

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

RSA No.4753 of 2011(O&M)
Date of decision : 26.02.2015

Mam Chand

...Appellant

Versus

Ajay Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Mr. Ranjit Saini, Advocate
for the respondent No.1.

AMIT RAWAL, J. (Oral)

This Regular Second Appeal is directed at the instance of appellant-defendant No.1 against the judgment and decree dated 31.10.2009, whereby the suit for specific performance of the agreement to sell dated 12.01.2004 in respect of land measuring 6 Kanal 16 Marla had been decreed and the relief qua land measuring 24 Kanal which was alienated by defendant No.1 before filing of the suit had been declined and the aforementioned judgment and decree was assailed by the plaintiff and as well as by the respondent. However, the appeal/Cross objections of the plaintiff was partly allowed and the judgment and decree of the trial Court was modified and instead of 6 Kanal 16 Marla land measuring 14 Kanal 16 Marla was ordered to be sold to the respondent-plaintiff by specific

performance of the aforementioned agreement to sell and the appellant-defendant was also directed to refund a sum of ₹82,000/-. However, the appeal/cross objections filed by the appellant-defendant was dismissed. It is in these circumstances, the appellant-defendant has approached this Court and filed aforementioned Regular Second Appeal.

Mr. Inderjit Sharma, learned counsel appearing on behalf of appellant-defendant No.1 contends that the respondent-plaintiff had not been diligent, much less, ready & willing in seeking the specific performance of agreement to sell inasmuch as that the target date for the agreement to sell was 12.07.2004, whereas the suit had been filed on 01.03.2007 and, therefore, the alternate relief should have been granted. He further submits that the Lower Appellate Court has wrongly reversed the finding of the trial Court by granting the relief in respect of land measuring 14 Kanal 16 Marla as the appellant-defendant No.1 had before filing of the suit suffered a consent decree & the land measuring 8 Kanal in favour defendant No.5 who is none else but the son of the appellant-defendant No.1 and this fact has not been noticed by the Lower Appellate Court. Therefore, there is illegality and perversity in the impugned judgment & decree.

Mr. Ranjit Saini, learned counsel appearing on behalf of respondent-plaintiff submits that judgment and decree passed by the lower Appellate Court is in consonance with provision of Sections 20, 13 and 12 of the Specific Relief Act inasmuch as that respondent-plaintiff during the pendency of the case had forgone the right in respect of land measuring 24 Kanal which was allegedly sold by appellant-defendant No.1 to defendant

No.2 to 4 and 6 and, therefore, the lower Appellate Court has rightly granted the specific performance in respect of land measuring 14 Kanal 16 Marla. He further submits that there is no illegality and perversity in the judgment and findings rendered, much less, no substantial question of law arises in the present appeal to be adjudicated by this Court.

I have heard learned counsels for the parties and appraised the impugned judgment and decree with revival contention.

I am of the view that the appeal is sans merit and is liable to be dismissed for the following reasons:-

The respondent-plaintiff has proved the execution of the agreement to sell by examining attesting witnesses of the agreement to sell. The appellant-defendant has not been able to cause any dent in the cross-examination to disprove the plea of the respondent-plaintiff. Even the advancement of the earnest money of ₹6,00,000/- has also been proved. The appellant-defendant No.1 has not examined any witnesses in respect of the averments made in the written statement to the effect that the agreement was suffering of forgery and fabrication. It was incumbent upon the appellant to rebut the aforementioned onus by appointing & examining of Handwriting Expert. No such effort has been made.

Since the appellant-defendant No.1 denied the execution of the agreement to sell, therefore, in view of the law laid down by this Court in *Jora Singh Vs. Lakhwinder Kumar & ors. 2011(1) R.C.R. (Civil) 130 & Lal Chand Vs. Tek Chand, 2013 (5) R.C.R. (Civil) 104*, the appellant-defendant cannot be permitted to raise the plea qua readiness and willingness on behalf of respondent-plaintiff.

It is categoric case of the respondent-plaintiff that after the expiry of the target date, the respondent-plaintiff had been approaching the defendant to execute the sale deed but defendant had been putting up the matter for one reasons or the other. Rather during the pendency of the suit, he was successful in selling the land measuring 24 Kanal to defendant Nos.2 to 4 and 6 and another piece of 8 Kanal to defendant No.5. The suit admittedly has been filed within a period of three years from the target date. There is no specific bar in exercising the discretion for granting the specific relief to the agreement to sell except where equitable circumstance are proved and pleaded. In the instance, no plea of hardship or less consideration has been proved, much less, pleaded. The finding rendered by the Lower Appellate Court do not suffer from illegality and perversity as the collusive decree in respect of land measuring 8 Kanal has been transferred by the appellant-defendant No.1 in favour of his son-defendant No.5, thus rightly granted decree for the specific performance of the agreement to sell in respect of land measuring 14 Kanal 16 Marla instead of 6 Kanal 16 Marla as ordered by the trial Court, in favour of respondent-plaintiff.

The finding rendered by the lower Appellate Court is based on appreciation of both oral and documentary evidence.

No substantial questions of law arises for the adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

26.02.2015

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**(AMIT RAWAL)
JUDGE**