

In the High Court for the States of Punjab and Haryana, at
Chandigarh

...

RSA-1412-2011(O&M)

Date of decision: 15.1.2015

Ram Chander

..Appellant

Versus

Pardeep Kumar and others

..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. S.K.Yadav, Advocate
for the appellant.
Mr. Sanjay Mittal, Advocate
for the respondents.

Mahavir S.Chauhan, J.(Oral)

On 8.5.1999, Ram Chander, appellant herein, entered into an agreement to sell land measuring 11 kanals 5 marlas with his brother Ami Lal (plaintiff before the trial Court and respondent herein) for a consideration of Rs. 1,45,000/-. An amount of Rs. 1,40,000/- was paid as earnest money. July 10,1999 was fixed as the date for execution and registration of the sale deed. July 10,1999 being a holiday, the respondent approached the office of Sub Registrar concerned on 9.7.1999 having ready with him sufficient amount to pay balance amount of the sale consideration and meet the expenses of execution and registration of the sale deed but the appellant did not come present there to perform his part of the obligation. Accordingly, respondent filed Civil Suit No. 472 of 2002/2005 before learned Civil Judge (Junior Division),

Mahendergarh ("trial Court" for short) for possession of the suit land by specific performance of agreement to sell dated 8.5.1999. Respondent's suit was contested by the appellant by filing written statement, wherein it was pleaded that the agreement in question did not bear appellant's signature and in fact, on 8.5.1999, a compromise was effected between three brothers including parties to the present proceedings in respect of their agricultural land, plot tubewell and electricity connection and the respondent, by playing a fraud and misrepresentation, might have got agreement dated 8.5.1999 executed and as such it was not binding upon the appellant. It was also stated that price of the suit land is about 5 lacs and as such, it is quite improbable that the appellant would agree to sell it for Rs. 1,45,000/-.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the defendant has entered into an agreement to sell with the plaintiff on 8.5.99, if so, its effect? OPP

2. Whether the plaintiff is still ready and willing to perform his part of the contract and is entitled to specific performance of the plaintiff? OPP.

3. Whether the suit is time barred? OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the suit is bad for non-joinder and mis-

joinder of necessary party?OPD

6. Whether the plaintiff has no cause of action to file the present suit?OPD

7. Relief.

Both the sides adduced evidence in support of their respective pleas. Learned trial Court appraised the evidence; heard both the sides and having come to the conclusion that the respondent was able to prove execution of the agreement to sell dated 8.5.1999 and his readiness and willingness to perform his part on the same as also failure of the appellant to perform his part of the obligation, vide judgment and decree dated 14.1.2010 decreed respondent's suit with costs by directing the appellant to execute the necessary sale deed within 30 days from the date of passing of the decree, of course on deposit of the balance amount of sale consideration by the respondent. Instead of doing so, appellant preferred Civil Appeal No. RT 192 of 2010 to assail the findings recorded by the learned trial Court. However, the appeal preferred by the appellant has been dismissed by the learned Additional District Judge (Fast Track Court), Narnaul (for short,"first Appellate Court") vide judgment/ decree dated 16.2.2011.

To challenge judgment/decreed dated 16.2.2011, the defeated defendant is before this Court by way of the instant Regular Second Appeal.

I have heard learned counsel for the parties.

It is vehemently argued by learned counsel for the

appellant that date of execution and registration of the sale deed was fixed as 10.7.1999 but the respondent claims to have appeared before the Sub Registrar concerned on 9.7.1999 saying that 10.7.1999 was a holiday. According to learned counsel for the appellant in such a situation, the respondent ought to have appeared before the Sub Registrar on 11.7.1999 and not on 9.7.1999 that too without giving a notice to the appellant. Further, according to learned counsel for the appellant, execution of the agreement dated 8.5.1999 by the appellant is quite improbable because it has come on record that just six days prior to that, i.e., on 2.7.1999, respondent had lodged an FIR against the appellant's son.

Further, it has been argued that the suit for specific performance of agreement to sell dated 8.5.1999 has been filed just a day before expiry of the maximum period of limitation prescribed for bringing such a suit which according to him indicates that the respondent was not ready and willing to perform his part of the agreement. In support of this contention, learned counsel relies upon ***Sant Ram versus Brij Mohan Kaura and another 2006(2) R.C.R. (Civil) 769.***

It has also been argued that agreement in question is an outcome of fraud as the appellant never executed any such agreement and his signatures might have been obtained by the respondent on this agreement by misrepresentation and fraud when he accompanied the respondent to execute the deed of compromise in respect of agricultural land and electricity connection etc.

The contentions, however, are resisted by learned counsel appearing for the respondents.

