

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

**RSA No.4678 of 2011 (O&M)
Date of decision: 01.12.2015**

Vikas Kumar

... Appellant

Vs.

Lakhmi Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Ram Bilas Gupta, Advocate
for the appellant.

Mr. Ashok Kaushik, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby, the judgment and decree of the trial Court decreeing the suit for specific performance of the agreement to sell dated 10.02.2005, has been set aside and plaintiff has been held entitled to recover earnest money amounting to ₹1,13, 500/- along with interest @ 10% per annum from the date of filing of the suit till the date of recovery.

Mr. Ram Bilas Gupta, learned counsel appearing on behalf of the appellant-plaintiff submits that agreement to sell dated

10.02.2005 was a registered document and the stipulated date for execution and registration of the sale deed was 11.08.2005, however, the respondent-defendant did not appear before the office of Sub Registrar for registration and execution of the sale deed but the appellant-plaintiff got marked his presence. Thereafter, immediately a legal notice dated 18.8.2005 was served upon the defendant-respondent but he did not reply to the same. Accordingly, the suit was filed on 03.10.2005, thus, perpetual readiness and willingness was there. Agreement to sell has been proved by both the attesting witnesses, therefore, the lower Appellate Court has committed illegality and perversity in ordering for refund of earnest money along with interest by erroneously relying upon the previous agreement to sell 10.2.2005, which was not between the parties to the lis but between defendant and father of the plaintiff. In support of his submission, he relies upon various judgments of this Court, as well as, of the Hon'ble Supreme Court in **Balbir Singh vs. Manjit Kaur and another 2013(1) RCR (Civil) 740; Mohini Kapoor vs. Deepak Uppal and others 2000(1) RCR (Civil) 807; Gurbachan Singh and another vs. Gurmit Singh 2003(4) RCR(Civil) 223; Gurdeep Singh vs. Kuljinder Singh 2012(2) RCR (Civil) 389; Narinderjit Singh vs. North Star Estate Promoters Limited 2012 (3) RCR (Civil) 168; Prakash Chandra vs. Naryana 2012(3) RCR (Civil) 335 and P.S.Ranakrishna Reddy vs. M.K.Bhagyalakshmi and another 2007(2) RCR (Civil) 290** to contend that once the

readiness and willingness has been proved, the Court below ought not to have declined the discretionary relief under Section 20 of the Specific Relief Act as the respondent-defendant has not denied signatures on the agreement to sell, but has come for the first time, with the different plea of loan transaction. Had it been so, nothing prevented the defendant-respondent in sending reply to the legal notice, thus, substantial question of law arises for adjudication of the present appeal.

Mr. Ashok Kaushik, learned counsel appearing on behalf of the respondent-defendant submits that the lower Appellate Court, being the last Court of facts and law, examined the execution of the previous agreement and found that the appellant was indulging into loan transaction and respondent had been paying the same along with interest and even the last agreement to sell dated is 10.02.2005 when the alleged agreement to sell had been set up by the appellant-plaintiff. It is the only residential house in which defendant-respondent along with his family members is residing. Thus, there is illegality and perversity in the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below, as well as, case law cited at bar.

There is no dispute with regard to the ratio decidendi culled out in the aforementioned judgments cited on behalf of the

appellant-plaintiffs. In case, ingredients of Section 16-C of the Specific Relief Act, are proved, then the Court should grant the discretionary relief. However, the facts and circumstances of the judgments (supra) do not apply to the present one as in the cited judgments, there is no such evidence, which as per which agreement to sell was found to be a loan transaction. The lower Appellate Court in paragraph Nos.21 to 24 held that all the previous agreement and statement of the plaintiff to be shaky. The same read thus:-

“21. First document in chronological order is Ex.D2. It is purported to have been executed on 11.08.2003. It is between Ganga Lal (father of the plaintiff) and defendant Lakhmi Chand. Payment of Rs.81,600/- is purported to have been made. As per defendant (DW6) he had borrowed a sum of Rs.60,000/- on 11.08.2003 for a period of 12 months. Interest was to be paid @ 3% per month. Amount of interest on Rs.60,000/- for 12 months comes to Rs.21,600/-. As per the defendant, this amount i.e. borrowed amount with interest was shown as the borrowing.

22. The second agreement (Ex.DA) was executed on 10.08.2004. Again 3% interest was calculated. The period in this agreement instead of one year is six months. Calculating interest for six months @ 3% on Rs.81,600/- the figure comes to Rs.14,688/-. However, total amount

i.e. Principal amount and interest as a total was mentioned as borrowing; the agreement was to terminate on 10.02.2005.

23 Concedingly Ganga Lal died before expiry of this agreement. Recent agreement (Ex.P1) thus is not between Ganga Lal and the defendant, but is between Vikash Kumar son of Ganga Lal and the defendant. It is again for six months. It was executed on 10.02.2005. As per the defendant, rate of interest again is 3% per month. Calculating of interest at this rate on the sum of Rs.96,288/- comes to Rs.17,328/-. The total amount thus comes to Rs.1,13,616/-. To make it in round figure, the amount has been shown to be Rs.1,13,500/-.

24. Thus, version of the plaintiff as recited in the agreement Ex.P1 that payment of Rs.1,13,500/- was paid in cash is not correct. Even when statement of plaintiff Vikash Kumar (PW1) is taken on its face value, in his cross-examination he is very fluid and incoherent on the Court of payment of consideration. At one place, he has mentioned that some payment out of total amount was made at his residence, whereas, yet other payment was made in Ballabgarh Tehsil, but at another place in cross-examination, he has mentioned that Rs.50,000/- was paid at the residence for which no receipt was executed

whereas the receipt Ex.P2 is for Rs.1,15,000/-. Thus, recital in Ex.P1 as also in Ex.P2 have been proved to be wrong; according to statement of Vikash Kumar (PW1) himself, payment was not made, as is mentioned in Ex.P1 and Ex.P2.”

Sequence of events of readiness leaves no manner of doubt that PW1-Vikash Kumar was within the knowledge of the earlier documents executed between his father and defendant.

Keeping in view the aforementioned facts, reversing the finding of the trial Court by granting the relief of earnest money, the lower Appellate Court rendered the findings which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 01, 2015
savita