

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

RSA No. 4928 of 2012 (O&M)

Date of Decision: February 24, 2015

Prithvi Pal Singh and another

....Appellants..

Versus

Randhir Kaur and others

...Respondents..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Amit Jain, Advocate with
Mr. Sandeep Punchhi, Advocate,
for the appellants.

Mr. Rajesh Sethi, Advocate with
Mr. Arun Kumar Biriwal, Advocate,
for respondent No.1.

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 regular second appeal has been preferred by defendants No. 1 and 2 feeling dissatisfied against judgment and decree dated August 11, 2012 passed by Additional District Judge, Sirsa confirming judgment and decree dated April 13, 2010 passed by trial court whereby suit of plaintiff for specific performance of agreement of sale dated November 05, 2004 as well as for permanent injunction restraining defendants No. 1 and 2 from

alienating land in dispute to any other person except plaintiff qua their share was decreed whereas qua share of defendants No. 3 and 4 was dismissed.

2. Tersely put, case of plaintiffs-respondents is that defendants No.1 and 2 on their behalf as well on behalf of defendants No. 3 and 4 had entered into an agreement of sale in respect of land measuring 193 kanals 18 marlas fully detailed and described in head note of plaint, @ ₹1,27,000/- per acre and on receipt of a sum of ₹12.50 lacs plus ₹1 lac as earnest money, agreement was reduced in writing on November 05, 2004. Sale deed was to be executed and registered on or before January 30, 2005 and possession was to be delivered to plaintiff at the time of execution of agreement of sale i.e. November 05, 2004. It has further been pleaded that Dhanwant Singh, alleged attorney of plaintiff was delivered possession of land subject matter of agreement of sale by defendants No. 1 and 2. However, defendants No.3 and 4 refused to deliver possession of land belonging to them and asserted that possession of land owned and possessed by them shall be handed over to plaintiff at the time of execution and registration of sale deed. It has further been submitted that as per default clause in the agreement of sale, earnest money would stand forfeited, if defendants failed to execute sale deed as per terms and conditions of agreement. It has further been averred that if Court comes to the conclusion that plaintiff is not entitled to purchase share of

defendants No. 3 and 4, plaintiff is ready to get the sale deed executed and registered in respect of land measuring 130 kanals and 9 marlas, which is ownership of defendants No. 1 and 2. As per the terms of agreement of sale, Dhanwant Singh visited office of Sub-Registrar, Sirsa for getting sale deed executed and registered on January 31, 2005 (January 30, 2005 being holiday) along with balance sale consideration and other amount required to be incurred by him but defendants-appellants did not turn up to perform their part of contract. Accordingly, Dhanwant Singh got his attendance marked by getting attested his affidavit before Sub-Registrar, Sirsa. Since, defendants did not turn up to execute & register the sale deed and committed breach of the terms of agreement, plaintiff was constrained to knock the doors of the Civil Court by way of filing of the suit for possession by way of specific performance for agreement of sale.

3. The suit was resisted by defendants No. 1 and 2/appellants by filing written statement raising preliminary objections *inter alia* on the grounds that suit is not maintainable in the present form; that neither any cause of action has arisen to plaintiff nor she has got *locus standi* to file present suit; and that plaintiff is estopped from filing present suit by her act and conduct. However, execution of agreement of sale dated November 05, 2004 has been admitted by defendants No. 1 and 2/appellants qua their shares only. They further pleaded that only a sum of ₹ 5.5 Lacs was paid to them by plaintiff as an earnest money though recital was made in the

agreement of sale with regard to receipt of ₹12.5 lacs as plaintiff had undertaken to clear loan amount availed by defendants qua land in question. It has been further asserted by defendants No. 1 and 2 that there being holidays on January 29/30 2005, Prithvi Pal Singh appeared in the office of Sub-Registrar, Sirsa on January 31, 2005, the date on which sale deed was to be executed and registered but plaintiff did not turn up. He also got his presence marked in the office of Sub-Registrar, Sirsa. It has also been submitted that plaintiff through her power of attorney is not competent to file suit and that possession of land subject matter of agreement of sale was never delivered either to plaintiff or Dhanwant Singh, an alleged attorney. Even otherwise, Dhanwant Singh has nothing to do and had no concern qua agreement of sale in question.

4. From the pleadings of the parties, various issues were culled out by Id. trial court and both the parties were afforded ample opportunities to adduce and conclude their evidence. The plaintiffs and defendants led oral as well as documentary evidence in respect of their pleadings and subsequently closed their evidence.

