

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

RSA No.1936 of 2012 (O&M)

Date of Decision: 12.05.2015

Sham Lal

.....Appellant

Versus

Pardakhan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Arun Abrol, Advocate,
for appellant.

Mr. Dinesh K. Nagar, Advocate,
for respondent.

SHEKHER DHAWAN, J

Present regular second appeal is against judgment and decree dated 15.11.2011 passed by Additional District Judge, Gurdaspur whereby appeal against judgment and decree dated 14.11.2007 passed by Additional Civil Judge (Senior Division), Gurdaspur was dismissed.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgment of the Courts below. However, relevant facts for the purpose of decision of appeal that plaintiff had filed suit for possession by way of specific performance of agreement of sale dated 27.11.2001 in respect of

land measuring 8 Kanals 9 Marlas and in the alternative suit for recovery of ₹3,00,000/- along with interest. As per plaintiff the total sale consideration was fixed at ₹2,50,000/- and a sum of ₹1,50,000/- was paid as earnest money at the time of agreement in presence of the witnesses. Balance amount of ₹1,00,000/- was to be paid on 26.11.2002, the date for execution of sale deed. He remained present in office of Sub-Registrar, Dhariwal on 26.11.2002 so as to perform his part of the agreement but defendant failed to turn up. Legal notice was served upon defendant but to no effect and as such suit before the Court.

4. Defendant contested the suit taking the plea that he had received ₹1,50,000/- as earnest money and executed agreement of sale dated 27.11.2011. As per defendant, he is a commission agent and carrying on his business as such Puran Masih along with Tarsem Masih and Khushipur were working in the mandi. Plaintiff approached Puran Masih and Tarsem Masih and expressed his desire to invest ₹1,50,000/- with the defendant in the commission agent business and defendant agreed to said proposal and as such a sum of ₹1,50,000/- was invested with the defendant on 27.11.2011. The amount was duly recorded in the account books which were being maintained regularly maintained by the defendant. On 11.11.2002 a sum of ₹1,00,000/- was returned to the plaintiff. Thereafter plaintiff demanded ₹40,000/- on 17.01.2003 for purchase of dowry articles of his daughter and on 17.01.2003 defendant paid ₹40,000/-. Another sum of ₹20,000/- was paid to the plaintiff. Similarly on 28.10.2003 payment of ₹20,000/- was paid to the plaintiff and similarly on 28.10.2003 payment of ₹20,000/- was made to the plaintiff and on 27.11.2003 payment of ₹3,000/- was made and

on 15.12.2003 payment of ₹500/- was made. On 12.02.2004 entire amount along with interest was settled in presence of the plaintiff and a sum of ₹8500/- was paid to the plaintiff in presence of Tarsem Masih and Puran Masih. The agreement of sale was written as a security of the amount and the same was never intended to be an agreement of sale and as such defendant prayed that suit be dismissed.

5. On these facts Court of first instance settled the issue and parties were put to trial:

1. Whether the plaintiff is entitled to decree of possession on the basis of agreement dated 27.11.2001? OPP.
2. Whether the plaintiff is entitled to recover alleged amount alongwith interest being alternative relief? OPP.
3. Whether suit of the plaintiff is not maintainable in the present form? OPD.
4. Relief.

After recording the evidence and appreciation thereof, Court of first instance returned the findings that agreement Ex.P-1 was duly admitted by defendant in his written statement but the only plea was taken that the said agreement was written as a security and a sum of ₹1,50,000/- was invested by the plaintiff in the business of the defendant. The said contention was negated by Court of first instance. At the same time Court of first instance recorded the findings that execution of agreement was duly proved as per statement of plaintiff Pardakhan Singh as PW-1 and as per statement of PW-2 Kamalpreet Singh who is witness to the said agreement, PW-3 proved handwriting of his father who died on 21.11.2004 and also proved in the Register. The Court of first instance returned the finding that

repayment of the amount to the plaintiff by the defendant is not proved on the file. Otherwise plaintiff was willing and ready to perform for the agreement whereas defendant was not ready to willing and perform his part of agreement and suit of plaintiff for possession by way of specific performance of agreement Ex.P-1 was decreed. Defendant preferred appeal before Court of first Appellate Court but remained unsuccessful and as such present appeal before the Court.

