IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3130 of 2013 (O&M)
Date of decision : 24.04.2015

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Umed Singh

............Appellant

Versus

Satbir Singh

...........Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Arun Jain, Senior Advocate with
Mr. Arjun Veer Sharma, Advocate for the appellant.

Mr. M.L Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

Present regular second appeal has been filed against the judgment of the trial Court dated 12.12.2011 passed by the Civil Judge (Senior Division) Rewari, whereby the suit of the plaintiff for decree for possession by way of specific performance of agreement to sell was decreed and the judgment dated 16.1.2013 passed by the Additional District Judge, Rewari whereby the appeal against the judgment and decree of the trial Court was dismissed.

The plaintiff-respondent, Satbir Singh (hereinafter referred to as `the plaintiff') filed a suit for specific performance on account of agreement to sell and in the alternative refund of Rs. 45 lacs as liquidated damages with interest at the rate of 24% p.a interest with costs from the date of agreement to sell up to realization from the defendant for breach of contract.

The defendant-appellant, Umed Singh (hereinafter referred to as `the defendant') was the owner in possession of agricultural land (as mentioned in detail in the plaint) in revenue estate of Village Kundal, Tehsil and District Rewari as per jamabandi for the year 2000-2001. The defendant entered into an agreement to sell the land @ Rs. 4 lacs per acre. The plaintiff paid Rs. 8 lacs as earnest money on 27.12.2005 in the presence of the witnesses to defendant and the sale deed was to be executed and registered on or before 30.6.2006 after obtaining No Dues Certificate from the competent authority. On 18.5.2006, the defendant Umed Singh approached the plaintiff and received Rs. 13,50,000/- in cash on the basis of the agreement to sale dated 27.12.2005 in the presence of the witnesses and again the defendant received Rs. 23,50,000/- in cash on 10.6.2006 for clearing the loan amount and the date of agreement to sale for getting the sale deed registered was extended up to 26.8.2006 at the instance of the defendant and with the consent of the plaintiff. Thereafter the plaintiff came to know that defendant Umed Singh is going to sell the land to some other person on an enhanced price. Hence the suit was filed on 2.8.2006.

On notice, defendant filed a written statement and took the plea that the plaintiff had no cause of action to file the suit as he had no intention to alienate the suit land and the suit had been rendered infructuous as the defendant had made a statement on 5.8.2006 that he had no intention to alienate the suit land.

On the basis of the pleadings of the parties, following issues were framed by the trial Court:

1. *Whether on dated 27.12.2005 the defendant agreed to sell the suit land to the plaintiff at the rate of Rs. 4 lacs per acre and received Rs. 8 lacs as an earnest money? OPP.*
2. *Whether on dated 18.5.2006, the defendant had received additional amount of Rs. 13,50,000/- from the plaintiff on the basis of agreement to sell dated 27.12.2005?*
3. *Whether on dated 10.6.2006 the defendant had received another additional amount of Rs. 23,50,000/- in pursuance of agreement to sell dated 27.12.2005 and agreed to get sale deed executed and registered on dated 26.8.2006? OPP.*
4. *Whether the plaintiff was ready and willing and had been ready and willing to perform his part of contract? OPP*

5. Whether the suit is not maintainable in the present form? OPP.

6. Whether the plaintiff has no cause of action to file the present suit? OPD.

Issues no. 1 to 4 were tried together. The onus to prove these issues was cast upon the plaintiff. In order to prove these issues, the plaintiff examined PW-1 Rajpal s/o Sh. Man Singh who tendered the affidavit Ex. PW-1/A wherein he deposed that in view of agreement to sell Ex. PW 1/ B, defendant received amount of Rs. 8 lacs as earnest money in presence of witnesses on 27.12.2005.

PW-2, Hukam Singh s/o Chunni Lal tendered the affidavit Ex. PW 2/A, wherein he deposed that on 27.12.2005 the agreement to sell was executed and on the back side of the agreement, on receiving amount of Rs. 13,50,000/- from plaintiff in cash a writing dated 18.5.2006 was written and Umed Singh put his thumb impression and signed in English in his presence and in the presence of witnesses Rajbir s/o Hukam Chand on the writing Ex. PW2/B. On 10.6.2006 Umed Singh came in office Saraswati Enclave situated at Gurgaon in his presence and in the presence of Rajbir and received the amount of Rs. 23,50,000/- cash and writing to this effect was written.

