

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

R.S.A.No.1405 of 1987 (O&M)

Date of Decision: September 20th, 2016

Sarwan Singh (since deceased) through L.Rs.

...Appellants

Versus

Jagir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.R.S.Bajaj, Advocate,
for the appellant.**

**Mr.Sukhvir Singh Tiwana, Advocate,
for respondent No.1.**

**Mr.R.K.Singla, Advocate,
for respondent Nos.4 to 6.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit seeking specific performance of the agreements to sell dated 2.2.1975 and 25.11.1978 (Ex.P2 and Ex.P3), has been set-aside.

Mr.R.S.Bajaj, learned counsel for the appellant-plaintiff submits that on 2.2.1975, Narinder Singh had entered into an agreement to sell with the appellant-plaintiff in respect of land measuring 10 bighas 1 Biswa. The total sale consideration was ₹29,000/- against the payment of earnest money of ₹5,000/-. Narinder Singh died after nine months of the execution of the agreement to sell and the property devolved upon Jagir Singh in pursuance to the Will dated 20.01.1975 (Ex.D3). Jagir Singh

acknowledged the previous agreement to sell by putting endorsement on the agreement to sell dated 25.11.1978 and also received a sum of ₹5,000/-. The target date for execution and registration of the sale deed was fixed as 15.6.1979. However, before the stipulated date, on 16.3.1979, another sum of ₹2,000/- was paid, in essence in all, a sum of ₹7,000/- as earnest money had been paid. The agreement to sell has been proved through scribe Zora Singh and even attesting witness Tulsi Ram had appeared as DW-7, who admitted the agreement to sell. The trial Court, on the basis of the aforementioned evidence, decreed the suit.

He further submits that a necessity arose to seek the injunction against Jagir Singh as he was trying to alienate the property and accordingly on 13.5.1977, suit for injunction was filed which was decreed vide judgment and decree dated 18.1.1980. The appellant-plaintiff acquired the knowledge that respondent Nos.3 to 7-defendants had instituted the civil suit against Jagir Singh on 27.3.1980 by setting up an agreement to sell dated 22.11.1976. Jagir Singh conceded the same, resulting into passing of the judgment and decree dated 28.11.1981. In the written statement, Jagir Singh denied the execution of the agreement to sell and defendant Nos.3 to 7 took up the plea of bonafide purchasers. The Lower Appellate Court has erroneously and perversely held the execution of the agreement to sell, but perversely also non-suited the appellant-plaintiff on the ground of non-appearance. He submits that Gurcharan Kaur, attorney of plaintiff, had put in appearance and rather proved the case. In the cross-examination, she answered that plaintiff was suffering from weak eye-sight, thus, there was no need of proving the medical report. Lower Appellate Court should not have exceeded its jurisdiction in disagreeing with the findings rendered by

the trial Court as the agreement to sell, much less readiness and willingness had been proved, for, the suit was filed on 16.11.1979, just five months after the stipulated date and, thus, urges this Court for setting-aside the findings of the Lower Appellate Court.

Per contra, Mr.R.K.Singla, learned counsel for respondent Nos.4 to 6 and Mr.Sukhvir Singh Tiwana, learned counsel for respondent No.1 submit that non-appearance of the appellant-plaintiff was fatal as all the acts were done by him. The defendants have been prevented from raising the specific questions. In support of their contention, relied upon the ratio decidendi culled out in **Man Kaur (D) by L.Rs Versus Kartar Singh Sangha, 2010(10) SCC 512** and **Janki Vashdeo Bhojwani Versus Industrial Bank Ltd., 2005(1) RCR (Civil) 240**. Even otherwise, many other suspicious circumstances have been discussed in detail by the Lower Appellate Court, which had not been discussed by the trial Court and rightly so, the findings of the trial Court were set-aside and, thus, urge this Court for dismissal of the appeal as there is no illegality and perversity in the findings rendered by the Lower Appellate Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Bajaj, for, the relationship of the principal and the agent has been described under Order 3 Rule 1 CPC. The aforementioned provisions had been debated upon/pondered upon by the Hon'ble Supreme Court in the judgments as referred above and an occasion arose that where the act has been performed by the principal and only the agent appeared, in such circumstances the discretionary relief under Section 20 of the Specific Relief Act can be granted or not. The answer is in negative, for, all the acts,

as noticed above, were done by the appellant-plaintiff, but he did not put in appearance and offered for cross-examination. In my view, the defendants have been prevented from asking the specific question with regard to genuinity and payment of the consideration, in essence the agreement to sell has rightly been disbelieved/discarded by the Lower Appellate Court. Many other factors regarding the execution of the agreement to sell having been surrounded by suspicious circumstances, have been noticed.

I am in agreement with the findings rendered by the Lower Appellate Court and of the view that the same are liable to be affirmed as the same are based upon appreciation of oral and documentary evidence. No ground for interference is made out, much less no substantial question of law arises for determination by this Court.

Appeal stands dismissed.

September 20th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No