

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

Date of Decision: February 13, 2015

1. **R.S.A.No.1522 of 2013 (O&M)**

Nachattar Singh

...Appellant

Versus

Veena Rani & others

...Respondents

2. **R.S.A.No.1790 of 2013 (O&M)**

Sukhdev Singh

...Appellant

Versus

Veena Rani & others

...Respondents

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.D.S.Malwai, Advocate,
for the appellant (in RSA No.1522 of 2013).**

**Mr.Ashok Singla, Advocate,
for the appellant (in RSA No.1790 of 2013).**

**Mr.Rajbir Attri, Advocate,
for respondent No.1 (in RSA No.1522 of 2013).**

AMIT RAWAL, J. (Oral)

Civil Misc.No.4758-C of 2013 in RSA No.1790 of 2013

For the reasons mentioned in the application, which is

supported by an affidavit, leave is granted to the applicant-appellant to file appeal against the impugned judgments and decrees of the Courts below as the applicant-appellant was not a party before the trial Court as well as the Lower Appellate Court.

CM stands disposed of.

R.S.A.Nos.1522 & 1790 of 2013 (O&M)

This order of mine shall dispose of two Regular Second Appeal Nos.1522 and 1790 of 2013. The appeal bearing No.1790 of 2013 is at the instance of the subsequent vendee, who is alleged to have purchased 1/3rd share in the land measuring 26 Bighas 16 Biswas, which comes out to be 9 Bighas owned by defendant Nos.1 to 3. Since the facts are common, therefore, for deciding both the appeals, the facts are being taken from Regular Second Appeal No.1522 of 2013.

This Regular Second Appeal is directed at the instance of Nachattar Singh-vendee-defendant No.1 against the judgment and decree of the trial Court dated 4.11.2009, whereby the trial Court had decreed the suit only qua 1/6th share of Nachattar Singh and declined the relief seeking share of defendant Nos.2 to 4. In essence, the decree has been passed only qua the share of Nachattar Singh, which, according to the learned counsel for the appellant, comes to be 4 Bigha 9 Biswas of the total holding. However, the appeals filed by Nachattar Singh-defendant No.1 and respondent-plaintiff were dismissed by the Lower Appellate Court. The Lower Appellate Court, in paragraph 24 of the impugned judgment, according to the learned counsel for the appellant, has erroneously observed that defendant No.1 would be liable to execute the sale deed to the extent of 1/6th share out of the suit land

owned by him as per jamabandi for the year 1998-99 on receipt of proportionate balance sale consideration, which, according to the learned counsel for the appellant, is not in consonance with the judgment and decree of the trial Court, much less, in accordance with law.

Mr.Ashok Singla, learned counsel appearing for the appellant in RSA No.1790 of 2013 filed by Sukhdev Singh, who is none else but a subsequent vendee, in support of his grounds of appeal, submits that appellant Sukhdev Singh acquired a right in the property by virtue of sale deed dated 27.10.2005. He further submits that during the pendency of the appeal filed by Nachattar Singh, the appellant acquired the knowledge of litigation between Nachattar Singh and respondent-plaintiff and accordingly moved an application under Order 22 Rule 10 CPC on 4.10.2010. The said application was contested by Nachattar Singh by stating that Sukhdev Singh was informed about the agreement to sell and as well as of the litigation and there was no apparent collusion between him and the plaintiff. The Lower Appellate Court, vide order dated 26.10.2005, while disposing of the appeal, dismissed the application as well, which has also been challenged in the present appeal, thus, submits that the present appeal involves the following substantial questions of law:-

- a) Whether the impugned judgments-decrees passed at the back of the appellant who is only interested person in the suit property and in violation of the principles of natural justice and rule of law and audi alteram partem, are unsustainable in the eyes of law?
- b) Whether a person who attains any right in the suit

property during the pendency of the litigation has no right to contest the same or become a party under Order 22 Rule 10 CPC if he had knowledge about the pendency of the litigation before he acquires the right?

c) Whether the part performance of an agreement to sell can be granted even though the case does not fall within sub-sections (2), (3) and (4) of Section 12 of Specific Relief Act and when the plaintiff did not relinquish her claim qua the unperformed part either in the pleadings or even thereafter?

d) Whether the specific performance of an agreement to sell could have been granted merely because it is lawful or equiable to do so, especially in view of Section 20 of Specific Relief Act which says that said relief should not be granted merely because it is lawful to be granted?

e) Whether failure of the plaintiff to prove the attorney with the help of which her attorney holder had filed the suit, is not fatal to the case and whether the suit should not have been dismissed on account of plaintiff's failure to prove said attorney especially when said attorney was specifically disputed in the written statement?

f) Whether the present appellant, who is the only affected person by the decision of the suit in plaintiff's favour, should not have been allowed to be impleaded as a party and contest the litigation?

g) Whether the impugned judgments-decrees passed by the

Id.Courts below are illegal and perverse and run contrary to the oral as well as documentary evidence on the file and are a result of mis-reading and non-reading of material evidence and pleadings on the file?

