

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

1. RSA No.103 of 2015 (O&M)
Date of decision : 14.08.2015

Kapoor Chand (deceased) through LRs

...Appellant

Versus

Raj Kumar and another

...Respondents

2. RSA No.120 of 2015 (O&M)
Date of decision : 14.08.2015

Kapoor Chand (deceased) through LRs

...Appellant

Versus

Raj Kumar and another

...Respondents

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. Hamid Hussan, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second
Appeals No.103 & 120 of 2015, titled as Kapoor Chand (deceased) through

LRs Vs. Raj Kumar and another, whereby the suit filed by the appellant/plaintiff has been dismissed. Even the appeal filed against the judgment and decree also met with the same fate.

Mr. Hamid Hussan, learned counsel appearing on behalf of LR's of appellant/plaintiff (since deceased) submits that both the Courts below have committed illegality and perversity in dismissing the suit for specific performance of agreement to sell dated 09.10.2004 for the reasons that the agreement to sell dated 28.02.2005 set up by the defendant No.2 is subsequent to the one entered into in favour of the appellant/plaintiff and, therefore, such piece of evidence was sufficient for the Court to disbelieve the subsequent agreement and thus in essence the decree of the specific performance ought to have been passed.

He further submits that attesting witnesses of the agreement to sell have been examined and thus, agreement to sell dated 09.10.2004 has been proved even that defendant No.1 i.e. vendor namely Raj Kumar had been proceeded ex parte in both the suits. He further submits that findings rendered by the Courts below that agreement to sell dated 09.10.2004 is forged and fabricated is wholly erroneous, much less, perverse as it bears the stamp of Notary and is a typed one, much less, it also bears signatures of the witnesses. He further submits that once the agreement to sell has been proved, there was no occasion to the trial Court not to exercise its discretion under Section 20 of the Specific Relief Act. Therefore, appeal involved substantial questions of law which are to be determined by this Court.

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

The target date for execution of the registration of the sale deed in respect of the agreement to sell dated 09.10.2004 originally was fixed as 31.12.2004 which according to the appellant/plaintiff was changed twice from 31.12.2004 to 31.10.2005 and from 31.10.2005 to 30.11.2005 and the total sale consideration was ₹30,000/-. The appellant-plaintiff stated to have paid almost 90% amount of the sale consideration i.e. ₹28,000/- in respect of land measuring 4 kanals.

It has been alleged in the plaint that the appellant/plaintiff came to know about the agreement to sell executed by defendant No.1 in favour of defendant No.2 in the month of 2007, when he saw defendant No.2 standing in the fields of defendant No.1, he immediately filed a suit for specific performance on 08.10.2007. No explanation has come forth in not filing the suit after sending the legal notice on 26.11.2005, much less, there is no averments in the suit, thus, in my view readiness and willingness as per Section 61(c) is conspicuously wanting.

In order to lend support to the aforementioned observation, I rely upon judgment by Hon'ble Supreme Court rendered in *Sita Ram & ors. Vs. Radhey Shyam 2007(4) RCR (Civil) 533*, wherein it has been laid down that readiness and willingness has to be from the date of execution of the agreement to sell during the subsistence of the agreement, during the pendency of the suit till passing of the decree.

There is another aspect of the matter which cannot escape from the notice of this Court, the agreement to sell set up by the defendant No.2 was also in respect of same land for total sale consideration vis-a-vis ₹2 lacs per sale. The appellant/plaintiff could have examined the defendant No.1

Raj Kumar Vendor in affirmative by putting him to agreement to sell, but no effort, has been made.

It is a matter of record that appellant/plaintiff died when the evidence of the plaintiff was going on. The trial Court and the Appellate Court found that agreement to sell dated 28.02.2005 is subsequent to the agreement to sell dated 09.10.2004. Had it been so, there would be no occasion for defendant No.1 to extend the date up to 31.10.2005 and then from 31.10.2005 to 30.11.2005 as during the interregnum, he had also entered into agreement to sell dated 28.02.2005 with the defendant No.2 which is essential requirement of law for succeeding in suit for specific performance, much less, seeking discretionary relief in Section 20 of the Specific Relief Act. The stamp paper qua agreement to sell dated 09.10.2004 is in name of plaintiff, not in name of defendant No.1-Vendor.

Both the Courts below have rendered a finding of fact and law, after appreciating the oral and documentary evidence.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, both appeals are dismissed.

14.08.2015

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**(AMIT RAWAL)
JUDGE**