

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 1402 of 2011
Date of decision : January 12, 2015

Kiran Bai

....Appellant

versus

Kirpal Singh

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Vikas Bahl, Senior Advocate with
Mr. Parvindere Singh, Advocate, for the appellant

Mr. Jagram Singh Cooner, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

After having been unsuccessful throughout when the Court of learned Additional Civil Judge (Senior Division), Jhajjar through judgment and decree dated 3.3.2009 decreed the suit of plaintiff Kirpal Singh and thereafter the learned District Judge, Jhajjar through impugned judgment and decree dated 29.11.2010 dismissed the appeal. Unsuccessful defendant Kiran Bai has invoked the jurisdiction of this Court in this regular second appeal.

Heard Mr. Vikas Bahl, Senior Advocate with Mr. Parvinder Singh, Advocate, for the appellant and Mr. Jagram Singh Cooner, Advocate, for the respondent and perused the record.

The claim of the plaintiff whereby he has filed a suit for specific performance of alleged agreement to sell dated 20.7.2000 Ex. P1 is that the plaintiff agreed to sell her land detailed and described in the head note of the plaint for a total sum of Rs 4,37,000/- out of which earnest money of Rs 4,07,500/- was paid on the same very day and the sale deed was undertaken to be executed till 23.3.2001 and thus the plaintiff submitted that when the defendant failed to undergo her part of the obligation in respect of readiness and willingness he moved the office of Sub Registrar for marking his presence on 23.3.2001 as well as served legal notice but the defendant remained adamant on her stand and hence the suit in question.

The defendant has taken the plea that she had been regularly taking loan from the plaintiff and on various occasions this money was taken and returned since the year 1995-96 and that it is subsequently the plaintiff has developed malafide intention and procured her signatures/thumb impressions by which he has fabricated this agreement to sell which was never executed nor took any earnest money and thus denied in toto these averments. The learned Trial court framed the following

issues:-

1. Whether the plaintiff is entitled to specific performance of the contract dated 20.7.2000 directing the defendant to execute the sale deed and to do all the necessary things for passing the title of the suit property as detailed in para-1 of the plaint in favour of the plaintiff ?OPP
2. Whether the plaintiff in the alternative is entitled to recovery of Rs 4,07,500/- with interest from 20.7.2000 at the rate of 24% p.a. up to the date of realization from the defendant ?OPD
3. Whether the plaintiff has no locus standi to file the present suit ?OPD
4. Whether the suit is not maintainable in the present form ?OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD
6. Whether the defendant is entitled to special costs under section 35-A CPC ?OPD
7. Relief.

The plaintiff examined PW1 Satbir Singh, himself as PW2, Sohan Singh PW3 whereas defendant herself examined as DW1 and sought corroboration from Virender Singh DW2, Satbir Singh DW3, Shamlal DW4 leading to the findings of the courts below.

On the basis of the contentious stand, this Court framed the

following substantial question of law:-

“ Whether there has been due execution of agreement to sell dated 20.7.2000 by the defendant in favour of the plaintiff and if so whether the plaintiff was ready and willing and therefore, is entitled to a decree for specific performance ?

Appreciating the arguments of the two sides, the first and foremost point sought to be assailed is over the limitation question. It is contended on behalf of the appellant that the alleged agreement to sell is dated 20.7.2000 and the suit has been filed on 3.3.2009 after almost 9 years and thus sought to be controverted with much force and vehemence on behalf of the present respondent submitting that the plaintiff had been trying all the means by making application before the Sub Registrar, by way of issuing legal notice and requesting defendant and therefore, establishes that the suit was well within the limitation from the date of cause of action. Going through these submissions, section 3 of the Limitation Act read with Schedule to the Limitation Act whereby item at Sr. No. 56 lays down that a suit for specific performance may be filed within a period of three years. To the very query of the Court, the learned counsel for the respondent could not show how or by what means the suit of the plaintiff was within the prescribed period of limitation. Though it is sought to be assailed that no issue as to the question of limitation has been framed but being a pure