Execution of agreement dated 8.5.1999, Exhibit PW1/A has been proved by PW1 Gurdyal Sharma, Deed Writer, and PW2 Leela Ram and PW3 Ami Lal attesting witness and vendee, respectively. Even the appellant has admitted his signatures on the said agreement though hesitatingly. Plea of the appellant that he did not put his signatures on the documents Exhibit PW1/A and that this agreement is the result of fraud run contrary to each other because by pleading fraud, the signatures are impliedly admitted. Further, by pleading that he did not execute the agreement to sell dated 8.5.1999, the appellant has dis-entitled himself from taking the plea of the respondent being not ready and willing to perform his part of agreement because in such a situation, mere statement of the vendee that he has been ready and willing to perform his part of agreement is sufficient.

As regards the plea that the respondent appeared before the Sub Registrar on 9.7.1999 instead of 11.7.1999. Suffice it to say that obligation to execute and get registered a sale deed was equally on the appellant and the respondent. It has not come on record that the appellant did present himself before the Sub Registrar on 11.7.1999 and the necessary sale deed could not be executed for want of presence of the other side.

As regards the plea that the suit has been filed on the last date or say one day prior to expiry of the maximum period of

limitation, it needs to be pointed out that a similar situation arose in the case of ***K.S.Vidyanadam v. Vairavan***, 1997(2) RCR (Civil) 312, wherein six months' period was specified in the agreement for completing the sale and from the conduct of the parties it was evident that time was of the essence of the contract and in these circumstances Hon'ble Supreme Court ruled that silence of the vendee for two and a half years disentitled him from seeking specific performance thereof. Allahabad High Court followed this judgment in ***Smt. Jamila Khatoon v. Ram Niwas Gupta***(supra). However, in ***K.S. Vidyanadam v. Vairavan*** (supra) Hon'ble Supreme Court referred to an earlier judgment reported as ***Chand Rani v. Kamal Rani, JT 1993(1) SC 74 : 1993(1) S.C.C. 519 : 1993(2) RRR 46 (SC)***, wherein it was held, "it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are (evident ?) : (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract". The judgment of the Supreme Court in ***K.S. Vidyanadam v. Vairavan*** (supra) has been considered in ***Veerayee Ammal v. Seenii Ammal, 2001(4) RCR(Civil) 625 : 2001(3) LJR 713 : AIR 2001 Supreme Court 2920 : 2002(1) Supreme Court Cases 134***. In this case the appellant entered into a agreement to sell (Exhibit A-2) with the respondent- defendant initially on 5.1.1980 and

subsequently on 16.3.1980 with respect to land measuring 27 cents for a price of Rs. 24,300/-. A sum of Rs. 8,000/- was stated to have been paid to the respondent-defendant on the day of the execution of the agreement which was reduced to writing and signed by the parties. As the respondent-defendant failed to execute the sale deed, the appellant-plaintiff filed a suit for specific performance of contract after notice to her. In her written statement respondent-defendant admitted the execution of the agreement and the receipt of Rs. 8,000/-. It was, however, contended that at the appellant-plaintiff committed breach of the contract and failed to pay the balance amount of consideration, and her suit for specific performance was not maintainable. It was further contended that time was the essence of the contract between the parties as was evident from the terms of the agreement. Deciding all the issues in favour of the appellant-plaintiff, the trial court decreed the suit permitting the appellant-plaintiff to deposit the balance amount within two weeks. The respondent-defendant was directed to execute the sale deed within two weeks from the date of deposit of the balance amount of consideration. The first appeal filed by the respondent-defendant was dismissed by the 1st Additional District Judge, Madurai vide his judgment dated 25th October, 1982. In second appeal, the High Court framed the a question of law, "Whether in the circumstances of the case, the plaintiff has established that she has been ready and willing to perform her part of the contract." And considering it as substantial question of law upset the findings recorded by the courts

below. Hon'ble Supreme Court, however, ruled as under:

“10. The question of law formulated as substantial question of law in the instant case cannot, in any way, be termed to be a question of law much less as substantial question of law. The question formulated in fact is a question of fact. Merely because of appreciation of evidence another view is also possible would not clothe the High Court to assume the jurisdiction by terming the question as substantial question of law. In this case Issue No. 1, as framed by the Trial Court, was, admittedly, an issue of fact which was concurrently held in favour of the appellant-plaintiff and did not justify the High Court to disturb the same by substituting its own finding for the findings of the courts below, arrived at on appreciation of evidence.”

In view of the above, judgment cited is found to be of no help to the case of the appellant.

Further, the appeal does not involve any substantial question of law.

Resultantly, I regret my disinclination to interfere with the well reasoned judgments recorded by the courts below.

Dismissed with costs.

January 15,2015
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(MAHAVIR S.CHAUHAN)
JUDGE