keeping in view, the aforementioned facts and circumstances, the findings rendered by the lower Appellate Court as the appellant-plaintiff was not ready and willing to perform his part of the agreement, is hereby set aside, in essence, the suit for specific performance of the agreement to sell dated 17.10.2000 is decreed.

The respondent-defendant is directed to perform his part of the agreement on receipt of the balance sale consideration within a period of two months from the date of receipt of certified copy of the order, failing which the Executing Court will give liberty to seek the sale deed executed through the Local Commissioner.

Keeping in view the aforementioned facts, question of law as noticed above are answered in favour of appellant-plaintiff and against the respondent-defendant.

Accordingly, Regular Second Appeal is allowed.

Suit is decreed in toto.

Decree sheet be prepared.

01.12.2015

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**(AMIT RAWAL)
JUDGE**