PW/3 Rajbir s/o Hukam Chand tendered affidavit Ex. PW 3/A wherein he deposed that as per agreement to sell dated 27.12.2005 and writing dated 18.5.2006, Umed Singh received a sum of Rs. 13,50,000 cash from Satbir and put his thumb impression on the writing. On 10.6.2006 in his presence and in the presence of Hukam Singh the amount of Rs. 23,50,000/- were received by Umed Singh and time of registration of sale deed was extended up to 26.8.2006.

PW-4 Ramphal tendered affidavit Ex. PW-4/A wherein he deposed that Umed Singh agreed to sell his land 156 kanals 9 marlas situated in Village Kundal, Tehsil and District Rewari for sale consideration of Rs. 4 lacs per acre and received the amount of Rs. 8 lacs as earnest money.

The plaintiff examined himself as PW-5 and filed his affidavit Ex. PW5/A, wherein he testified the version mentioned in the plaint.

The defendant appeared as DW-1 and admitted that he had received amount of Rs. 8 lacs and his signatures on the agreement to sell Ex. PW1/ B. Apart from the testimony of defendant, there was no evidence to prove the fraud committed by the plaintiff as the defendant had admitted his signatures on the alleged agreement to sell in favour of the plaintiff.

Issues no. 1 to 4 were decided in favour of the plaintiff to the effect that on 27.12.2005, the defendant agreed to sell the suit land to the plaintiff at the rate of Rs. 4 lacs per acre and received Rs. 8 lacs as an earnest money and on 18.5.2006, the defendant had received additional amount of Rs. 13,50,000/- from the plaintiff on the basis of agreement to sell dated 27.12.2005 and agreement to sell dated 27.12.2005 was extended up to 26.8.2006. On 10.6.2006, the defendant received an amount of 23,50,000/- from the plaintiff. Hence the plaintiff was ready and willing to perform his part of the contract.

The suit of the plaintiff was decreed for specific performance of the agreement to sell by the trial Court and the defendant was directed to hand over the possession within a period of two months. On appeal filed by the defendant, the findings of the trial Court were affirmed and the appeal was dismissed by the appellate Court. While dismissing the appeal, the appellate Court observed that the defendant Umed Singh has admitted his thumb impressions and signatures on the original agreement to sell Ex. PW-1/B and also admitted that he received an amount of Rs. 8 lacs. Mere statement of the defendant that the plaintiff played fraud is not sufficient to prove that any fraud was committed with the defendant particularly when all the attesting witnesses have fully supported the case of the plaintiff regarding due execution of the agreement to sell Ex. PW1/B and the receipts Ex. PW 2/B with regard to an amount of Rs. 13,50,000/- and Ex. PW 2 /C with regard to an amount of Rs. 23,50,000/-

Mr. Arun Jain, counsel for the appellant has argued that the present suit had been filed prior to the cut off date fixed for the execution of the agreement to sell dated 26.8.2006. At the time of filing of the suit, there was no foundation for the breach of the contract. The scribe of the agreement to sell and the stamp paper vendor had been examined to prove the execution of the agreement to sell. The land was situated at District Rewari whereas the alleged payments had been made at Gurgaon. The plaintiff had miserably failed to lead any evidence to show that the amount of Rs.8,00,000 and Rs. 23,50,000/- had been received by the appellant-defendant. The plaintiff was an income tax payee and no evidence was led by him that the above said payments were reflected in the income tax returns. In the absence of any supporting evidence, the execution of the agreement to sell and payment of the amount have not been proved by the plaintiff and this findings of fact requires reconsideration in the regular second appeal.

On the other hand Mr. M.L Sarin, learned senior counsel appearing for the respondent referred to ***Deity Pattabhiramaswamy vs. S. Hanymayya and others, AIR 1959 Supreme Court 57*** and ***Veerayee Ammal vs. Seeni Ammal (2002) 1 SCC 134*** to contend that under **Section 100** of **Civil Procedure Code, 1908**, **there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be. Nor does the fact that the finding of the first appellate Court is based upon some documentary evidence made it any the less a finding of fact. A judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate Court based upon an appreciation of the relevant evidence.**

Learned counsel for the respondent has referred to a judgment passed by this Court in the case of ***Parsani Devi and***

<u>another vs. Angrej Singh and another</u> bearing ***Regular Second Appeal No. 2885 of 2002 (decided on 20.7.2009)*** where this Court has held that where there was intentional violation of the agreement to sell, it gave a right to a cause of action for filing the suit for specific performance even before the date fixed for execution of the sale deed. Here the plea of the defendant that the suit was premature was rejected.

