

RSA No.2339 of 2014 (O&M)

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

RSA No.2339 of 2014 (O&M)

Date of Decision: August 28, 2015

Swaran Kaur & another

...Appellants

Versus

Shangara Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Rajinder Kumar Singla, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment dated 10.05.2010 passed by the Civil Judge (Junior Division), Nakodar, whereby, the suit for possession by way of specific performance of agreement to sell dated 02.11.2004 which was entered into between the appellant-defendants and the respondent-plaintiff for land measuring 22 Kanals and 13 Marlas as detailed in the heading of the suit, stands decreed and the appeal against which was dismissed by the Additional District Judge, Jalandhar vide judgment and decree dated 23.12.2013.

It is the contention of the counsel for the appellant-defendants that the appellant-defendants did not enter into agreement to sell, in fact, the respondent-plaintiff is a Commission

Agent and Salwinder Singh-appellant No.2 had approached the respondent-plaintiff for some loan to be given to him and on that basis, some writing was made on which appellant No.1 had also put her signatures. They had only proceeded on the assumption that it was a loan amount and they have never sold the land to the respondent-plaintiff. He contends that the appellant-defendants are agriculturist by profession and had been selling their produce to the respondent-plaintiff who is a Commission Agent and therefore, because of faith and confidence in the respondent-plaintiff, the document was signed by the appellant-defendants. There being a fiduciary relationship between the parties which has been misused by the respondent-plaintiff, the agreement to sell cannot be said to be a valid document and therefore, cannot be made the basis for passing a decree in favour of the respondent-plaintiff. In support of this contention, he has placed reliance upon the judgment of this Court in

Dalbir Singh alias Vir Singh Vs. Dalbir Singh 2001 (2) RCR (Civil)

307.

Another argument which has been raised by the counsel for the appellant-defendants is that the land which is stated to be having been agreed to sell is the only land which is left with them alongwith possession as on an earlier occasion also, 4 acre of land was sold by the husband of appellant No.1, namely, Jarnail Singh, in favour of Shangara Singh and his wife Chand Rani. This is the only

source of livelihood and therefore, if the decree is executed, this would lead to extreme hardships and keeping in view the provisions as contained in Section 20 of the Specific Relief Act, 1963, the discretion in favour of the appellant-defendants be exercised by the Court and instead the alternative relief, as claimed, with regard to the refund of the amount of ₹11,32,500/- to the respondent-plaintiff, be granted.

I have considered the submissions made by the counsel for the appellant-defendants and have gone through the judgments passed by the Courts below but cannot accept the contentions as have been raised above.

The respondent-plaintiff has been able to prove by cogent evidence the execution of the agreement to sell. The appellant-defendants have failed to prove that there was a money transaction between the two parties and have also failed to prove that the respondent-plaintiff being a Commission Agent had given advance money to the appellant-defendants for the produce or under the guise of selling their crop to the respondent-plaintiff. The concurrent findings as have been recorded by the Courts below which are based on cogent and proper appreciation of the evidence, cannot be faulted with which would persuade this Court to interfere in the present appeal.

As regards the contention of the counsel for the

appellant-defendants that there was a relationship of Commission Agent and a agriculturist which was a fiduciary relationship, suffice it to say, mere assertion would not be enough. There is no evidence led or pointed out which would indicate such a relationship existing between the parties. Being a Commission Agent or agriculturist cannot be accepted as a relationship which would be of fiduciary nature unless the same is supported by cogent and justifiable evidence on record. The judgment relied upon by the counsel for the appellant-defendants i.e. *Dalbir Singh alias Vir Singh's* case (supra), cannot be made applicable to the present case.

The last assertion which has been raised by the counsel for the appellant is with reference to Section 20 of the Specific Relief Act. There can be no dispute that this is a discretion at the hands of the Court which Court is not bound to grant the relief in specific performance because it is lawful to do so, however, the extreme hardship which is sought to be projected on the part of the appellant-defendants, cannot be said to be of such a nature as it could entitle them to take a shield of Section 20, especially when they had entered into an agreement to sell with open eyes and there has been no change of circumstances thereafter.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

RSA No.2339 of 2014 (O&M)

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

August 28, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE