IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2374 of 2012 (O&M) and
X-objection No. 23-C of 2012
Date of decision:- September 28, 2015

Paramjit Kaur and another

.....Appellants..

Vs.

Kamal Kant and another

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. R.K. Singla, Advocate,
for the appellants.

Mr. Arun K. Bakshi, Advocate,
for respondent No.1/Cross-Objector (plaintiff).

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

JASPAL SINGH, J.

This appeal has been preferred by appellants/defendants feeling dissatisfied against judgment and decree dated October 18, 2011 passed by ld. Additional District Judge, Jalandhar upholding the judgment and decree dated December 08, 2008 passed by ld. Additional Civil Judge (Senior Division), Nakodar whereby suit of plaintiff for possession by way of specific performance though dismissed but the suit in the alternative for recovery of earnest money along with interest, was decreed.

2. Both appeal as well as cross-objections being outcome of one and the same judgment and decree dated October 18, 2011 passed by lower appellate court are being dealt with and disposed of by this common judgment.

3. Briefly stated, facts of the case as alleged by plaintiff-respondent are that appellants-defendants are owners of the land in suit, as detailed in the head note of the plaint, situated in village Mulewal Arrayian, H.B. No. 96, Tehsil Shahkot, District Jalandhar. Appellants-defendants entered into an agreement to sell their land in favour of plaintiff-respondent at the rate of ₹2,50,000/- per killa and appellants-defendants received a sum of ₹5 lacs as earnest money from the plaintiff-respondent at the time of execution of agreement to sell dated May 16, 2000. Appellants-defendants agreed to execute and register the sale deed on or before May 15, 2002 in favour of the plaintiff-respondent or in the name of the person whom the plaintiff-respondent would say, on receipt of balance sale consideration. It was stipulated that in case plaintiff-respondent will resile from the terms of the agreement, then the earnest money stand forfeited and in case defendants-appellants resile from the terms of the agreement then they will be liable to pay double the amount already received as earnest money. It was also agreed that plaintiff-respondent will be entitled to get the sale deed executed and registered in his favour through the civil court by filing a suit for possession by way of specific performance of the agreement against the defendants-appellants. All the terms and conditions were duly incorporated in the agreement to

sell dated May 16, 2000. On May 15, 2002 plaintiff-respondent remained in the office of Sub Registrar, Shahkot to perform his part of contract along with balance sale consideration and other expenditure. The defendants-appellants did not come to the office of Sub Registrar, Shahkot. He waited for defendants from 9 a.m. to 4.30 p.m and ultimately he got his presence marked by way of affidavit duly attested by the Executive Magistrate, Shahkot. The plaintiff-respondent was always ready and willing to perform his part of the contract but they were the defendants-appellants, who have committed breach of contract. The plaintiff-respondent is still ready and willing to perform his part of the agreement to sell. He approached defendants-appellants to admit his claim but they have flatly refused. Hence, suit was filed, which was decreed in favour of plaintiff-respondent vide order dated December 08, 2008.

4. Disheartened with the aforesaid judgment and decree, defendants-appellants filed appeal bearing No.171 of 2010, which was dismissed vide judgment and decree dated October 18, 2011 by upholding the judgment and decree passed by the ld. trial court.

5. Dissatisfied with the aforesaid judgments and decrees, appellants-plaintiffs have preferred the instant Regular Second Appeal whereas the plaintiff-respondent filed Cross-objections seeking decree for possession by way of specific performance.

