

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

**RSA No.3380 of 2013 O&M)
Date of decision: 12.01.2015**

Charanjit Kaur ... Appellant

Vs.

Gurvinder Singh Takhar ... Respondent

RSA No.4131 of 2013 O&M)

Gurvinder Singh Takhar ... Appellant

Vs.

Charanjit Kaur and another ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arjun Bir Singh, Advocate
for Mr. S.S.Brar, Advocate
for the appellant/defendant No.1(Charanjit Kaur)
in RSA No.3380 of 2013.

Mr. Ashish Kashyap, Advocate
for Mr. Dinesh Goyal, Advocate
for the appellant/plaintiff (Gurvinder Singh Takhar)
in RSA No.4131 of 2013.

AMIT RAWAL J.

C.M.No.2290-C-2014

The application is allowed, subject to all just exceptions.

The Court fee and Annexures P-1 to P-3 are taken on record.

C.M.No.2291-C-2014

The application is allowed, subject to all just exceptions.

RSA No.3380 of 2013 (O&M)

This judgment shall dispose of two regular second appeals i.e. RSA No.3380 of 2013 and RSA No.4131 of 2013 filed by the defendant and plaintiff against common judgments and decrees rendered by the Courts below. For the sake of convenience, the facts are being taken from RSA No.3380 of 2013.

Respondent-plaintiff filed a Civil Suit No.607 of 2009 dated 30.01.2003 for specific performance of the agreement to sell dated 20.02.2002 in respect of land measuring 20 kanals 3 marlas situated in village Paragpur, Tehsil and District Jalandhar, comprised in Had bast No.225, Khewat No.182, Khatauni No.232, Khasra No.118(5-14), 119(1-3), 120(4-9), 121(7-14), 122(1-12), 123 (8-18), 124(10-12), 125(5-16), 126(10-17) and Khewat No.181, Khatauni No.231, Khasra No.110(11-10), 111/1(7-8) as fully detailed in *fard jamabandi* for the year 1997-98 executed by defendant No.1 in favour of the plaintiff and directing defendant No.1 to execute and register the sale deed of the suit land in favour of the plaintiff and for joint possession of the plaintiff over the suit land and in the alternative suit for recovery of ₹ 47,54,158/- along with pendente-lite and future interest @ 7% per annum with first charge on the suit property, as well as for permanent injunction restraining defendant No.1 from alienating or transferring in any manner or giving on lease or parting with possession in any form, or creating any charge or encumbrance of any nature over the suit property on the ground that defendant No.1 is none else but real sister of the plaintiff and

defendant No.2 is the son of defendant No.1. It was averred in the plaint that defendant No.2 availed the loan amount of 60,000/- U.S. Dollars (\$) from plaintiff and it was to be returned along with interest @ 7% compounded annually and in this regard executed loan agreement dated 26.02.1993. As per the agreement, loan amount was to be returned on or before 01.01.2003. Defendant No.1, mother of defendant No.2, stood as surety for the repayment of the loan amount. However, loan amount was not paid by defendant No.2, defendant No.1 executed agreement to sell dated 20.02.2002 in favour of the plaintiff whereby she acknowledged her liability as surety for the repayment of the loan amount of \$ 60,000/- and defendant No.1 agreed to transfer her entire property in India by way of agreement to sell dated 20.02.2002 for the consideration of adjusting the due amount payable by defendant No.2 for discharge of the surety given by defendant No.1 towards clearance of the loan amount by defendant No.2 to the plaintiff. Defendant No.1 had also executed the General Power of Attorney in favour of Jatinder Singh son of Ragbir Singh after 31.12.2002 of the choice of the plaintiff to complete all the necessary formalities for the transfer of the suit property. It had been pleaded that since defendants backed out from the said agreement and their acknowledgments, much less, also cancelled the power of attorney given by her in favour of nominee of the plaintiff. It was averred that plaintiff was always ready and willing to perform part of the agreement.

Defendants filed written statement by raising various

preliminary objections including the jurisdiction of Court, maintainability, much less, locus standi etc. It was alleged that the agreement was executed in U.S.A. The defendants denied the execution of the agreement to sell dated 20.02.2002 alleged to be executed by defendant No.1. Loan agreement was also denied.

The trial Court appointed Sh. Anil Dutt Kalia, Advocate for recording the statements of witnesses of the agreement to sell namely PW2-Ms. Deanne Roberts and PW3-Harmeet Singh, i.e. attesting witnesses as LCW1 and LCW2 respectively. The agreement Ex.P2 was executed by the appellant/defendant No.1-Charanjit Kaur in the presence of the marginal witnesses and the same was authenticated by Consulate General of India.

