

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

**RSA No.232 of 2012 (O&M)
Date of decision: 28.10.2015**

Ram Saran and another ... Appellants

Vs.

Naresh and others ... Respondents

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. Harkesh Manuja, Advocate
for the appellants.

Mr. D.S.Punia, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Appellant-defendants are in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby, the suit for possession by way of specific performance of the agreement to sell dated 13.05.2002, has been decreed. In essence, judgment and decree dated 19.03.2009 of the trial Court *vis-a-vis* entitling the plaintiff to recover earnest money of ₹3,50,000/- along with interest @ 6% per annum, has been set aside.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the appellant-defendants submits that *dehor* of the fact, agreement to sell has been proved but the fact remains that whether

the lower Appellate Court could grant the discretionary relief as envisaged under Section 20 of the Specific Relief Act, particularly when it is pleaded case of the plaintiff that he had acquired the knowledge of the registered gift deed dated 08.05.2003 executed by Ram Saran in favour of defendant No.2, in respect of 54/560 share measuring 2 kanals 14 marlas land, which is part of the land measuring 18 kanals 14 marlas, agreed to be sold. Thus, apparently, there was breach and no explanation has come forth in not filing the suit with promptitude on 05.04.2005. In essence, readiness and willingness was conspicuously absent, thus, there is illegality and perversity in the finding rendered by the lower Appellate Court. He further submits that possession of the property was handed over to the vendee, but the fact remains that suit has been filed for seeking possession by way of specific performance of the agreement to sell. Even otherwise, it has come on record that appellant-defendants are in cultivating possession of the land in dispute.

Mr. D.S.Punia, learned counsel appearing on behalf of respondent No.1/plaintiff submits that vendee had entered into agreement to sell and Ram Saran had also executed a 'Vakalatnama' for effecting khasra girdawari and other consequential act. He further submits that Mukhtiar Singh was suffering from cancer and died on 07.01.2005. A criminal complaint against the defendants *vis-a-vis* execution of the gift deed in favour of defendant No.2 was filed, however, after dismissal of the same, the instant suit was filed. The

respondent No.1/plaintiff was ready and willing to execute and register the sale deed throughout as he marked his presence before the Sub Registrar on 05.06.2003, i.e., extended date as earlier stipulated date for execution and registration of the sale deed was 15.05.2003 and earnest money amounting to ₹ 3,50,000/- against the total sale consideration had been paid. There is no illegality and perversity in the finding rendered by the lower Appellate Court as the defendants did not file an appeal against the judgment and decree of the trial Court.

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

The substantial question of law which arise to be determined by this Court reads as under:-

“As to whether the respondent-plaintiff had been ready and willing throughout, i.e, from the date of execution of the agreement to sell dated 13.05.2002, during its currency, till his death, thereafter his LRs till filing of the suit, much less, during pendency of the suit?”

Mukhtiar Singh died in the year 2005 and legal notice was sent in January, 2005, whereas, the suit had been filed on 05.04.2005, no explanation has come forth for showing the act of readiness and willingness from 05.06.2003, i.e., extended stipulated date onwards. It is a categoric case of the plaintiff that he acquired the knowledge of gift deed dated 08.05.2003 in respect of land

measuring 2 kanals 14 marlas. In my view, there is apparent breach on the part of the defendants giving cause of action to plaintiff in seeking vindication of their right arising out of agreement to sell.

As per the ratio decidendi culled out by the Hon'ble Supreme Court in **Sita Ram and others vs. Radhey Shyam 2007(4) R.C.R.(Civil) 533**, it is well settled law that readiness and willingness has to be throughout,

In my view, readiness and willingness was conspicuously absent. The trial Court after noticing the aforementioned facts, partly decreed the suit entitling the plaintiff refund of ₹3,50,000/- along with interest @ 6% per annum. Even otherwise, if a person has already parted with major chunk of money against the total consideration, it cannot be believed that he would fix the date of execution and registration of the sale deed after one year. The lower Appellate Court has not taken into consideration the aforementioned facts while exercising power under Section 20 of the Specific Relief Act.

Keeping in view the aforementioned findings, substantial question of law, as noticed above, is answered in favour of the appellant-defendants and against respondent No.1/plaintiff. In essence, the judgment and decree of the lower Appellate Court in decreeing the suit of the specific performance of the agreement to sell dated 13.05.2002 is set aside. However, judgment and decree of the trial Court is restored. In essence, respondent No.1/plaintiff would be entitled to refund of earnest money of ₹ 3,50,000/- along with

interest @ 6% per annum from the date of execution of the agreement till its realization.

Accordingly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

October 28, 2015
savita