

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

RSA No.1551 of 2013(O&M)
Date of decision: 19.02.2015

Kashmir Singh and others

...Appellants

Versus

Sher Singh Cheema and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. KBS Mann, Advocate for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was decreed by the trial court vide judgment and decree dated 06.06.2011. Appeal preferred against the said decree failed and was dismissed on 27.01.2012. This is how, defendants are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiffs prayed for a decree for specific performance of the agreement to sell dated 27.06.2008, qua a land measuring 50 kanals 5 marlas, as depicted in the cause title of the plaint. A decree for injunction was also claimed, restraining the defendants from alienating the suit property in any manner. It was averred that the defendants happened to be the owners in possession of the suit property. And an

agreement to sell dated 27.06.2008, was executed by the defendants, in favour of the plaintiffs, for a total sale consideration of ₹ 36,11,720/-. A sum of ₹ 18,75,000/- was purported to have been advanced by way of earnest money. In terms of the agreement, sale deed was to be executed on 27.07.2008. However, both the parties vide a supplementary agreement dated 27.07.2008, extended the date for execution of the sale deed to 27.08.2008. On the appointed date i.e. 27.08.2008, plaintiff No.1 remained present in the office of Sub Registrar, Muktsar along with the balance sale consideration and necessary funds to meet the expenditure. However, defendants failed to turn up to perform their part of the contract. Resultantly, plaintiff No.1 got his presence marked by getting an affidavit attested from Sub Registrar, Muktsar. So much so, a registered notice dated 03.09.2008, asking the defendants to perform their part of the contract, was also not heeded to. Since, defendants threatened to alienate the suit land, thus, the suit.

In defence, it was pleaded, inter alia, that pursuant to another agreement to sell, a land measuring 4 acres was already sold by the defendants to the plaintiffs. Agreement in question i.e. dated 27.06.2008, was alleged to be a forged and fabricated document, as the same was never executed by the defendants.

On a consideration of the matter in issue and evidence on record, the courts below found that the defendants in the course of their evidence admitted the execution of the agreement in question (Ex.P3). It was also conceded that with the consent of the parties, the date for execution of the sale deed was extended to 27.08.2008. Likewise, defendants also admitted the receipt of earnest money of ₹ 18,75,000/- from the plaintiffs and also that the said amount was proportionately divided by the defendants as per their shares. Plea set out by the defendants, that plaintiffs had agreed to clear their bank loan, and it was only thereafter, a sale deed was to be executed, and as plaintiffs failed to clear the loan, defendants did not execute the sale deed, was rejected, as the recitals in the agreement to sell (Ex.P3), did not support the version of the defendants. Nothing in this regard was recited in the agreement. An analysis thereof, revealed that in fact the defendants had agreed to get the land redeemed before the date fixed for execution of the sale deed, which the defendants apparently failed to comply with. As regards, whether the plaintiffs were ready and willing to perform their part of the contract, it was observed that plaintiff No.1 i.e. Sher Singh Cheema, remained present in the office of Sub Registrar, Muktsar, on the appointed date i.e. 27.08.2008, till evening along with the balance sale consideration. Concededly, defendants did not turn up to

perform their part of the contract. Affidavit (Ex.P1) proved that plaintiff No.1 was indeed present in the office of Sub Registrar, as he got his affidavit attested from the Sub Registrar, Muktsar, vide Ex.P2. The document (Ex.P2) bears the photograph and signatures of Sher Singh Cheema. Presence of plaintiff No.1 in the office of Sub Registrar, Muktsar, was also proved by Vishwa Mitar Sharma, Advocate (PW1), who typed the affidavit (Ex.P1) and also by Jagtar Singh (PW3), a Clerk from the office of Sub Registrar. That being so, it was concluded that in fact, defendants had committed the breach of the agreement, whereas the plaintiffs had always been ready and willing to perform their part of the contract. Resultantly, the suit was decreed. Appeal preferred against the said decree by the defendants failed and was accordingly dismissed.

I have heard learned counsel for the appellants at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to

assert, for plaintiffs to succeed, they were required to prove that the agreement to sell dated 27.06.2008 (Ex.P3) was indeed executed by the defendants, in favour of the plaintiffs. Though, defendants denied the execution of the agreement and the same was purported to be a forged document, however, in the course of evidence, they conceded the execution of the agreement dated 27.06.2008. Accordingly, receipt of sum of ₹ 18,75,000/- by way of earnest money. So much so, they also conceded that the amount received i.e. ₹ 18,75,000/- was proportionately divided by the defendants in terms of their shares in the suit land. Likewise, that the date for execution of the sale deed, was mutually extended by the parties to 27.08.2008. The plea set out by the defendants, that in fact, plaintiffs had agreed to clear their bank loan, remained unsubstantiated on record. An analysis of the agreement unraveled that in fact, defendants were obligated to clear the loan and get the suit land redeemed. So much so, registered notice dated 03.09.2008, that was sent through Shri Darshan Singh Hayer, Notary Public, Muktsar, vide which defendants were asked to execute the sale deed, though duly served, was never responded to. As is made out from the records, plaintiffs proved that they were always ready and willing to perform their part of the contract. Plaintiff No.1 i.e. Sher Singh Cheema was present in the office of Sub Registrar. His affidavit (Ex.P1), proves that he got his

presence marked, which was duly attested by Sub Registrar vide Ex.P2. Document (Ex.P2) bears his photographs and signatures. Likewise, Vishwa Mittar, Advocate (PW1), who typed the affidavit (Ex.P1), testified the presence of the plaintiff in the office of Sub Registrar, Muktsar on 27.08.2008. So much so, Jagtar Singh (PW3), Clerk from the office of Sub Registrar, Muktsar, proved the attestation upon the affidavit (Ex.P1) by the Sub Registrar, Muktsar. Learned counsel for the appellants could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 19, 2015
Rajan

(Arun Palli)
Judge