

RSA No. 325 of 2012 (O&M)

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

RSA No. 325 of 2012 (O&M)

Date of Decision: September 04, 2015

Swaran Singh

...Appellant

Versus

Baltej Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Rangi, Advocate
for the appellant.

Mr. G.N. Malik, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree dated 21.07.2010 passed in favour of the respondent-plaintiff, whereby, the suit for possession through specific performance of the contract on the basis of agreement to sell dated 21.10.2003 and for permanent injunction, has been decreed and the first appeal preferred by the appellant-defendant stands dismissed by the District Judge, Fatehgarh Sahib on 01.10.2011.

It is the contention of the counsel for the appellant that the Courts below have not taken into consideration the aspect that no agreement to sell was actually entered into between the parties, rather, the appellant-defendant had signed some blank papers which

was for a loan of an amount of ₹3,00,000/-, because of the fact that his wife was suffering from cancer and the money was required for her treatment. That apart, he contends that as per the agreement to sell, the sale deed was to be executed on 15.05.2004 and even if, it is assumed that 15th and 16th being Saturday and Sunday, were holidays and therefore, on 17th respondent-plaintiff was required to be ready and willing to perform his part of the agreement for which he was required to produce proof of the remaining amount being available. He has referred to the cross-examination of respondent-plaintiff (PW-2) where he has not been able to specify the amount which he had collected from two sources i.e. from New Punjab Traders, Sirhind Mandi and Rajender Kumar of Rajpura who is the Commission Agent. What has been stated is that he has received an amount of ₹5/10 lacs from Commission Agent New Punjab Traders, Sirhind Mandi and ₹5/7 lacs from Commission Agent Rajender Kumar of Rajpura. He further states that it has been stated that the dates have also not been specifically mentioned as to when it was taken, because at one stage, he stated 2/3 days and on other stage, he stated 5/7 days. Counsel submits that it creates a doubt in the mind to the availability of the funds on that day i.e. 17.05.2004 when he had appeared before the Sub-Registrar, Fatehgarh Sahib, for execution of the sale deed. He, therefore, contends that the Courts below, in the given circumstances, have not considered the facts

specially the hardships which the appellant-defendant would have to undergo as this is the only piece of land which is his source of livelihood and if the appellant-defendant loses this, it would leave his family without any source to survive on. He, accordingly, contends that the judgments of the Courts below be set aside and the appeal be allowed.

I have considered the submissions made by the counsel for the appellant-defendant and have gone through the records of the case.

Perusal of the judgments passed by the Courts below and the records would show that the respondent-plaintiff has been able to prove on the basis of the statements made by the witness Baljinder Singh (PW-1), Rajinder Singh, Document Writer (PW-3) who has scribed the agreement to sell and has also obtained the signatures of the parties on his register which is maintained by him as also of respondent-plaintiff himself as PW-2. It, therefore, cannot be said that no agreement to sell was actually executed by the appellant-defendant.

Further the appellant-defendant has not been able to lead any evidence to show that either his wife was suffering from cancer for which she was taking treatment and that some amount was spent on her treatment. What has been produced in evidence by the appellant-defendant, it is oral evidence and in support of which he

has produced Ex.D-1 and Ex.D-3, according to which, he had earlier also entered into agreements to sell with other persons for obtaining loan which agreements, on his having discharged his liability, have been returned back to him in original. Unfortunately, he has not produced the persons namely Jagdish Singh and Surinder Singh, in whose favour, the agreements to sell were entered into i.e. Ex.D-1 and Ex.D-3. There being no evidence on record to support the assertion of the appellant-defendant that no agreement to sell was entered into or that he had obtained a loan because of the illness of his wife, the findings recorded by the Courts below on this aspect, cannot be faulted with.

The assertions of the counsel for the appellant-defendant that respondent-plaintiff has not been able to specify the source of his money at the time when he approached the office of the Sub-Registrar, Fatehgarh Sahib, on 17.05.2004, suffice it to say that although the exact amount which he has taken from two sources i.e. New Punjab Traders, Sirhind Mandi and Rajender Kumar from Rajpura, the Commission Agents, would not make any difference specially when the total of amount which is so mentioned comes to be more than the amount which was to be paid to the appellant-defendant. The requirement of the statute is 'readiness and willingness to perform the part of the contract all through' which the respondent-plaintiff has been able to prove. The requirement of the

statute having been fulfilled, it cannot be said that the respondent-plaintiff was not ready and willing to perform his part of the contract which would result in not granting him the decree of specific performance as has been prayed for. The law cited in the judgments on which the reliance has been placed by the counsel for the appellant-defendant with regard to the principle of law as has been laid down therein, cannot be disputed but the fact remains that if the requirement of statute has been fully complied with which would indicate that the respondent-plaintiff was ready and willing to perform his part of the contract, there is nothing which would deny him the benefit as has been claimed by him in the suit i.e. decree of specific performance of the contract.

The assertion of the counsel for the appellant-defendant that the Court, in the facts and circumstances of the present case, specially when there is extreme hardship would affect the appellant-defendant as this is the only piece of land available to him and he being an agriculturist, would be left with no other source of livelihood, suffice it to say that, that cannot be a ground for exercising the powers under Section 20 of the Specific Relief Act, specially when the exceptions as mentioned under Section 20 (2) are not fulfilled as the appellant-defendant has not been able to prove any of them which would enable this Court to exercise its discretionary powers in his favour.

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An arguments has further been raised that with the passage of time, the cost of the land has increased but that itself can not be a ground for exercising the powers under Section 20 of the Specific Relief Act as it has been held by the Supreme Court in various judgments one of which is **Satya Jain (d) through LRs Vs. Anis Ahmed Rushdie (d) through LRs 2012 (12) J.T. 30.**

In view of the above, finding no merit in the present appeal, the same stands dismissed.

September 04, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE