

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4163 of 2012(O&M)
Date of decision :February 2nd ,2015

Surat Singh

..... Appellant

Versus

Gurinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M. L. Sarin, Senior Advocate with
Ms. Alka Sarin, Advocate
for the appellant.

Mr. V. K. Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate
for respondent Nos. 1 to 3.

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?

Amit Rawal, J.

The present Regular Second Appeal is at the instance of the appellant-defendant against the impugned judgments and decrees of both the Courts below whereby the suit of the plaintiff-respondent Nos. 1 to 3 for possession by way of specific performance of agreement to sell dated 24.3.2005 in respect of khewat No.,288,289, 434,285, 286 &429. Khatauni No.354,524,350,351 & 519, Khasra Nos.35/11/1(2K-12M), 35/10(5K-16M),36/6 (8K-0M),15/1(6K-4M), 16/2 (5K-1M), 36/7/2 (1K-10M), 36/12 (6K-0M), 17 (6K-15M), 18/1 (1K-12M), 18/2 (1K 16M), 35/11/2 (0K-7M), 20/2/1(0K-3M), 36/16/1 (1K-16M), 15/2 (1K-16M) and 36/27 (0K-16M) out of land measuring 29K 10 Marlas situated in revenue-

area Village Singh, Tehsil and District Jalandhar and as well as for permanent injunction restraining the appellant-defendant from alienating, transferring or mortgaging the suit property has been decreed by both the Courts below.

Apropos, the admitted facts on record are that the appellant-defendant had entered into an agreement to sell dated 24.3.2005 with the respondents-plaintiffs, in respect of land measuring 29 Kanals 10 Marlas described above @ of ₹38,20,000/- per Kila for total consideration of ₹40,86,250/-. The respondents-plaintiffs in lieu of agreement to sell paid earnest money of ₹15 lacs as per the terms and conditions of the agreement to sell *ibid* Ex.P-1. The target date for execution and registration of the sale deed was fixed as 20.3.2006. As per the terms and conditions of the agreement the respondents-plaintiffs were required to pay another sum of ₹5 lacs on 20.9.2005. The respondents-plaintiffs complied with the terms and conditions of the agreement and paid a sum of ₹5 lacs to the appellant-defendant who executed a receipt in lieu thereof. That prior to the date of execution and registration of the sale deed the respondents-plaintiffs vide Ex. P-3 sent a legal notice dated 11.3.2006 whereby appellant-defendant was called upon to appear before the Registrar for execution and registration of the sale deed. In the legal notice it was clearly mentioned that the respondents-plaintiffs were ready to pay the balance sale consideration and the details of the same in the shape of cheques and drafts, much less cash had also been given. The appellant-defendant did not appear before the Sub Registrar whereas on the other hand, respondent-

plaintiff marked his presence before the Sub Registrar, Jalandhar vide affidavit dated 20.3.2006 and proved his presence through testimony of Paramjit Singh, Clerk which was duly entered in the office of sub Registrar, Jalandhar. The said witness also proved the entry on the file.

It would not be out of place to mention that the agreement to sell was witnessed by two witnesses Balraj Singh and Manjit Singh. Since the appellant-defendant did not perform his part of the agreement, the respondents-plaintiffs on 12.4. 2006 filed the suit i.e. almost a month after the despatch of the legal notice by setting out the aforementioned facts.

The appellant-defendant in response to the notice of the suit, filed written statement and raised numerous preliminary objections including the objection that plaintiffs did not come to the Court with clean hands, much less the suit was not maintainable etc. and the suit had been filed on the basis of document which had been partially forged. Therefore, the plaintiff had no locus standi to file the suit. It was also averred that the time was essence of the contract because the defendant was to utilize the sale consideration paid by the plaintiffs for the sale of the land to purchase more piece of land for cultivation and when the appellant-defendant had entered into agreement to purchase some other land vide two agreements dated 6.1.2006 Ex. D-2 and Ex.D-3 dated 26.12.2005. The target date in the aforementioned agreement to sell was initially fixed at 5.2.2006 and 20.2.2006 but the date for first agreement to sell which was in respect of land measuring 36 Kanals 2 Marlas was extended to

25.3.2006 and in respect of second agreement to sell pertained to the land measuring 58 Kanals 3 Marlas the target date was extended to 23.2.2006. The appellant-defendant further contended that the second page of the agreement to sell was forged in as much as the respondents-plaintiffs had inserted few lines which enabled the plaintiff to claim the relief of specific performance through competent court of law in case the appellant-defendant failed to perform the terms and conditions of the agreement. It was further averred that since time being the essence of the contract and the plaintiff failed to perform his part of the agreement and despite that defendant had parted with a sum of 2 lacs against the receipt of ₹20 lacs.

