

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

RSA No.177 of 2013 (O&M)

Date of decision : 15.10.2015

Kewal Singh

...Appellant

Versus

Bahadur Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sarju Puri, Advocate for the appellant.

Mr. Deepak Verma, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact, whereby the respondent-plaintiff has been held entitled to the decree for specific performance of agreement to sell dated 30.09.2002 on payment of balance sale consideration.

Mr. Sarju Puri, learned counsel appearing on behalf of appellant-defendant submits, that agreement to sell dated 30.09.2002 was in respect of land measuring 6 kanal 18 marlas. The target date for execution and registration of the sale deed was 25.03.2003. Before such date could come, on 20.03.2003 the target date was extended to 09.09.2004. As per the agreement to sell, respondent-plaintiff is stated to have paid a sum of

₹4,00,000/- towards earnest money against the total sale consideration of ₹4,31,250/-. Before expiry of the target date, legal notice dated 27.08.2004 was sent. He further submits that no explanation has come forth in not filing the suit within 13 months from the date of alleged breach whereas suit has been filed on 15.10.2005. The factum of execution of the agreement to sell was emphatically denied. The categoric stand of the appellant-defendant was that defendant stood surety in respect of property purchased for his daughter. There was patwari who, in connivance with, the plaintiff coined the story of alleged agreement to sell by misusing the signed stamp paper.

He submits that both the Courts below have not appreciated the aforementioned facts and erroneously exercised the discretion under Section 20 of the Specific Relief Act and submits that appeal involves substantial question of law to be determined/decided by this Court.

He further submits that trial Court has committed illegality and perversity in not framing the issues vis-a-vis provision of Section 16(c) of the Specific Relief Act.

Mr. Deepak Verma, learned counsel appearing on behalf of respondent-plaintiff submits, that it is a categoric case of the respondent-plaintiff that on the instance of the defendant, target date for execution and registration of the sale deed was extended from 25.03.2003 to 09.09.2004. In paragraph 7 and 11 of the plaint, it was specifically stated that respondent-plaintiff had approached the defendant to perform his part of agreement to sell, but he failed to do so which resulted into filing the suit on 15.10.2005. Preceding to the target date, legal notice through registered post was sent, but same was not replied and thus prays for dismissal of the

appeal.

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

The execution of the agreement to sell has been proved through the testimony of one attesting witness and scribe. The appellant-defendant has not been able to prove the ingredients of Order 6 Rule 4 CPC as to whether any fraud or some misrepresentation was done on the part of respondent-plaintiff. No expert witness has been examined to belie that the signature was on the stamp papers. The legal notice dated 27.08.2004 had been sent through registered post which carries presumption as per Section 27 of the General Clauses Act.

Both the Courts below after noticing the aforementioned fact arrived at a finding that it was a fit case for exercising the discretion under Section 20 of the Act. Respondent-plaintiff cannot be said to have faulted in approaching the Court after lapse of 13 months in filing the suit.

Non framing of the specific issues would be immaterial in case both the parties were alive to the situation and led evidence. In the present case, evidence qua readiness and willingness has been led, therefore, contention of Mr. Sarju Puri, vis-a-vis non framing of the issues is hereby rejected.

Both the Courts below have rendered a finding of fact based on the appreciation of oral and documentary evidence.

Appeal is dismissed.

15.10.2015

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**(AMIT RAWAL)
JUDGE**