

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2364 of 2014 (O&M)

Date of Decision.01.10.2015

Gurpal Singh

.....Appellant

Versus

Balkar Singh and another

.....Respondents

Present: Mr. G.S. Nagra, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J. (ORAL)

1. The plaintiff who purported to have obtained a sale deed written and subscribed by his brothers, who were the defendants, sought for the relief of possession and for a direction to the defendants to admit execution and register the document. As inartistic as the frame of the suit is, I would understand the suit to mean a suit for specific performance, for, Section 49 of the Registration Act makes possible an unregistered sale deed to be used as an evidence of an agreement for specific performance.

2. At the trial of the suit, the defendants were said to have made a statement on 25.02.2011 admitting that they had compromised the matter and they would have no objection to the suit being decreed. The Court did not decree the suit on the basis of the said statement but allowed the trial to open on all issues including the issue of whether there had been payment of consideration or not. The trial went on for

another 2 years and 7 months and ultimately the Court found in favour of the plaintiff on a reasoning that the defendants who had admitted before him that they had received the consideration were barred from setting up a plea that the consideration had not been paid. The Appellate Court reversed the decision and held that the person shown as witness in the sale deed was the Numbardar in the village and he had stated that the consideration as recited had not been paid. The plaintiff having failed to prove the consideration as pleaded by him, is before this Court.

3. As I have already observed that if the suit must succeed, it must succeed on the tests which are to be applied for a suit for specific performance. Readiness and Willingness is an essential ingredient as required under Section 16(c) of the Specific Relief Act. That readiness must be available for a person to state that the consideration was paid in a particular fashion or if it was not proved as paid, the plaintiff must willingly offer to pay that money at the trial. If the plaintiff was relying on only on the statement of the defendants that they had received consideration said to be made on 15.02.2011, suit could not have been even allowed for progress of full-fledged trial. Order 23 Rule 3 CPC is a mandate that would require the Court to act on the compromise between the parties and if any one of the parties was denying the compromise, the issue of whether the compromise was valid or not was a matter that should be decided by the Court without adjourning the case on a day to day basis. If the Court had not acted on the statement which was made in the year 2011 but took the case for trial and proceeded to dispose of the case after 2 years and 7 months, the

plaintiff cannot merely rely on the statement made before the Court as proving the consideration. If the plaintiff had participated at the trial then it would be necessary for him to prove what was necessary in a suit for specific performance. The payment of consideration was the lynch-pin on which the entire claim by the plaintiff revolved and if that consideration had not been established, the Appellate Court was justified in reversing the judgment of the trial Court which did not consider the evidence of witnesses but merely relied on the statement before the Court as constituting a bar against the defendants. The relief of specific performance in the manner in which the decree was drafted that the defendant shall execute the sale deed and if it is not done, the Court itself will do would have meant gross injustice if the plaintiff was not prepared to make payment of consideration which consideration was failed to be established at the trial.

4. The decision of the Appellate Court dismissing the plaintiff's suit and allowing the appeal by defendants Nos.1 and 2 is perfectly justified and I find nothing substantial for intervention in favour of the appellant-plaintiff. The second appeal is dismissed.

(K. KANNAN)
JUDGE

October 01, 2015
Pankaj*