

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

**RSA No.2287 of 2011 (O&M)
Date of decision: 16.01.2015**

Kamal Kumar ... Appellant

Vs.

Veer Singh ... Respondent

RSA No.3211 of 2011 (O&M)

Veer Singh ... Appellant

Vs.

Kamal Kumar ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.S.Bhullar, Advocate
for the plaintiff (Kamal Kumar).

Mr. L.S.Sidhu, Advocate
for the defendant (Veer Singh).

AMIT RAWAL J. (Oral)

This judgment shall dispose of two regular second appeals bearing No.3211 of 2011 and 2287 of 2011.

RSA No.2287 of 2011 is directed at the instance of Kamal Kumar-plaintiff assailing the judgment of the lower Appellate Court whereby the lower Appellate Court modified the judgment and decree of the trial Court by granting alternative relief of refund of Rs.7 lacs

along with interest @ 12% per annum from the date of agreement to sell dated 29.06.2002 till realization. The suit of the plaintiff for specific performance of the agreement to sell dated 29.06.2002 in respect of land measuring 52 kanals 17 marlas was decreed.

RSA No.3211 of 2011 is directed at the instance of Veer Singh-defendant against the judgments and decrees of both the Courts below whereby the suit of the plaintiff for specific performance had been decreed and of the lower Appellate Court which partly modified the decree of the trial Court by granting alternative relief to the plaintiff qua refund of earnest money.

For the sake of convenience, the facts are taken from RSA No.2287 of 2011 for adjudication of the appeals.

Plaintiff filed a Civil Suit on 12.06.2003 claiming the relief of specific performance of the agreement to sell dated 29.06.2002 in respect of the land measuring 52 kanals 17 marlas at the rate of Rs.1,40,000/- per acre and paid a sum of Rs.7,00,000/- as earnest money. Target date for execution and registration of the sale deed was fixed as 30.12.2002. In order to prove the execution of the agreement to sell, plaintiff examined PW1-Vijay Kumar, document writer, PW2-Sushil Bhushan, attesting witness, PW4-Baldev Singh and other attesting witnesses besides plaintiff himself appeared in the witness box as PW3. Even plaintiff prior to the filing of the suit sent a legal notice dated 30.01.2003. Photostat copy of the relevant entry contained in the register of the document writer Ex.P2, carbon

copy of the legal notice dated 30.01.2003, Ex.P4; postal receipt and Ex.P5, jamabandis for the year 2000-2001 Ex.P6 were produced in evidence.

Defendant in the written statement did not deny the signatures, on the agreement but came out with plea, were taken on blank paper.

Plaintiff in order to show readiness and willingness also proved affidavit dated 30.12.2002 Ex.P2 to show that he was ready and willing to perform his part of the agreement and appeared before the Sub Registrar on the date fixed for execution and registration of the sale deed. The plaintiff in cross-examination admitted that the possession of the suit property had not been handed over though there is recital that possession has been delivered.

The trial Court on the basis of the aforementioned evidence decreed the suit of the plaintiff and directed the defendant to execute the sale deed of the suit property registered in favour of plaintiff within a period of two months from the date of order failing which, the plaintiff would be entitled to get the sale deed executed and registered through Court.

Aggrieved against the judgment and decree of the trial Court, defendant (appellant in RSA No.3211 of 2011) filed an appeal and plaintiff (appellant in RSA No.2287 of 2011) filed cross-objections. The lower Appellate Court partly allowed the appeal filed by the defendant and modified the decree of the trial Court to the

extent that plaintiff would be entitled to the refund of earnest money of Rs.7 lacs along with interest @ 12 % per annum from the date of agreement to sell dated 29.06.2002 till the date of decree and future interest @ 6% per annum till the realization of the decretal amount. However, the cross-objection of plaintiff was dismissed.

Mr. H.S.Bhullar, Advocate for the plaintiff contended that lower Appellate Court has committed illegality much less perversity and has gone arena surmises and conjectures in rendering the findings that defendant did not own any other land despite the fact that no such defence plea has been taken in the written statement. He further submitted that the lower Appellate Court has assumed that the agreement to sell was not for the sale of the land but it was for money transaction. He also submitted that lower Appellate Court rendered finding beyond pleadings of fraud by making reference to the averment in written statement wherein it had been mentioned that the signatures were obtained on the blank paper. Even defendant has not led any evidence in support of the plea that the signatures were obtained on the blank paper. Therefore, there was no occasion for the lower Appellate Court to set aside the findings qua grant of discretionary relief of the specific performance.

In support of his contention, Mr. Bhullar, relied upon the judgment of Hon'ble Supreme Court in **Prakash Chandra vs. Narayan 2012(3) RCR (Civil) 335**. Mr. Bhullar further submits that the following substantial questions of law involve for adjudication of

the present appeal:-

“a) Whether the impugned judgment/decreed is illegal being contrary to the pleadings and evidence on the record?

b) Whether the impugned judgment and decree is illegal being beyond the issues framed in the suit?”

Mr. L.S.Sidhu, Advocate appearing on behalf of the defendant submitted that the suit of plaintiff ex facie was not maintainable in view of the fact that plaintiff had unequivocally admitted that possession of the suit land was not handed over though there was a recital of the possession of the suit land having actually been handed over. The suit for specific performance of the agreement to sell was erroneously decreed by the trial Court, therefore, the lower Appellate Court rightly allowed the appeal and modified the decree by granting the relief of refund of earnest money.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

The argument of learned counsel appearing on behalf of the defendant that suit for specific performance in the absence of possession was not maintainable is devoid of merit. Once the plaintiff has to prove the ingredients of Section 16-C(i) and (ii) of the Specific Relief Act then the Court after examination of other evidence has discretion to grant the consequential relief while exercising

power under Section 20 of the Specific Relief Act.

The trial Court rightly after observing admission of the plaintiff, which surfaced in the cross-examination, rendered a finding of fact on the basis of the documentary and oral evidence brought on record by the plaintiff. Plaintiff has not only proved execution of the agreement to sell by examining attesting witnesses of the agreement to sell but also proved readiness and willingness by appearing before the Sub Registrar on 30.12.2002 i.e. date fixed for execution and registration of the sale deed. Readiness and willingness was also in existence prior to filing of the suit as the plaintiff had sent a legal notice dated 30.1.2003 and also proved the postal receipt. Therefore, the trial Court exercised the discretion as envisaged under Section 20 of the Specific Relief Act.

The finding rendered by the lower Appellate Court to the effect that the defendant did not own other land than the one which was agreed to be sold by way of agreement to sell is based on surmises and conjectures as no such plea had been taken in the written statement. It has been pointed out that defendant though in examination-in-chief set up a plea of hardship, however the said plea cannot be taken into consideration being beyond pleadings. The lower Appellate Court without referring, to the agreement to sell, has erroneously observed that it was executed, as money transaction. This plea was never taken by the defendant that blank papers were used by the plaintiff for the purpose of extending loan. No complaint

either to the police or to any other authority has been made by the defendant qua misuse of papers by the plaintiff.

The questions of law, notice above, are thus, answered in favour of the plaintiff and against defendant.

Appeal filed by plaintiff-Kamal Kumar is thus, allowed and the judgment and decree of lower Appellate Court with regard to refusal of relief of specific performance of the agreement to sell is set aside and judgment of the trial Court to that extent is upheld. The defendant is directed to execute the sale deed within a period of three months from the date of passing of this order, failing which plaintiff will seek execution of the agreement through process of law. The appeal of defendant is dismissed. Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

January 16, 2015
savita