6. While assailing the impugned judgements and decrees passed by both the courts below, it has been argued with vehemence by learned counsel for the appellants that the same are absolutely

against the evidence available on file. In fact, both the courts below have failed to appreciate in right prospective the admission suffered by plaintiff-respondent No.1 as his witness. Kamal Kant, PW-1 during cross-examination has admitted in clear terms that he is running commission agent shop under the name and style of *"Vikas Trading Company"* and both the witnesses on the agreement to sell are also engaged in the same business. Appellants-defendants used to visit their shop for selling their agricultural produce and used to lend money to them and during that process he also used to obtain the signatures in the account books. Identical are the statements of Pawan Kumar (PW-2) and Jiwan Kumar (PW-3). Ld. trial court has also failed to appreciate that 'J' Forms issued by respondent-plaintiff dated October 02, 2010 worth ₹26794/-, September 28, 2000 worth ₹80,382 Mark B, dated September 27, 2000 for ₹49,033/- Mark C, dated September 29, 2000 for ₹47961/- have been duly proved on record, which is suggestive of the fact that agreement to sell is result of undue influence, fraud and misrepresentation. As such, it has no binding force. Similarly, ld. trial court as well as lower appellate court has also lost sight of the fact that respondent-plaintiff is income tax assessee and he was fully aware as to how the transaction of more than ₹20,000/- was to be effected while making the payment which is required to be made either by way of cheque, draft or pay order. But in the instant case, he has failed to produce the account books to show that the amount was withdrawn from bank and was paid to the appellants-defendants. Moreover, had there been any intention to sell the land that too @ ₹2.5 lacs per acre, respondent No.1-plaintiff must have asked for the possession of at least 2 acres of land, especially in the circumstances, when a long date of 2 years for execution of sale deed was given as per the recital in the agreement to sell Ex. P-1. Thus, all these circumstances leads to one conclusion that the agreement of sale dated May 16, 2000 has been forged and fabricated by the respondent-Kamal Kant in connivance with Pawan Kumar and Jiwan Kumar, witnesses, who also engaged in the same business i.e. commission agency and are close friends of the respondent-plaintiff. Thus, the impugned judgment and decree passed by the ld. trial court and affirmed by the lower appellate court even in the alternative for the recovery of the amount of the earnest money is not legally tenable and thus, liable to be set aside. Consequently, suit of the plaintiff-respondent deserves to be dismissed in toto that too with special costs.

7. On the other hand, while refuting all the submissions made by learned counsel for the appellants, it has been contended by learned counsel for the respondent-plaintiff that from the oral as well as documentary evidence available on file, it stands proved beyond doubt that Naresh Kumar Gupta while appearing in the witness box as PW-4 has deposed that he scribed the agreement of sale Ex.P-1 and he also made an entry at serial No. 217 in his register. The said agreement of sale was scribed at the instance of Dalip Singh and Kashmir Singh in favour of Kamal Kant-plaintiff in respect of the land measuring 28 kanals 4 marlas @ ₹2.50 lacs per

killa and at that time a sum of ₹5 lac was paid as earnest money in the presence of the witnesses. The plaintiff-respondent also remained willing and throughout after the execution of agreement of sale and even at present he is ready and willing to execute the sale deed as per terms and conditions of the agreement of sale. To show his bona fide in this regard, respondent-Kamal Kant visited the office of Sub Registrar, Shahkot and got attested an affidavit Ex. P-3 which has been proved by respondent-plaintiff by examining Surjit Singh, Clerk, Tehsil Office, Shahkot. The entry in this regard was also made in the register at Serial No.36/MC dated 15.05.2002, which was the date stipulated for the execution and registration of the sale deed but it were the appellants/defendants-, who did not turn up to execute the sale deed. It is also well settled that when the execution of an agreement of sale is duly proved, it should follow the decree for specific performance. Though, the power conferred under Section 20 of the Specific Relief Act, 1963 (for short, "Act") is a discretionary power but it has to be exercised judiciously. In the case in hand, ld trial court as well as the lower appellate court had failed to appreciate the fact that the execution of the agreement of sale is duly proved but for the simple reason that a time of two years have been provided for getting the sale deed executed in terms of the compromise, has been made a ground for declining the relief of specific performance, which is not the mandate of law. In fact, in view of the clear cut findings recorded by both the courts below with regard to the due execution of agreement of sale Ex.P-1, the decree for specific performance should have been passed to which the cross-objector-plaintiff is legally entitled.

