

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1799 of 2011(O&M)
Date of decision : August 13, 2015

Daya Nand

..... Appellant

Versus

Braham Dutt

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain , Advocate
for the appellant.

Mr. Sanjay Mittal , Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present appeal is to the judgment and decree dated 21.4.2009 whereby suit for the specific performance of the agreement to sell dated 15.6.1998 had been dismissed and the appeal filed against the same has also met the same fate.

Learned counsel for the appellant-plaintiff submits that both the courts below have committed illegality and perversity in declining the relief and as a fact the respondent-defendant had admitted the execution of the agreement. The agreement to sell was entered on 15.6.1998 and the target date was fixed as 15.12.1998 in

respect of land measuring 8 Kanals 10 Marlas. However, fresh agreement to sell was entered into on 15.12.1998 and the date for execution and registration of the sale deed was 15.5.1999. However since 15/16.5.1999 were Saturday and Sunday a fresh agreement to sell dated 17.5.1999 was executed whereby the date for execution of the sale deed was fixed as 15.6.2000. He submits that the witnesses to the agreement to sell has proved its execution, thus, there was no occasion for the trial court to dismiss the suit in not exercising discretion as envisaged under Section 20 of the Specific Relief Act, 1963. He further submits that in the suit claim for refund of earnest money was not sought for. The dispute arose on 14.5.2001 when the respondent threatened to alienate the property, though agreement to sell had been admitted.

Learned counsel for the respondent-defendant submits that in facts and circumstances, much less evidence on record brought viz-a-viz value of the property, on the date of entering of the agreement to sell, the value of the property was much more than agreed to be sold. In this regard Ex. DW-3/A the sale deed executed in favour of the respondent-defendant in respect of the same proved on record that the value of the property was approximately ₹95,000/- before agreement and therefore the inadequacy in the sale consideration would not create agreement as agreement to sell but as a loan transaction. In support of his submissions he has cited the judgment in **Bal Krishna and another Vs. Bhagwan Das (dead) and others 2008 (2) RCR (Civil) 732** to contend that the discretionary relief under Section 20 of the Specific

Relief Act, 1963 cannot be granted unless it involve some hardship .

In **Suresh Singla Vs. Phool Pati and another 2013 (1) RCR (Civil)**

503 to contend that where 90% of the sale consideration has been paid and sale deed is deferred for six months period, it would be tangible not to grant discretionary relief as intention of the plaintiff was not to get the sale deed executed.

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

The trial Court has non-suited the appellant-plaintiff on the premise that in the later agreement to sell dated 17.5.1999 there was a clause that so long so the property transferred in the name of the respondent-defendant the sale deed would be executed only i.e. if the respondent-defendant gets the property mutated in his name. Whereas the appellate court non-suited the appellant on the premise by taking into consideration the sale deed Ex. DW3/A, even the trial court had also noticed this fact while declining the discretionary relief.

I am not in agreement with the contention raised by Mr. Ajay Jain that once the agreement to sell has been admitted the discretionary relief was inevitable. Rather on going through the averments made in the written statement it is borne out that it was a loan transaction for the reason that sale deed Ex. DW3-A ex facie showed that the value of the property was much higher at the time when the agreement dated 15.6.1998 was entered into and the sale deed pertaining to the said property had been executed by none else but father of the appellant-plaintiff. Thus, plaintiff was in knowledge

of the fact that value of the property was much higher increased than agreed to be sold, thus, for all intents and purposes the transaction can be treated as loan transaction and not an agreement to sell. Explanation 2 to Section 20 of the Specific Relief Act, 1963 comes to the rescue of the respondent-defendant wherein it has been laid down that while dealing with the question as to whether discretionary relief should be exercised or not it has to be noticed that by an act and conduct of the plaintiff-vendee, as execution subsequent to the contract some hardship has been caused. It is strange that the respondent-defendant after having parted with 90% of the alleged sale consideration did not seek execution and registration of the sale deed and got the agreement extended thrice and no explanation has come forth to the contrary.

I am in total agreement with the judgments cited (supra) of the Hon'ble Supreme Court.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

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

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 13, 2015
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