In the facts of the present case, the execution of the agreement to sell PW-1/B has been duly admitted by the defendant DW-1 in his cross-examination. He also deposed that he had not executed the sale deed as he wanted to take Rs.10,00,000/- per acre and that he wanted to sell the suit land at higher rate. He admitted his signatures and thumb impressions on the said agreement to sell Ex. PW1/B. He admitted that he was having good terms with Satbir Singh plaintiff. In cross-examination Umed Singh, defendant admitted that he had received Rs.8,00,000/-. He further stated that Rajpal s/o Man Singh belongs to his village and said Rajpal is good person.

PW-1 Rajpal s/o Sh. Man Singh tendered the affidavit Ex. PW-1/A wherein he deposed that in view of agreement to sell Ex. PW 1/ B, defendant received amount of Rs. 8 lacs as earnest money in presence of witnesses on 27.12.2005. The contents of the agreement to sell were read over to Umed Singh who put his thumb impressions and signed in English in his presence and in the presence of Ramphal s/o Sh. Ved Ram on agreement to sell Ex. PW1/B. It was also agreed that no dues certificate would be taken within the period of getting the sale deed, if any, loan taken by the defendant. The admission of DW-1, Umed Singh with regard to the execution of agreement to sell that Raj Pal who was witness to the said agreement was a good person completely rules out the allegation that the agreement to sell in question was the result of any fraud. There was no reason for both the Courts to doubt the deposition of PW-1, Raj Pal. Hence the deposition of PW-1, Raj Pal was clear from any doubt or allegation of any fraud. Raj Pal admitted in cross-examination that the agreement to sell was written in Rewari and the agreement was written on instructions of Umed Singh and the amount was given in cash. The deposition of PW-2 Hukam Singh further supported the case of the plaintiff that Umed Singh had executed the agreement in favour of Satbir Singh in his presence and Satbir Singh had given Rs. 13,50,000/- in cash to Umed Singh and after receiving the said amount on the document Ex. PW-2/B on 18.5.2006. On 10.6.2006, Umed Singh had come at the office of Satbir Singh and at that time, he and Rajbir were also present their when Rs. 23,50,000/- were given to Umed Singh and a writing was written regarding the above said transaction. On account of non-clearance of the loan, the date for execution of sale deed was extended to 26.8.2006. The writing dated 10.6.2007 Ex. PW-2/C was proved by Hukam Singh PW-2. PW-3 Rajbir also proved the transaction dated 18.5.2006 and deposed that on 18.5.2006, Umed Singh received an amount of Rs.13,50,000 in cash from the plaintiff Satbir Singh and thereafter put his signatures and he identified the signatures on Ex. PW-2/B. He further deposed that on 10.6.2006 Umed Singh had gone to the office of plaintiff at Gurgaon where Hukam Singh was present. Umed Singh received an amount of Rs.23,50,000/- from Satbir Singh on 10.6.2006 and the time of the execution of the sale deed was extended up to 26.8.2006. He identified his signatures on the writing Ex. PW2/C. Once the defendant DW-1 had admitted the credentials of the plaintiff that he was a rich person and the execution of the two receipts had been duly proved by PW-2, Rajbir Singh and PW-3 Hukam Singh, the suit of the plaintiff was rightly decreed by the trial Court and the lower appellate court for execution of the agreement to sell. The objection of the counsel for the defendant that the suit was premature has been rightly rejected by the lower appellate Court by placing reliance on the judgment of ***Parsani Devi's case (supra)***, wherein it has been observed in paragraph 15 as under:

> *15. The second question raised by counsel for the appellants is that the suit is pre-mature, as it was filed before the date fixed for execution of the sale deed i.e 5.6.1992. As noticed in the narrative of facts, Parsani Devi violated the agreement to sell by suffering a collusive decree on 19.8.1991. This intentional violation of the agreement to sell gave rise to a cause of action to file a suit for specific performance. The law does not countenance a proposition and none can be canvassed that where a contracting party violates a contract, the*

aggrieved party must wait for the date fixed for execution of the sale deed to arrive so as to allege that a cause of action has accrued for filing a suit for specific performance.

The defendant in his deposition had also admitted that he was wanting to sell the land in dispute at the rate of Rs.10,00,000 per acre and when the notice of the suit was given, the defendant had made a statement on 5.8.2006 that he had no intention to alienate the suit land. The application for grant of ad interim injunction was disposed of on the basis of the judgment passed by the trial Court. Hence in view of the above statement made by the defendant and his a deposition as DW-1, the suit of the plaintiff was not premature before the trial Court as after making a payment of Rs. 45,00,000/- to the defendant, the plaintiff had a right to protect his interest to get execution of the sale deed.