5. After analyzing evidence available on file adduced by parties i.e. oral as well as documentary and hearing learned counsel for parties, suit of plaintiffs was decreed as reflected in para 1 of this judgment.

6. Aggrieved against judgment and decree dated April 30, 2010 passed by Id. trial court, defendants No. 1 and 2 preferred an

appeal bearing Civil Appeal No. 62 of 2010 but that was also dismissed by Id. Additional District Judge, Sirsa on August 11, 2012 affirming/upholding judgment and decree dated April 30, 2010 passed by Id. trial court.

7. Disheartened with dismissal of appeal by first appellate court, defendants No.1 and 2/appellants preferred instant appeal, in which, notice of motion was issued by this Court on January 31, 2014 by passing following orders:-

“Learned Senior counsel for the appellants relies on the judgement of the Hon'ble supreme Court in **Vimaleshwar Ngapa Shet Vs. Noor Ahmed Sheriff**, 2011(3) Civil Court Cases 673, to contend, inter alia, that the learned courts below have not judiciously exercised their discretion, while decreeing the suit for possession by specific performance. He submits that the plaintiffs have failed to prove on record by leading cogent and convincing evidence that they were ready and willing to perform their part of contract alongwith the balance sale consideration for getting the sale deed executed. After expiry of the target date i.e. 31.1.2005, it was the defendants-appellants, who issued notice to the plaintiffs on 11.2.2005. Plaintiffs-respondents did not respond to the notice of the appellants but kept on waiting for unreasonable and unexplained long time. Finally, the suit was filed as late as on 3.4.2006. He further submits that in the totality of circumstances of the case, coupled with the over all conduct of the

plaintiffs-respondents, they were not entitled for the impugned decree.

Notice of motion for 9.5.2014.

In the meantime, execution of the impugned decree shall remain stayed.

L.C.R. be also requisitioned before the next date of hearing.”

8. In response to issuance of notice of motion, Mr. Rajesh Sethi, Advocate appeared and represented respondent No.1 /plaintiff. Lower court's record was requisitioned and received.

9. While assailing findings recorded by both the courts below regarding readiness and willingness to perform the part of agreement of sale as well as impugned judgments and decrees, it has been ebulliently argued by learned counsel for appellants that same are absolutely against the evidence and settled cannons of law. Mis-appreciation of oral as well documentary evidence has resulted into miscarriage of justice. In fact, respondent No.1-plaintiff has miserably failed to prove on record that she has been ready and willing to perform her part of agreement. Dhanwant Singh, through whom suit was filed by plaintiff-Randhir Kaur was neither her attorney at the time of execution of agreement of sale dated November 05, 2004 (Ex.P-1) nor at the time, when he allegedly appeared before Sub-Registrar, Sirsa i.e. January 31, 2005, for getting sale deed executed and registered with Sub-Registrar as per terms and conditions of agreement of sale, in question. Similarly, there is also no cogent, convincing or reliable evidence on file that either plaintiff

or Dhanwant Singh was possessing sufficient amount to meet expenses of registration as well as for making payment of balance sale consideration. In fact, plaintiff-Randhir Kaur did not appear before Sub-Registrar, Sirsa on January 31, 2005 to show her intention to get the sale deed executed and make the payment of balance sale consideration. Though an agreement of sale (Ex.P-1) bears signature of Dhanwant Singh but there is nothing on record to suggest that he signed agreement of sale as an attorney of plaintiff or that on the basis of any general power of attorney or special power of attorney, he acted on her behalf. Even, plaintiff did not appear in witness box and opted to remain away for the reasons best known to her. Dhanwant Singh appeared in the witness-box alleging himself to be general attorney of plaintiff-Randhir Kaur, on the basis of power of attorneys dated January 18, 2000 and September 14, 2005. A perusal of power of attorney dated January 18, 2000 (Ex.P-5) reveals that it pertains to land situated within the revenue estate of village Khairpur whereas power of attorney dated September 14, 2005 (Ex.P3/P4) neither authorizes Dhanwant Singh to purchase any property on behalf of his mother nor there is any reference in respect of disputed property therein. Since, plaintiff did not appear either on the date stipulated for execution and registration of sale deed or as her own witness in Court, it can not be said that she has been ready and is still willing to perform her part of contract. Thus, when Dhanwant Singh has nothing to do with suit property or agreement in

question, his appearance before Sub-Registrar, Sirsa as well as before trial court are of no evidentiary value. While concluding arguments, it has been contended by learned counsel for appellants that since plaintiff has miserably failed to prove readiness and willingness to perform her part of agreement (Ex.P1) in compliance of terms and conditions of agreement of sale as well as to get sale deed executed, impugned judgments and decrees dated 13.04.2010 and 11.08.2012 are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal that too with exemplary costs.

