

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2370 of 2013(O&M)
Date of decision: 12.10.2015

Smt. Dipika Sharma

... Appellant

Versus

Paramjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Jasbir Singh, Advocate, for the appellant.
Mr. HS Jaswal, Advocate for the respondent.

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 plaintiff was decreed by the trial court vide judgment and decree dated 11.03.2011. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 26.03.2013, defendant is before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff, he prayed for a decree for possession by way of specific performance of the agreement dated 14.10.2004, as regards the suit property measuring 1¾ marlas (11'X46"). As defendant happened to be the owner in

possession, vide agreement in question, she had agreed to sell the same for a total consideration of ₹ 2,00,000/-. A sum of ₹ 1,00,000/- was paid by way of earnest money at the time of execution of agreement. The sale deed was to be executed on 18.04.2005, on receipt of balance sale consideration. Plaintiff had always been ready and willing to perform his part of the contract. As 18.04.2005 was a holiday, plaintiff appeared before the Sub Registrar, Machhiwara on 19.04.2005, but was informed that it was not the day fixed for registration of the documents. Plaintiff again went to the office of Sub Registrar on the following day i.e. 20.04.2005 and was fully equipped with the balance sale consideration and the funds to defray the miscellaneous expenses. He remained present in the office till 4:45 p.m. and got his presence marked. But the defendant failed to turn up. And as the defendant threatened to alienate the suit land to someone else, thus, the suit.

In defence, it was pleaded, inter alia, that the plaintiff happened to be a money lender from whom the defendant had obtained loan of ₹ 50,000/-. Plaintiff obtained signatures of the defendant on certain blank papers to secure the loan, with an assurance that he would return those on clearance of the loan amount. It was agreed that the defendant would pay interest @ 3% per month and she had since been paying the interest every month. Plaintiff was alleged to have

played a fraud upon the defendant. Agreement dated 14.10.2004 was said to be a sham transaction.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, both the courts concurrently concluded that concededly defendant happened to be the owner of the suit property. To prove the due and valid execution of the agreement, dated 14.10.2004 (Ex.P1), plaintiff examined himself as PW3, as also one of the attesting witnesses, namely, Sukhwinder Singh as PW1. Though, Sohan Lal (DW3), another attesting witness of the agreement, tried to support the version of the defendant in his examination-in-chief, but conceded in his cross-examination that first he had put his signatures on the agreement and thereafter the plaintiff as also the defendant had signed the agreement. Defendant admitted her signatures on the agreement (Ex.P1) during her cross-examination. Meaning thereby, not only the parties to the lis but even the attesting witnesses were present at the time of execution of the agreement. So much so, defendant even failed to suggest to PW1 to PW3, that she had not executed the agreement dated 14.10.2004. She had also not disputed that the plaintiff had paid a sum of ₹ 1,00,000/- to her at that time. Meaning thereby, the version of the plaintiff remained un-controverted by the defendant. Nothing was brought on record, least any cogent or credible evidence, to prove that the agreement dated 14.10.2004 was indeed a

result of fraud or was a fabricated document. Defendant (DW2) conceded in her cross-examination that she never served any notice upon the plaintiff to dispute the agreement and maintained that she had merely obtained a loan of ₹ 50,000/-. So much so, she also admitted that the stamp papers, upon which the agreement was scribed, were purchased by her husband. She is literate as she had signed the agreement (Ex.P1) in English though it was scribed in Punjabi. Testimonies of the plaintiff, attesting witnesses, namely, Sukhwinder Singh (PW1) and Sohan Lal (DW3) fully proved the due and valid execution of the agreement. Evidence on record revealed that the plaintiff had indeed been ready and willing to perform his part of the contract. Interestingly, no suggestion was even put to the plaintiff in this regard, least he was cross-examined qua being ready and willing to perform his part of the contract. That being so, the only and the inevitable conclusion both the courts could arrive at was to decree the suit, as prayed for. As indicated above, nothing was brought on record, least any cogent or credible evidence, to show that the agreement in question was indeed a forged document. Concededly, defendant never made any complaint or initiated any action against the plaintiff though the agreement was purported to be a result of fraud. Defendant purports to have borrowed only a sum of ₹ 50,000/-, but nothing was even remotely suggested as to for what purpose

the alleged loan was obtained. She claimed to have been regularly paying interest on the loan amount @ 3% per month, but nothing was brought on record to substantiate the said plea.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been arrived at by both the courts were either contrary to the position on record, or suffered from any material illegality. The only submission that has been advanced by learned counsel for the appellant is; that agreement in question was a forged document and both the courts failed to consider the provisions of Section 20 of the Specific Relief Act, 1963 (for short, 'the Act'). In the wake of the provisions of Section 20 of the Act, it is contended, that plaintiff ought not to have been granted a decree for specific performance of the contract. Reliance is placed on Lakhbir Singh v. Mohan Singh and another, **2007(1) RCR (Civil) 791** and Ram Singh v. Sughar Singh, **2011(1) All. LJ 23**. Ex facie, the argument that is being advanced by the learned counsel is misconceived and cannot be countenanced. Nothing could be pointed out whether any plea, in terms of the provisions of Section 20 of the Act, was even remotely set out in the written statement filed by defendant or any evidence was led in this regard. Nothing was urged either, in this respect, before both the courts. Not just that, in the matter in hand, defendant denied

to have entered into any agreement, and rather the same was alleged to be a forged document. The Hon'ble Supreme Court in Prakash Chandra v. Narayan, **AIR 2012 SC 2826**, in paragraph 15 had observed; ***“the question as to whether the grant of relief for specific performance will cause hardship to the Defendant within the meaning of Clause (b) of sub-section (2) of Section 20 of the Specific Relief Act, 1963, being a question of fact, the first appellate court without framing such an issue ought not to have reversed the finding of the trial court while concurring with it on all other issues with regard to the Appellant's entitlement to relief for specific performance of contract. The High Court in the second appeal failed to notice that the Respondent had not taken any defence of hardship and no such issue was framed and in absence of any such evidence on record, the first appellate court held that he would be landless should the decree for specific performance be granted.”***

That being so, decisions being relied upon by the learned counsel do not have any bearing on the matter in issue.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less

any substantial question of law, arises for consideration.

Appeal being devoid of merit is accordingly dismissed.

October 12, 2015
Rajan

(Arun Palli)
Judge