Mr.Singla further submits that the judgments and decrees of both the Courts below are liable to be set-aside as the same suffer from illegality and perversity on the following grounds:-

i) The appellant-subsequent vendee has been denied the right of appeal and hearing on merit as the Lower Appellate Court erroneously dismissed the application under Order 22 Rule 10 CPC, rather the application should have been allowed and appellant should have been given an opportunity to address the arguments on merit;

ii) There is a clear violation of the provisions of sub-section (3) of Section 12 of the Specific Relief Act and in support of the aforementioned submission, the counsel relies upon the judgment of the Full Bench rendered by this Court in **Rakesh Kumar Versus Sat Pal**, 1986(2) PLR 214 and judgment rendered by a Division Bench of Andhra Pradesh High Court in **A.Ramalakshmi Sethu Rao (died) and Ors. Versus D.Bheemehswara Rao and Ors.**, 1996(2) SCC 217;

(4) The trial Court has committed an illegality in exercising discretion under Section 20 of the Specific Relief Act as the respondent-plaintiff failed to prove the execution of the agreement to sell, much less, passing of the earnest money and

signature of Nachattar Singh, as, Nachattar Singh always used to append his thumb impression;

(5) Veena Rani-vendee has not stepped into the witness box and only her attorney, namely, Sanjiv Kumar stepped into the witness box and, therefore, Nachattar Singh has been deprived of right to put specific question qua the execution of the agreement to sell etc.;

(6) There was a collusion between defendant No.1 and the plaintiff;

(7) The suit filed by Veena Rani through her attorney, who was none else but her husband and said attorney has not seen the light of the day;

(8) Sukhdev Singh is the bonafide purchaser, as per the provisions of Section 41 of the Transfer of Property Act;

(9) The sale vide sale deed dated 27.10.2005 would not be hit by provisions of Section 52 of the Transfer of Property Act.

Mr.D.S.Malwai, learned counsel appearing for appellant-defendant No.1 in RSA No.1522 of 2013, in support of his grounds of appeal, has raised the following points:-

a) The respondent-plaintiff has failed to prove the liquid cash;

b) Veena Rani has not stepped into the witness box, but her son, namely, Sanjiv Kumar feigned ignorance regarding the source of earnest money;

c) The trial Court has erroneously and perversely exercised

the discretion under Section 20 of the Act as the suit of the respondent-plaintiff for seeking specific performance of 1/3 share was not maintainable as defendant Nos.2 to 4 had not appended their signatures on the agreement to sell.

I have heard the learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below and am of the view that the appeals are liable to be dismissed on the following grounds:-

The law qua applicability of Section 52 of the Transfer of Property Act is no longer Res Integra in view of the judgment of this Court in **Yogeshwar Education Trust Versus Gurmeet Kaur and others, 2009 (2) CivCC 345**. In the said case, while giving conclusions, the Division Bench of this Court held that even at the stage of pendency of the Special Leave Petitions in case the property exchanged hands or during the pendency of any proceedings before the Courts below, Section 52 would be attracted.

In the instant case, the civil suit was filed on 3.2.2005, whereas the sale deed is dated 27.10.2005. The execution of the sale deed by Nachattar Singh qua his share in favour of appellant Sukhdev Singh, thus, would be hit by doctrine of lis pendence.

As regards the plea in view of the provisions of sub-section (3) of Section 12 that a suit for specific performance in respect of the entire land was not maintainable much stress has been laid on the findings recorded by the Full Bench of this Court in **Rakesh Kumar's case** (supra).

The Full Bench of this Court in paragraph 6 of the judgment held that where a party agrees to sell a property in which some other persons

have also a share, then with regard to such a property under Section 12(3), specific performance can be directed in respect of so much of his/their part of the contract as he/they could perform and the plea that there has to be specific pleadings in the plaint qua relinquishment of the claim with regard to the share of other co-sharers and the respondent is meaningless. In the instant case, the Courts below, after noticing the oral and documentary evidence, have given a finding by directing only Nachattar Singh to execute the sale deed qua his share, i.e., 1/6th share, for, the respondent-plaintiff has been able to prove not only the execution of the agreement to sell, but also the advancement of the earnest money of ₹3.00 lacs. Both the witnesses have withstood the test of cross-examination conducted by the defendants and no dent has been caused in their cross-examination, thus, trial Court moulded relief in accordance with provisions of law aforementioned.

The plea that the respondent-plaintiff has failed to prove the signatures of Nachattar Singh on the agreement to sell is also devoid of merit, for the reason, that both the attesting witnesses of agreement to sell have unequivocally deposed that the agreement to sell was thumb marked by Nachattar Singh in their presence, thus, the plaintiff had discharged the burden, much less, the onus shifted upon the defendant to rebut the same. However, the defendant has not led any evidence to disprove/belie the alleged claim of the respondent-plaintiff that he never appended his thumb impression and used to append only his thumb impression and such plea has been taken for the first time in this Court.