It is a matter of record that the appellant Surat Singh affixed his thumb impression as well as signatures on each page of the agreement. The appellant-defendant also brought on record his agreement to sell as Ex. D-1 which according to the plaintiff did not contain the lines which would have given a right in favour of the plaintiff to seek specific performance of the agreement to sell through competent Court of law.

The trial court framed as many as six issues including issue No.5 which pertained to time being the essence of the contract. All the witnesses examined by both the parties have already been referred to in paragraph 6 of the trial Court, therefore this Court in order to avoid repetition do not feel it necessary to give their reference while deciding the present appeal. The trial Court after examining the evidence brought on record in respect of alleged forgery of the agreement to sell opined that the photocopy of the

agreement to sell Ex.D-1 brought on record by the appellant-defendant did not bear the thumb impressions and this aspect of the matter was not explained either by the appellant-defendant in his testimony nor by his counsel while addressing the arguments before the court below and thus came to a categorical finding that the agreement to sell Ex. P-1 could not be said to have been suffering from an act of forgery and found that the lines from point X to X1 which is alleged to have been inserted by the plaintiff was written with the consent of both the parties after making necessary note and document also bore thumb impression and signatures of both the parties and accordingly dismissed the suit. Thereafter the appellant-defendant challenged the aforementioned judgment and decree before the lower appellate court which was also dismissed.

I have heard learned counsel for the parties and appraised the impugned judgments of both the courts below and of the view that the appeal is liable to be dismissed for the following reasons.

The respondents-plaintiffs examined PW-8, Head Constable Parminder Lal to contend that the FIR No.332 dated 10.9.2007 under Sections 420,465,467,468, 471 and 120-B IPC Ex.D-4 was registered by the appellant-defendant. The cancellation report was submitted after obtaining opinion from the Forensic Science Laboratory, Punjab, Chandigarh by the Inspection Agency regarding the disputed writing. The respondent-plaintiff also examined PW-4 Gulshan Sarangal Scribe of the agreement who unequivocally stated that note from point X to X1 was inserted with

the consent of both the parties. However the appellant-defendant could not cause dent, in his cross examination, except by putting a suggestion that the said witness did not scribe the document. It is a matter of record that the agreement to sell had been admitted by the defendant and once the appellant-defendant had admitted the execution of the agreement the burden to prove that the note X to X1 was not inserted with the consent of both the parties was on the appellant. However, the appellant did not discharge such a burden. Be that as it may, even if the agreement to sell did not contain a clause i.e. in case of failure on the part of the vendor to perform his part of the agreement the plaintiff would be only entitled to liquidated damages even then the court had jurisdiction to exercise discretion on examination of oral and documentary evidence under Section 20 of the Specific Relief Act, 1963. The said aspect had been examined by the Hon'ble Supreme Court in **P. D'Souza Vs. Shondrilo Naidu (2004) 6 SCC 649** wherein it has been held that even where the agreement to sell only provide for a liquidated damages, the vendee cannot be deprived specific performance. In the aforementioned judgment the Hon'ble Supreme Court held the judgment rendered in in **Dadarao Vs. Ramrao (1999) 8 SCC 416**, wherein it was held, that where the agreement to sell did not provide any clause to seek specific performance even then vendee was not held entitled to claim the specific performance except liquidated damages, as *per in curiam*. In view of the aforementioned ratio decidendi laid down by the Hon'ble Supreme Court the insertion of lines from X to X1 the plea that plaintiff could not claim the relief of specific performance

would be meaningless. In essence, the contention of learned Senior counsel appearing on behalf of the appellant-defendant that respondents-plaintiffs could not have sought relief of specific performance and remedy, if any, was only for suit for recovery, is devoid of merit and is accordingly repelled.

The appellant-defendant appeared as DW-1 and in cross examination admitted his address as Plot No.207, Model Town, Jalandhar and the notice Ex. P-3, was sent at the same address. The appellant-defendant in the written statement for the first time took plea that the time was essence of contract as he had already entered into two agreement to purchase, vide Ex.D-2 and D-3 in respect of land measuring 58 Kanals 3 Marlas, which is an after thought, as he could have taken by replying to the legal notice. However nothing has come on record, much less proved in the evidence that aforementioned plea was ever raised. Not only this, even the terms and conditions of the agreement did not envisage such a condition either expressly or impliedly nor it is discernible from the surrounding circumstance i.e. object of making the contract, was conspicuously absent. It is for the first time the appellant-defendant coined a story that the plaintiff was not ready and willing to perform his part of the agreement, for, the time was essence of the contract. In support of the aforementioned contention learned Senior counsel appearing on behalf of the appellant-defendant cited the judgment of the Supreme Court in **Chand Rani (dead) by L.Rs Vs. Kamal Rani(dead) by L.Rs (1993) 1 SCC 519** and **P. Purushottam Reddy and another Vs. M/s Pratap Steels Ltd. 2002 (1) Supreme 357** to contend that in

case of agreement to sell of the immovable property there is presumption as to the time being essence of contract even then if it is not so the Court may infer that it is to be performed in a reasonable time, if the following conditions are evident:

- i) from the express terms of the contract;
- ii) from the nature of the property; and
- iii) from the surrounding circumstances, for example, the object of making the contract.