10. These arguments have been controverted by learned counsel for respondent No.1-plaintiff, Mr. Rajesh Sethi, Advocate.

11. While controverting various contentions put forth by learned counsel for appellants, it has been argued with vehemence by learned counsel for respondent No.1-plaintiff that Ms. Randhir Kaur-respondent No.1 is residing in USA. She appointed Dhanwant Singh, her son as her general attorney, vide general power of attorney dated September 29, 1999, registered on January 18, 2000 (Ex. P-5) as well as General Power of Attorney deed No. 351 dated September 14, 2005 (Ex.P-3) authorizing him to do all acts on her behalf. Dhanwant Singh, attorney entered into an agreement of sale with defendants No. 1 and 2/appellants for purchasing land subject matter of agreement dated November 05, 2004 (Ex. P-1) and paid a sum of ₹12.5 lacs as an earnest money besides additional payment

of ₹ 1 lac on the same day, out of the total sale consideration. On the stipulated date for execution and registration of sale deed as per terms and conditions of agreement, Dhanwant Singh remained present in the office of Sub-Registrar, Sirsa on January 31, 2005 as January 30, 2005 happened to be a holiday. He waited for defendants for whole day in the office of Sub-Registrar with balance sale consideration as well as amount required to be incurred by him for purchase of stamp paper and registration charges but defendants did not turn up to perform their part of contract. Accordingly, Dhanwant Singh got his presence marked by swearing an affidavit (Ex.P-2) before Sub-Registrar, Sirsa. Since, defendants failed to perform their part of contract, plaintiff-Randhir Kaur was constrained to file suit seeking specific performance of agreement of sale through Dhanwant Singh, her son as her general attorney. It is pretty settled that general attorney is competent to file a suit as well as to appear as a witness having full knowledge about the facts of case. In the case in hand, Dhanwant Singh was present at the time of execution of an agreement of sale (Ex.P-1). He appended his signature on behalf of proposed purchaser. Mere fact that he did not mention on the agreement (Ex.P1) that he is appending his signature as attorney on behalf of his mother-Randhir Kaur, does not *ipso facto* mean that he did not act as her attorney, especially, in the circumstances that ₹13.5 lacs were paid as an earnest money by him to defendants No.1 and 2, out of the total sale consideration.

Moreover, execution of agreement of sale (Ex.P-1) has not been denied, rather, same is an admitted fact. Although, appellants-defendants No. 1 and 2 had tried to raise a dispute that only a sum of ₹5.5 lac was paid towards earnest money and further that balance amount was to be paid by plaintiff to clear bank loan outstanding *qua* land in question.

12. It is further contended by learned counsel for respondent No.1-plaintiff that Hon'ble Supreme Court while summarizing powers of general power of attorney in filing suit and his appearance in Court as a witness in place of principal in case ***“Man Kaur (dead) by LRs vs. Hartar Singh Sangha,” 2011 (1)RCR (Civil) 189 (SC)*** has observed that power of attorney can file a suit as provided under order 3 Rule 1 and 2 CPC and also depose as a witness about all the acts and transactions done by him. Having full knowledge of all transactions, is the best witness as party in place of principal. No adverse inference can be drawn against him due to non-appearance of principal in witness box. Thus, mere fact that plaintiff did not appear in person in witness box is not fatal to her case as all the acts were done by Dhanwant Singh on her behalf.

13. As far as recital with regard to delivery of possession in agreement of sale (Ex.P-1) is concerned, same cannot be treated as a gospel truth. In fact, possession was never delivered at the spot. This fact has clearly been admitted by appellants-defendants in para No. 7(4) of their written statement. Non-registration of agreement of

sale (Ex.P-1) in such situation has no adverse effect. Even otherwise, it is not the requirement of law that agreement of sale is compulsorily registrable.