Not only this, defendant No.1 had also executed General Power of Attorney in favour of Jatinder Singh son of Raghbir Singh. Plaintiff-respondent/Gurvinder Singh also proved the *jamabandi* regarding property/share of defendant No.1. PW2-Deanne Roberts testified that she had been notary in the estate of Arizona, Maricopa County in USA till September 5, 2004 and the agreement Ex.P2 was attested by her as notary and bore her signature and seal. She further stated that agreement was presented before her by none else but by defendant No.1-Mrs. Charanjit Kaur and plaintiff-Mr. Gurvinder Singh Takhar for attestation.

It is a matter of record that both Gurvinder Singh Takhar and Charanjit Kaur are real brother and sister. She further stated that power of attorney Ex.P4 was presented before her for attestation by

Mrs. Charanjit Kaur, whose photograph was affixed on the document and Mrs. Charanjit Kaur appended her signature on the power of attorney in her presence. PW3-Harmeet Singh attesting witness, identified his signature on the agreement Ex.P2. He further testified that said agreement bore the signature of Balraj Singh Takhar, as witness also.

The stand of the defendant-appellant before the Courts below had been that the agreement could not be enforced, in view of the fact that the trial Court did not grant the relief of specific performance of the agreement to sell and only ordered for recovery of amount of ₹ 2,05,844/- along with interest from 30.12.2000 to 30.12.2003 @ 6% per annum amounting to ₹ 9,74,103.84 paisa. The plaintiff was also held entitled to pendente-lite interest @ 12% per annum on the sale amount of ₹27,05,844/- along with future interest @ 6% per annum and defendants were restrained from alienating the disputed property till the realization of decretal amount.

Aggrieved against the judgment and decree of the trial Court, defendants and plaintiff filed cross appeals before the lower Appellate Court. The appeal filed by the defendant-appellant was registered as Regular Civil Appeal No.95 of 2011 and plaintiff's appeal registered as Regular Civil Appeal No.63 of 2012. Lower Appellate Court after examining the oral and documentary evidence much less legal proposition of law dismissed both aforementioned appeals.

In these circumstances, both the aforementioned regular

second appeals have arisen from the impugned judgment and decree preferred by plaintiff and defendants before the lower Appellate Court.

Learned counsel appearing on behalf of the appellant(s) contended that Civil Court at Jalandhar had no jurisdiction as the agreement to sell was executed in January, 1990 in USA. He further contends that once the execution of the agreement had been denied by the plaintiff, the Court ought to have not granted the relief of refund of earnest money.

On the other hand, learned counsel appearing on behalf of plaintiff-appellant submitted that both the Courts below have committed illegality much less perversity as the Court should have decreed the suit for specific performance and therefore, urged that the appeal involves following substantial questions of law:-

- i. Whether the findings recorded by the learned Appellate Court is based upon misreading and mis-appreciation of the evidence and are based upon surmises and conjectures and are worth to set aside?*
- ii. Whether the findings recorded by learned Appellate Court are result of non application of mind of the Id. Lower Appellate Court?*
- iii. Whether the judgments of the Courts below are liable to be set aside, as no issues wise findings has been given and the learned Courts below were*

*under legal obligation to give a detailed judgment
issue wise on facts and law?*

*iv. Whether the manifest injustice has been
caused to the appellant?*

I have heard learned counsel for the parties and perused the impugned judgments and decrees of the Courts below.

The contention of the learned counsel for the appellant is devoid of merit. The Courts below have rightly declined the relief of specific performance as the agreement to sell did not contain specific dimensions of the property much less the description of the property was totally vague.

As far as, the other argument of learned counsel for the defendant-appellant is concerned that the Civil Court had no jurisdiction to try the suit is also devoid of the merit, for, admittedly, the property owned by the defendant, is situated in Jalandhar, so Civil Court at Jalandhar had jurisdiction to try the suit as it is not the case of the simpliciter for recovery of money. Lower Appellate Court had rightly declined the relief of specific performance in view of what has been observed while dealing with the contention of the learned counsel for the respondent in RSA No.4131 of 2013.

No fault can be found with the findings of the Courts below with regard to the relief having been granted to the appellant-plaintiff for refund of the earnest money along with interest. The judgments and decrees of the Courts below are upheld qua relief of refund of earnest money.

There is no illegality much less perversity found in the findings as the same are based on proper appreciation of facts and law.

In view of the above, finding no question of law much less substantial question of law arises for determination in both the aforementioned regular second appeals, the same are hereby dismissed.

(AMIT RAWAL)
JUDGE

January 12, 2015
savita