6. At the time of arguments Mr. Arun Abrol, learned counsel for appellant took the plea that the finding recorded by the Courts below are not based on record and the same deserve to be rejected. More so in this case the alleged agreement was executed on 27.11.2001 whereas notice was issued on 13.09.2004 and suit was filed on 25.11.2004, the date which is quite close to the expiry of limitation period. This fact itself shows that the agreement was in fact not duly executed otherwise there was no reason for the plaintiff to wait for issuance of notice till September 2004. On this point reliance was placed upon Hon'ble Supreme Court in **Tejram Vs. Patirambhau 1997 AIR (SC) 2702**. Learned counsel for appellant also took the plea that in fact the amount was repaid by the defendant which has not been considered and appreciated by the Courts below. Learned counsel for appellant also took the plea that there is no evidence that plaintiff was willing and ready to perform his part of the agreement on the date fixed for registration of sale deed. If so, plaintiff cannot seek specific performance of such an agreement as per provisions of Section 16(c) of Specific Relief Act 1963. On this point reliance was placed upon view taken by Hon'ble Co-ordinate Bench of this Court in case **Prem Raj and another Vs. Smt. Darshasna and others 2007(1) RCR (Civil) 681 P&H**.

7. Mr. Arun Abrol, learned counsel for appellant also took the plea that in such like cases of specific performance, as per provision of Section 20 and 21 of Specific Relief Act 1963 the discretion has to be exercised in judicious manner. On this point reliance was placed upon judgment from Co-ordinate Bench of this Court in case **Dharampal Sood Vs. Atul Thapar 2006(1) PLJ 433 P&H** where such a view was taken by this Court.

8. While arguing this point Mr. Dinesh K. Nagar, learned counsel for respondent took the plea that both the Courts below have recorded finding of fact and the said concurrent findings do not call for any interference. More so appellant had filed objections during the execution petition at three different stages and the same were dismissed on merit. Now the appellant has insisted for issuance of injunction order as the executing Court is going to execute the decree after allowing more than reasonable time. Otherwise the appeal is without any merit and same be dismissed.

9. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that the present regular second appeal is against concurrent findings recorded on facts by both the Courts below. The matter in question is simple whether agreement of sale Ex.P-1 was executed by defendant. Subject matter of judicial interpretation was whether the said agreement was duly proved on the file. Both the courts below have recorded the findings on the basis of oral as well as documentary evidence that plaintiff has been able to prove due execution of agreement by stepping himself into the witness box and by producing attesting witnesses as well as son of the scribe who had written the

document. The entry regarding execution of agreement duly proved on the file as the same also find recorded in the register of deed writer. The plea regarding repayment of amount has been rightly discarded by Courts below primarily on the ground that defendant placed reliance on entries in the Ledger copies of which are Ex.D-1 to D-3 on the file. However no proper receipt has been produced to prove on the file by defendant. Even the signatures of plaintiff were not obtained. Even original record was not produced. The onus lawfully shifted upon defendant to prove that repayment of ₹1,50,000/- was made by defendant but that has not been done.

10. As the agreement has been duly proved on the file, there are no grounds for rejecting the claim of the plaintiff in absence of any substantial material on the file. It cannot be treated as case of extraordinary hardship so as to make out a case for denying specific performance under Sections 20 and 21 of Specific Relief Act.

11. As regards to the readiness and willingness on the part of plaintiff, it has been proved on the basis of documentary evidence that he had put his appearance in the office of Sub-Registrar on 29.09.2004 so as to establish his readiness and willingness. Plaintiff got issued legal notice on 13.09.2004 and thereafter he had made his intention clear regarding his willingness and readiness by filing the present suit for possession by way of specific performance of the agreement. Merely because of the fact that notice was issued about two months prior to the period of limitation does not make out a case to reject the contention of plaintiff. On these points the facts of the case in hand are distinguishable from the facts of the above

referred pronounced by Hon'ble Supreme Court in case Tejram Vs.

Patirambhau (Supra) as well as view of this Court in case **Prem Raj and another Vs. Smt. Darshasna and others (Supra)**.

12. Otherwise the present appeal does not involve any substantial question of law except mere appreciation of oral as well as documentary evidence available on the file which has already been done by both the Courts below and there are concurrent findings of facts, the same do not call for any interference.

13. In view of the above, the present appeal being without any merit stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 12, 2015

msd