14. Elaborating his various submissions, learned counsel for appellants-defendants No. 1 and 2 with regard to readiness and willingness of plaintiff to get sale deed executed and registered in terms of agreement of sale (Ex.P-1), has stressed that plaintiff through her general attorney has categorically stated in the plaint that she had been ready and willing and is still ready and willing to perform her part of contract, which further stands fortified from the fact that Dhanwant Singh, general attorney of plaintiff remained present in the office of Sub-Registrar, Sirsa on the date stipulated for execution and registration of sale deed i.e. January 31, 2005 with balance sale consideration as well as other amount required to be incurred for execution and registration of sale deed. When defendants did not come present in the office of Sub-Registrar, he got attested affidavit Ex.P-2 showing his presence there, whereas appellant No.1 succeeded in forging and fabricating a false affidavit to show his presence in the office of Sub-Registrar. Stamp paper was purchased from Bathinda, that too, from a stamp vendor whose license already stood cancelled and got it attested from the office of Sub-Registrar, Sirsa whereas presence of Dhanwant Singh stands fully confirmed. Even, Sampat Ram PW-1, who is one of the attesting witnesses of agreement of sale has also deposed that Dhanwant

Singh remained present in the Office of Sub-Registrar on January 31, 2005 along with balance sale consideration. So far as, financial capacity of Dhanwant Singh to make payment of balance sale consideration or the amount to be incurred for execution and registration of sale deed is concerned, it stands fully proved from sale deeds (Ex. 15 and P16) vide which, land was sold by Randhir Kaur prior to the date stipulated i.e. January 30, 2005 for making payment to get sale deed executed as per terms and conditions of agreement of sale (Ex. P-1). Moreover, it were defendants, who can be termed to be guilty of non-performance of their part of agreement. They failed to clear bank loans and to get property in question redeemed from bank. There is also a recital in this regard in agreement of sale (Ex.P-1). So, it is amply clear that plaintiff had been ready and willing and is still ready and willing to perform her part of agreement, whereas, it were defendants who are at guilty of non-performance of their part of agreement. In such situation, Id. trial court has rightly passed decree for specific performance of agreement of sale *qua* land owned and possessed by appellants-defendants No.1 and 2, which has been rightly upheld by Id. lower appellate court. Instant appeal being devoid of merit deserves to be dismissed with special cost.

15. After having heard learned counsel for parties at length, bestowing consideration to rival submissions and meticulously going through evidence available on file, this Court is of the considered

view that there is legal force in the contentions advanced by learned counsel for appellants-defendants No.1 and 2, in view of various reasons to be unfolded in the discussion.

16. The sole question which require determination in this appeal is whether plaintiff-respondent No.1 has been successful in proving her readiness and willingness to perform her part of agreement of sale (Ex.P-1) or not. In case, this Court comes to a conclusion, that answer to this question is in negative, impugned judgments and decrees would not be sustainable. Section 16 of the Specific Relief Act 1963 deals with readiness and willingness of party to agreement of sale. It depends upon facts and circumstances of a particular case and no *straight jacket formula* can be laid down. Section 16 (c) explanation (ii) provides that plaintiff is required to prove his/her continuous readiness and willingness from the date of contract to the time of hearing to perform contract on his/her part. Failure to make good that averment brings with it and leads to inevitable dismissal of suit. Section 16(c) read with explanation (ii) requires a person seeking benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entirety to specific relief. These provisions impose a personal bar. The court is to grant relief on the basis of conduct of a person seeking relief and he cannot take advantage of the weakness of opposite party.

17. Adverting to the facts of the case in hand, agreement of sale dated November 05, 2004 (Ex.P-1) was executed by appellants-defendants No. 1 and 2 on their behalf as well as on behalf of defendants No. 3 and 4, on receipt of a sum of ₹13.5 lacs as earnest money. Though, amount of earnest money has been disputed by learned counsel for appellants-defendants No. 1 and 2 but there is no cogent and convincing evidence in this regard. So, it cannot be safely concluded that agreement of sale (Ex.P-1) was executed by defendants No.1 and 2 on receipt of a sum of ₹13.5 lacs as an earnest money. Execution of document has also not been otherwise disputed by appellants-defendants and respondent-plaintiff. Otherwise also, no amount of oral evidence can be taken into consideration and pales into insignificance, in view of a recital contained in document.