For argument sake, if Nachattar Singh had not appended his thumb impression and only appended signature, he would have been within

his right to lodge a complaint to the police with regard to the alleged forgery on the agreement to sell. There is no such complaint being filed on his behalf nor any evidence in this regard has been led.

The reference to the statement of DW-1 is not corroborated by other supporting evidence, i.e., by examination of signature by Handwriting Expert or otherwise.

The dismissal of the application under Order 22 Rule 10 CPC by the Lower Appellate Court at the stage when the appeal was almost at the fag-end of the hearing would not have taken away the right of appeal of the appellant-vendee. It is settled law that the third person, who is effected by the judgment and decree, can always file the appeal by seeking leave of the Court and raise the arguments in support of his case. Therefore, moving of the application under Order 22 Rule 10 CPC and his rejection is, thus, meaningless.

The finding of the Lower Appellate Court qua the direction to defendant No.1 to execute the sale deed in respect of his share against the receipt of proportionate amount vis-a-vis his share, is not only erroneous but perverse. The trial Court has rightly observed in the decree that defendant No.1 would be liable to execute and register the sale deed on receipt of the balance sale consideration. In essence, the balance sale consideration would mean the consideration agreed to be paid in respect of 9 bighas of land.

The plea of collusion between the plaintiff and defendant No.1 also does not have any substance, much less, merit, on the premise had there been collusion, the defendant-Nachattar Singh would not have challenged the decree of trial Court by filing appeal despite the fact that he had already

sold his share to vendee Sukhdev Singh vide sale deed dated 27.10.2005. In the instant case, defendant No.1 had challenged the decree by filing the appeal, which had resulted into rejection.

In view of what has been observed above, the appeal filed by Sukhdev Singh is, thus, merit less as no substantial question of law arises for adjudication of this Court.

As regards the plea of Mr.D.S.Malwai that Nachattar Singh did not receive the earnest money is also devoid of merit as both the attesting witnesses of the agreement to sell have unequivocally stated that in their presence the respondent-plaintiff paid the earnest money. The earnest money of ₹3.00 lacs was paid by Shiam Lal, husband of plaintiff, who executed the agreement to sell on behalf of Veena Rani. The defendant has failed to rebut the aforementioned evidence. In essence, the statements of the witnesses examined on behalf of the respondent-plaintiff have gone unimpeached.

As regards the non-production of the power of attorney alleged to have been executed by Veena Rani in favour of Shiam Lal, it is hereby observed that Shiam Lal died at the stage when the suit was for completion of the pleadings. It is settled law that in case of a relation of husband and wife either of the parties can appoint each of them, as agent. This proposition of law has been upheld by the Hon'ble Supreme Court in **Man Kaur (Dead) by L.Rs Versus Hartar Singh Sangha, (2010) 10 Supreme Court Cases 512**. Since Shiam Lal had died, the power of attorney even if has not come on record, would not be effective piece of evidence as Veena Rani had executed a power of attorney in favour of her son Sanjiv Kumar,

who had also appeared as PW3. It is unfortunate that Shiam Lal had died during the pendency of the proceedings and all acts, i.e., with regard to the execution of the agreement to sell were done by Shiam Lal and he was, thus, competent to depose on behalf of Veena Rani. Ofcourse the case of the respondent-plaintiff would have been shattered had the power of attorney been not proved in case Shiam Lal had been alive. The defendants have also not been able to cause any dent in the testimony of PW-1, the scribe of the agreement, who not only affirmed in his affidavit but proved that Nachattar Singh on his behalf and on behalf of other defendants entered into an agreement to sell with the plaintiff for a consideration of ₹1,01,000/- per bigha. The respondent-plaintiff has also proved the ingredients of Section 16(c) of the Specific Relief Act by not only making a statement as per Section 16(c), but proved the same also by examining the attesting witnesses to the agreement to sell. The appellant-defendant has failed to prove on record any documents to prove that Nachattar Singh used to append his thumb impression, therefore, there was no occasion before the Courts below to arrive at a different finding than the one rendered. In the written statement filed by defendant No.1, it has never been alleged that plaintiff never remained ready and willing to execute the sale deed and, therefore, the Courts below have rightly exercised discretion in decreeing the suit as per provisions of Section 20 of the Specific Relief Act. Both the Courts below have rendered a finding of fact and law, based on oral and documentary evidence. No substantial question of law arises to be adjudicated by this Court.

In view of what has been observed above, the appeals are

accordingly dismissed.

It is made clear that the findings rendered by the Lower Appellate Court qua proportionment share is, hereby, modified in view of that has been observed above.

February 13, 2015
ramesh

(AMIT RAWAL)
JUDGE