8. While concluding his arguments, it has been submitted by cross-objector/plaintiff that the appeal being devoid of any merit preferred by Paramjit Kaur and another is liable to be dismissed whereas cross-objection preferred by him deserves to be accepted. Consequently, the suit of the plaintiff for specific performance deserves to be decreed in toto.

9. This Court has given a deep thought to the rival submissions made by learned counsel for the parties and has scrutinized the evidence as well as impugned judgments and decrees.

10. Undoubtedly, the agreement of sale Ex.P-1 stands proved from the evidence available on file i.e. from the testimony of Kamal Kant PW-1 as well as attesting witnesses namely Pawan Kumar PW-2 and Jiwan Kumar PW-3. Not only this, PW-4 Naresh Kumar testify that Ex. P1 was scribed by him at the instance of Dalip Singh and Kashmir Singh and further that a sum of ₹5 lacs was paid in their presence as an earnest money out of the total sale consideration. However, both the courts below have declined the decree for specific performance and the suit has been decreed in the alternative for the recovery of amount of earnest money along with interest.

11. Now, the sole question which requires determination in this appeal is whether the decline of decree for specific performance

is justified in the facts and circumstances of the case. Discretion provided under Section 20 of the Act to direct specific performance of an agreement has been envisaged under Section 20 of the Act but it has to be exercised on sound, reasonable, rational and acceptable principles. Parameters for the exercise of such a discretion vested by Section 20 of the Act cannot be entrapped within any precise expression of language and the contours thereof will always depend upon the facts and circumstances of each case. Thus, the ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the particular facts of any given case. It must, however, be borne in mind that the efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance.

12. In the light of the aforesaid settled principles, if the facts and circumstances of the instant case taken into consideration, this Court jumps to the conclusion that the trial court as well as lower appellate court have exercised the discretion in a very effective and judicious manner.

13. In the case in hand, it is an admitted fact that the plaintiff-Kamal Kant as well as the attesting witnesses of the agreement of sale (Ex.P-1) namely Pawan Kumar and Jiwan Kumar are commission agents by their profession and further that Dalip Singh and Kashmir Singh, proposed vendors have been selling their agricultural produce and on different occasions, they have been obtaining loan and the entries in this regard were being made by

plaintiff-Kamal Kant in the account books. Meaning thereby, that there were transactions in between the commission agents i.e. the respondent/plaintiff and the appellants/defendants and during the course thereof, the agreement of sale Ex.P-1 appears to have been brought into existence just to secure the advances of loan on different occasions by way of agreement of sale. No doubt, there is no entry in the account books with regard to the payment of ₹5 lacs as earnest money and that the amount of ₹5 Lacs has also not been paid or advanced by plaintiff-Kamal Kant to the appellants/defendants through any cheque, pay order or draft but one thing is evident that there was no intention of the parties for the sale of the agricultural land recited in the agreement. Had, it been so, a long date of two years might not have been stipulated or prescribed in the execution of the sale deed, on the basis of the agreement and further on payment of a sum of ₹5 lac, the respondent/plaintiff must have put forth a demand for possession of at least two acres of land immediately at the time of execution of the agreement of sale but there is nothing in this regard on record. Since, the intention of the parties to sell the land is not established and is sounded by suspicious circumstances, the trial court has rightly decreed the suit in the alternative for the recovery of the earnest money along with interest and has rightly declined the relief of specific performance, which has been upheld by lower appellate court.

14. This Court also does not find any infirmity, illegality or impropriety in the conclusion drawn by the trial court and affirmed by

the lower appellate court. Rather, is of the considered view that the impugned judgments and decrees are absolutely inconsonance with the evidence available on file and settled canons of law and these, do not call for any interference by this Court. There is no question of law much less any substantial question of law involved in this case warranting the issuance of notice of motion. Hence, the instant appeal being devoid of merit is dismissed leaving the parties to bear their own cost.

(JASPAL SINGH)
JUDGE

September 28, 2015
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