The Supreme Court in ***Ahmadsahab Abdul Mulla vs. Bibijan and others (2009) 5 Supreme Court Cases 462*** was considering the question whether the use of the expression "date" used in Article 54 of the Schedule to the Limitation Act, 1963 is suggestive of a specific date in the calender? Answering in the affirmative, the Supreme Court observed in paragraphs 11 and 12 as under:

11. The inevitable conclusion is that the expression `date fixed for the performance' is a crystallized notion. This is clear from the fact that the second *part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on `when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.*

12.Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression `date' used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.

In view of the observation of the Supreme Court, once the defendant admitted in his deposition that he was ready to sell the land at a higher rate at Rs. 10,00,000/- per acre, the plaintiff was within his right to file the suit before the date of agreement to sell.

The Supreme Court in the case of ***Vithalbhai (P) Ltd. vs. Union Bank of India (2005) 4 SCC 315*** considering the case of a premature suit has observed in paragraph 20 and 21 as under:

> *20. No amount of waiver or consent can confer jurisdiction on a Court which it inherently lacks or where none exists. The filing of a suit when there is cause of action though premature does not raise a jurisdictional question. The claim may be well-merited and the Court does have jurisdiction to hear the suit and grant the relief prayed for but for the fact that the plaintiff should have waited a little more before entering the portals of the Court. In such a case the question is one of discretion. In spite of the suit being premature on the date of its institution the Court may still grant relief to the plaintiff if no manifest injustice or prejudice is caused to the party proceeded against. Would it serve any purpose, and do the ends of justice compel the plaintiff being thrown out and then driven to the need of filing a fresh suit--- are pertinent queries to be posed by the Court to itself.*
>
> *21. Where the right to sue has not*

matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The Court may reject the plaint if it does not disclose a cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, may be irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the Court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the Court shall not necessarily dismiss the suit. The Court would examine if any prejudice has been caused to the defendant or any manifest injustice would result to the *defendant if the suit is to be decreed. The Court would also examine if in the facts and circumstances of the case it is necessary to drive the plaintiff to the need of filing a fresh suit or grant a decree in the same suit inasmuch as it would not make any real difference at that stage if the suit would have to be filed again on its having matured for filing.*

This view of the Supreme Court in ***Vithalbhai's case (supra)*** has been followed recently in the case of ***Virgo Industries (Eng.) Private Limited vs. Venturetech Solutions Private Limited (2013) 1 Supreme Court Cases 625,*** where Hon'ble the Supreme court observed in paragraphs 15 & 16 as under:

15.*Furthermore, according to the plaintiff, which fact is also stated in the plaints filed in C.S. Nos. 831 and 833, on the date when the aforesaid two suits were filed the relief of specific performance was premature inasmuch as the time for execution of the sale documents by the defendant in terms of the agreements dated 27.7.2005 had not elapsed. According to the plaintiff, it is only after the expiry of the aforesaid period of time and upon failure of the defendant to* *execute the sale deeds despite the legal notice dated 24.2.2006 that the cause of action to claim the relief of specific performance had accrued. The above stand of the plaintiff found favour with the High Court. We disagree. A suit claiming a relief to which the plaintiff may become entitled at a subsequent point of time, though may be termed as premature, yet, can not per se be dismissed to be presented on a future date. There is no universal rule to the above effect inasmuch as "the question of a suit being premature does not go to the root of the jurisdiction of the Court" as held by this Court in Vithalbhai (P) Ltd. v. Union Bank of India*

16. In Vithalbhai (P) Ltd. case this Court has taken the view that whether a premature suit is required to be entertained or not is a question of discretion and unless "there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event", the Court must weigh and balance the several competing factors

> *that are required to be considered including the question as to whether any useful purpose would be served by dismissing the suit as premature as the same would entitle the plaintiff to file a fresh suit on a subsequent date. We may usefully add in this connection that there is no provision in the Specific Relief Act, 1963 requiring a plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the agreement in a situation where the defendant may have made his intentions clear by his overt acts.*

Hence in the facts of the present case, once the defendant has admitted that he wants to sell the land at a higher price at a Rs. 10,00,000/- per acre, in view of the judgment of the Supreme Court in ***Vithalbhai's case (supra),*** it gave a cause of action to the plaintiff to file a suit on 2.8.2006 before the date fixed for the execution of the agreement. Since the execution of the agreement and payments made were duly proved, this finding of fact does not require any interference in the regular second appeal. The suit was rightly held not premature.

Hence in the present case no findings of facts requires to be reassessed and in view of the Section 100 of the CPC no substantial question of law arises for consideration. In view of the consistent view of the Supreme Court in ***Deity Pattabhiramaswamy's case (supra)***, present regular second appeal is dismissed.

24.4.2015 **(RITU BAHRI)**
ritu **JUDGE**