18. Before rendering findings with regard to readiness and willingness on the part of plaintiff, it would be appropriate to mention that plaintiff-Randhir Kaur never appeared in person either at the time of execution of agreement of sale or on the date stipulated for execution or registration of sale deed i.e. January 31, 2005 or at the time of institution of suit or during course of evidence. Only Dhanwant Singh appeared. Whether he was competent and authorized person to appear at all these stages on behalf of his mother-Randhir Kaur, is to be seen. In paragraph No.1 of plaint, it has been averred by plaintiff that Dhanwant Singh has been

appointed as general attorney by plaintiff-Randhir Kaur through registered deed dated September 14, 2005 (Ex.P-3) registered in the office of Sub-Registrar, Sirsa, meaning thereby that Dhanwant Singh was not holder of any power of attorney on behalf of his mother prior to that. So, question of entering into an agreement as an attorney of his mother on November 05, 2004 and his alleged appearance in the office of Sub-Registrar, Sirsa on January 31, 2005 cannot be deemed to be on behalf of Randhir Kaur-plaintiff. Here, it would also be pertinent to mention that a perusal of application/affidavit (Ex.P-2) got attested from Sub-Registrar, Sirsa on January 31, 2005 reveals that he claimed himself to be an attorney of Smt. Randhir Kaur on the basis of general power of attorney No. 433, dated January 18, 2000 and not on the basis of power attorney dated September 14, 2005, reference of which does not find mention in the pleadings unfolded in the plaint.

19. A glance at power of attorney dated September 29, 1999 alleged to be registered on January 18, 2000 transpires that said power attorney does not pertain to the land in dispute, rather, it is specific in respect of lands/properties situated at village Khairpur whereas disputed property is located in revenue estate of Mangala. This attorney is also highly doubtful and suspicious. Though, it has been alleged to have been executed on September 29, 1999 by Randhir Kaur, it appears to be witnessed by one Devinderjit Singh Bhangu on October 02, 1999, which was subsequently got registered

with Sub-Registrar, Sirsa by Dhanwant Singh, attorney and not by its executant. So, one thing becomes evident that neither on the date of execution of agreement of sale (Ex.P-1) Dhanwant Singh was attorney holder of plaintiff nor on January 31, 2005, the date on which he allegedly appeared before Sub-Registrar, Sirsa. Plaintiff herself did not opt to appear either before Sub-Registrar to show her readiness and willingness, or while filing suit or in the witness box as her own witness.

20. No doubt, attorney is as good witness as a party but prior to September 14, 2005, he was not competent and authorized person to act as attorney of plaintiff, his mother.

21. The next question which arises is whether Dhanwant Singh was also authorized to purchase property in the name of his mother is also not proved.

23. During course of arguments, learned counsel for respondent No.1-plaintiff has relied upon recital in the power of attorney dated September 14, 2005 (Ex.P-3 and Ex.P-4) to show that Dhanwant Singh was competent and authorized to purchase property on behalf of his mother. But a close scrutiny of relevant portion transpires that he has been authorized to do all acts in respect of property owned and possessed by her and further which she additionally or supplementary purchases and the land which is transferred in her name from any other source. This recital does not

authorise attorney to purchase additional or supplementary property in her name.

24. From the entire discussion, it emerges that though Dhanwant Singh appended his signature on agreement of sale and made payment of earnest money yet he was not competent to appear on behalf of his mother to get sale deed executed or to get his presence marked. It was incumbent upon plaintiff-Randhir Kaur to establish that she had been ready and willing and is still ready and willing to perform her part of agreement. Readiness and willingness on part of Dhanwant Singh in the absence of power of attorney on the relevant dates is of no relevance.

25. Before parting this judgment, it would be appropriate to mention that receipt of earnest money to the tune of ₹13.5 lacs has already been admitted by appellants-defendants No. 1 and 2, at the time of execution of agreement of sale deed dated November 05, 2004 (Ex.P-1). There is no cogent, convincing or reliable evidence brought on record by appellants-defendants No. 1 and 2 that amount of earnest money stood forfeited. Though, respondent No.1-plaintiff has failed to prove her readiness and willingness to perform her part of agreement, yet, she is entitled to refund of earnest money.

26. An an upshot of the aforesaid discussion, finding that impugned judgments and decrees, delivered by both the courts below are not sustainable in the eyes of law, are set aside by way of acceptance of instant appeal but at the same time suit of plaintiff-

respondent No.1 stands decreed with costs, in alternative for recovery of an amount of ₹13.5 lacs paid by her as earnest money along with interest @ ₹12% per annum from the date of institution of suit i.e. April 03, 2006, which shall be recoverable from defendants No.1 and 2/appellants.

February 24, 2015
sonika

(JASPAL SINGH)
JUDGE