The ratio decidendi laid down by the Hon'ble Supreme Court is not disputed. However, it has to be applied to the facts and circumstances of each case. By taking into consideration the facts and circumstances of the present case, there is no term or condition mentioned in the agreement to sell that the appellant-defendant, would pass on part of the earnest money received by entering into two agreement to purchase and with the balance sale consideration would purchase another chunk of agricultural land at a lesser price. Even, if assuming for the argument sake, though not admitted the aforementioned condition had been incorporated in the agreement to sell still the aforementioned judgments do not come to the rescue of the appellant-defendant, for, the target date in both the agreement to sell Ex.D-2 and D-3 was prior to the target date in the agreement to sell dated 24.3.2005. For the sake of repetition the target date of the agreement to sell dated 24.3.2005 in the present case was 20.3.2006 whereas the target date in Ex.D-2 and Ex. D-3 which was originally fixed for 5.2.2006 was extended to 20.2.2006 and then on 3.2.2006 extended to 25.3.2006 and in the second

agreement the target date was originally fixed as 26.12.2005 and thereafter Ex.D-3 was extended to 23.2.2006 thus, in all probabilities target date in the agreement to sell involved in the present case had not reached so that appellant-defendant would not have received the entire sale consideration in order to enable him to purchase the land measuring 94 Kanals 6 Marlas. Therefore, the judgment (**supra**), relied upon by learned Senior counsel in support of his grounds of appeal and submissions do not apply to the facts and circumstances of the present case and the contention is hereby repelled. No evidence either oral or documentary has been lead by the appellant-defendant to make the court believe that the factum of purchase of land i.e.two agreements to sell (**supra**) was disclosed to the respondent-plaintiff at the time of execution of agreement to sell dated 24.3.2005 Ex. D-1 or at a later point of time. In fact it was unilateral act of appellant-defendant.

The learned Senior counsel appearing on behalf of the appellant-defendant further contended that the respondents-plaintiffs had failed to prove the readiness and willingness as they were not equipped with liquid cash, cheques and drafts mentioned in the legal notice Ex.P-3. In order to rebut the aforementioned contention of the learned counsel for the respondents-plaintiffs pointed out that vide Ex. P-7, P-8,P-9,P-11 and P-12 six cheques have been proved. Learned counsel for the appellant-defendant further contended that even if the amount, which respondents-plaintiffs alleged to have been well equipped with., was not of the respondents-plaintiffs but was of someone else. On perusal of

record i.e. Ex.P-19 and P-20 it is evident that it pertained to balance sheet of Hardial Singh who in fact is father of the plaintiff. The factum of readiness and willingness has been noticed by the lower appellate court being the last court of fact and law by referring to the testimony of the witnesses PW-5, PW-6, PW-7, PW-8 and PW-9. All the aforementioned witnesses had brought on record the account statement of Hardial Singh, father of the plaintiffs as well as Gurinder Singh and Narinder Singh, plaintiff Nos. 1 and 2. The account statement from the concerned Bank i.e. Punjab and Sind Bank, Jalandhar, Punjab Centurian Bank of Punjab, Jalandhar were proved through the testimony of aforementioned witnesses.

From the documentary evidence brought on record it had, prima facie, been proved by the respondents-plaintiffs that they were having sufficient amount in their hand to pay the balance sale consideration and thus, there was no lacking qua readiness and willingness on their part to perform their part of the agreement to sell. Rather, on the other hand, the appellant-DW-1 admitted in his cross examination that on the target date he did not visit office of the sub Registrar which indicated the fact that he was not interested to perform his part of the agreement to sell. The appellant-defendant had not placed on record any documentary evidence with regard to alleged plea of cancellation of the agreements to purchase i.e. Ex.D-2 and D-3.