question of law such an issue need not be there and the Court can suo-moto on its own consider and take cognizance of such a legal point and thus there being filing of the suit after almost 9 years of the agreement to sell as even date fixed for sale was 23.3.2001 leaves no scope to doubt that the suit is hopelessly barred by limitation. Thus an important and vital question having bearing on the outcome of the suit was grossly missed by the courts below. In the light of what is sought to be argued before this Court as has been submitted on behalf of the appellant, the stand of the defendant is truthful and bonafide and she has not apparently denied her signatures/thumb impressions on the agreement Ex. P1 but has claimed that it was on account of such a fraudulent conduct the plaintiff has created this document. Before venturing into this since it is by now a well settled position of law that it is for the plaintiff to prove and establish his case and cannot be allowed to take undue advantage of the weakness of the case of the defendant and which position of law is well enunciated in the case of **PUDA vs Shiv Saraswati Iron & Steel Rerolling Mills, 1998(1) PLJ 643 (SC)** and therefore, casts a heavy burden on the plaintiff to establish his case to the hilt. Moreover it is not disputed by the respondent side that the element of readiness and willingness is to be proved and established by the plaintiff which leads to the entitlement of decree for specific performance and for which issue no. 1 has been framed which casts onus upon the

plaintiff. The fact that undisputedly right from her written statement there is categorical stand of the appellant that she has been taking loans from the plaintiff and who had misused the same due to her illiteracy and which shows that the same was executed between these parties whereby the sale was to be executed upto 23.7.2000 and as per Ex. DW3/B another agreement to sell of the same very property which is present subject matter is shown to have been executed on 20.7.2000 and as per Ex. DW4/A another agreement to sell for the same very land was executed whereby sale deed was to be executed upto 27.5.1999 and that too for a different sum of amount and which fact could not be controverted on behalf of the present respondent and their counsel and thus it leads to only and only irresistible conclusion that it was a case of money lending whereby the plaintiff had been trying to extend the period to secure his loan in the garb of different agreements to sell. Not only this in view of what is sought to be put forth before this Court by the appellant's counsel the very own document of the plaintiff Ex. P1 shows that out of the total amount of Rs 4,37,000/- the plaintiff has paid a sum of Rs 4,07,500/- and for small amount of money he did not execute the sale deed for almost a decade are matters which establishes beyond any doubt that all was not well with the case of the plaintiff and at no point of time plaintiff was ever ready or willing to undergo this transaction together with the fact that the documents of the

defendant certainly rebut the truthfulness of the version of the plaintiff. The learned counsel for the appellant has cited **Suresh Singla vs Smt. Phool Pati and another, 2012(3) PLR 729; Smt. Mohini vs Ram Chander, 2012 (5) R.C.R. (Civil) 238; S.Rangaraju Naidu vs S. Thiruvarakarasu, 1995 (3) R.R.R. 298; Gurbax Singh vs Labhu Ram, 1995(3) PLR 546 and Punjab & Sind Bank vs Balraj Singh and others, 2011 (2) PLR 202** to hammer home the point that from the sequence of these events and execution of the documents was proved as detailed above. It is manifestly clear that it was a pure loan transaction and there was no agreement to sell in fact executed legally or for a purpose with any such intention and therefore, the dominant purpose of this documentation is the recovery of the dues and there was not even an iota of evidence to show any intention of getting any sale deed executed. The principle of law, that one who seeks equity must do equity comes into play. The plaintiff having come to the courts in terms of section 20 and section 16 of the Specific Relief Act and which vests in the courts un-bridled powers to grant or refuse specific performance of an agreement and which is a pure judicial discretion based on sound judicial principles. Since the stand of the plaintiff is neither bonafide nor truthful and which important and vital fact has lost sight of by the courts below and even the element of readiness and willingness as has been laid down in **Jugraj Singh and another vs Labh Singh and others,**

AIR 1995 SC 945 is totally missing impels this Court to reverse the findings of the two courts below and to set aside the same holding that since the defendant as per Ex. P1 has taken money and has put the same to her use and equity demands that she must pay back the same and it would subserve the ends of justice if a decree for recovery of this balance amount of Rs 4,07,500/- or the amount so found due after deducting the amount paid is passed in favour of the plaintiff and against the defendant for which the plaintiff shall be entitled to recover interest @ 6% per annum from the date of filing of the suit till realization of the amount. The substantial question of law is answered accordingly.

In view of these discussions, the impugned judgments of the courts below are set aside and the present appeal is allowed in those terms.

January 12, 2015
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(Fateh Deep Singh)
Judge