

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

R.S.A.No.1068 of 2013 (O&M)

Date of Decision: August 25, 2015

Surjit Singh & others

...Appellants

Versus

Sewa Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Arun Singla, Advocate,
for the appellants.**

**Mr.Vikas Bahl, Senior Advocate with
Mr.Parvinder Singh, Advocate,
for the respondent.**

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the concurrent findings of facts and law, whereby the suit for specific performance of the agreement to sell dated 24.7.2008 and the possession of land measuring 20 kanals 13 marlas on deposit of the balance sale consideration has been decreed in favour of the respondent-plaintiff.

Mr.Arun Singla, learned counsel appearing on behalf of the appellant-defendants submits that both the Courts below have committed an illegality and perversity in not noticing the fact that the respondent-plaintiff has failed to prove the readiness and willingness as per Section 16(c) of the

Specific Relief Act (for short “the Act”) and, therefore, the discretion under Section 20 of the Act ought not to have been exercised and the suit was liable to be dismissed. He further submits that there is inconsistency in the statements of the witnesses and the attesting witnesses of the agreement to sell, inasmuch as that, the plaintiff has stated that he had entered into an agreement to sell on behalf of Amarjit Kaur, whereas the attesting witness PW-2 Balwinder Singh stated otherwise and, therefore, the appeal involves the substantial questions of law, to be determined by this Court.

Mr.Vikas Bahl, learned Senior Counsel assisted by Mr.Parvinder Singh Advocate appearing on behalf of the respondent-plaintiff submits that the agreement to sell dated 24.7.2008 and receipt of earnest money have been admitted by the appellant-defendants and the target date for execution and registration of the sale deed was 1.10.2008. Since the defendants did not execute and register the sale deed, though they marked themselves present before the office of the Sub Registrar, nothing prevented them to execute the sale deed. Having not done so, the suit, aforementioned, was filed on 8.10.2008 with promptitude. He further submits that as per Section 68 of the Indian Evidence Act, when the attesting witnesses have been examined, therefore, the appellant-defendants cannot say that the agreement has not been proved. He has further submitted that it is now settled law that the source of money is required to be proved. In this regard, he has relied upon the statement of account, Ex.P7, which has been proved on record.

I have heard the learned counsel for the parties and appraised the paper book.

In order to seek the discretionary relief under Section 20 of the Specific Relief Act, plaintiff has to prove that he was ready and willing to perform his part of the agreement. It is a matter of record that the total sale consideration of the land agreed to be sold was ₹1,34,77,125/- and ₹27,00,000/- was paid as earnest money. The balance amount was to be paid on the date of the execution and registration of the sale deed, i.e., 1.10.2008. Since no consensus was arrived at between the parties, the suit was filed on 8.10.2008. The plaintiff has examined the attesting witnesses to the agreement to sell. PW-2 has proved the same, though the appellant-defendants have admitted the execution of the agreement to sell. The readiness and willingness from the date of the filing of the suit as per Section 16(c) of the Act has been proved. Even the remaining amount, which was to be paid on the date of execution and registration of the sale deed, was proved vide Ex.P7. No fault can be found with the findings rendered by both the Courts below and the judgments and decree do not suffer from any illegality and perversity, much less, no substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

August 25, 2015
ramesh

(AMIT RAWAL)
JUDGE