Mr. M. L. Sarin, learned Senior counsel further contended that the lower appellate court has failed to discharge the obligation as enshrined under Section 96 of the Code of Civil

Procedure as the impugned judgment suffers from non-compliance of provisions of Order 41 to 31 CPC as the lower appellate court did not formulate the point of determination while rendering the impugned judgment and decree. In support of his contention he cited the following two judgments one of the Hon'ble Supreme Court and another rendered by this Court i.e. **Balraj Taneja and another Vs. Sunil Madan and another AIR 1999SC 3381 and Sukhcharan Singh and others Vs. Pargan Singh PLR Vol.IV 414.** While referring to the aforementioned judgments learned counsel contended that the lower appellate court was required to formulate a concise statement of case, the points for determination, the decision thereof and much less the reasons for such decision and having failed to do so it is a fit case for remanding back to the lower appellate court for deciding the appeal afresh.

I am afraid that the aforementioned contention of the learned Senior counsel for the appellant has no force, much less substance.

The lower appellate court while deciding the appeal has decided all the issues parawise and finding with reference to issue Nos.1 and 5 has conjointly decided in paragraph 14 of the impugned judgment. For the sake of brevity para 14 is extracted hereinbelow:-

“The appellant/defendant further raised the issued that the plaintiffs were not ready and willing to perform their part of the agreement to sell as they were not having ready cash amount on the date fixed i.e.20.3.2006 for execution and registration of

sale deed. There is nothing on record to show that appellant/defendant was present in the office of Sub-Registrar to perform his part of the agreement to sell. On the other hand, the plaintiffs have examined Paramjit Singh, Clerk office of Sub Registrar, Jalandhar as PW-1, who has proved on record the affidavit dated 20.3.2006, which was duly entered in the office of Sub Registrar, Jalandhar to get their presence marked in the office of Sub Registrar. The relevant entry is also proved on the file by Paramjit Singh, Clerk PW-1. In order to establish the balance sale consideration, they have examined Hardyal Singh PW-5, who had advanced money to the plaintiff by two cheques. The account statements of Hardyal Singh, Gurinder Singh and Narinder Singh are proved on the file by examining Kamal Kishore, Clerk PW-6, Chander Pal, Office, Punjab & Sindh Bank, Jalandhar, PW-7 Pardeep Sharma, Clerk, Punjab National Bank PW-8 and Vikas Khera, Asstt. Manager Centurian Bank of Punjab PW-9. These witnesses duly established that the plaintiffs were having sufficient amount in their hands to pay the balance sale consideration. Therefore readiness and willingness on the part of the plaintiffs to perform this part of the agreement to sell Ex. P1 is duly proved on the file. Surat Singh DW-1 has admitted in his cross-examination that on the date fixed he did not go to the office of sub Registrar, which indicates that it was appellant/defendant who was not interested to perform his part of the agreement to sell. So far as agreement to sell is Ex. D-2 and D-3 placed on record by the appellant are concerned, no finding can be given on the said agreements to sell as that

matter is between the parties named in the agreement to sell. The plea taken by the appellant/defendant that he could not honour the said agreements to sell Ex. D-2 and Ex.D-3 on account of act and conduct of the plaintiffs, is without any basis. Therefore, the appellant/defendant has failed to establish his claim as detailed in the written statement. The facts of the case and documents on record are rightly appreciated by the lower Court. The judgment and decree dated 14.9.2009 passed by the lower court does not require any interference and the same is accordingly upheld.”

Both the issues were in fact connected, as readiness and willingness would also envisage the time being essence of the contract. Order 41 Rule 32 CPC envisages that in case the lower appellate court is to endorse the view of the trial court it need not to give the detailed reasons. In view of the fact appellant-defendant did not visit the office of Sub Registrar on the target date, whereas on the other hand, the respondent-plaintiff had proved with umpteen evidence that he was ready and willing to perform his part of the agreement that by sending legal notice, marking presence before the office of Sub Registrar and the possession of sufficient liquid cash had been proved through testimony of the witnesses referred above. The presence marked before the office of Sub Registrar has been proved through testimony of PW-2. The ingredients of Section 16 (1)(c) of the Specific Relief Act, 1963 have thus been proved, but the appellant-defendant however failed to rebut the onus. The admission of appellant that he did not appear

before the office of the Sub Registrar i.e.the target date for the execution and registration of the sale deed would show his intention not to perform his part. The respondent-plaintiffs have also proved through Ex. P-13 to P-18 the certificates issued by the concerned Bank that Narinder Singh, Gurinder Singh-plaintiffs and Hardial Singh their father had sufficient money in their bank accounts.

In view of what has been observed above, no substantial question of law arises for determination by this Court as both the courts below rendered a finding of fact and law and there is no illegality and perversity in the findings rendered by both the courts below.

No other argument has been raised by the appellant-defendant.

Accordingly the appeal does not have any substance and is hereby dismissed. There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

February 2nd, 2015
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