# In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 3442 of 1987 (O&M)**
**Date of Decision:.29.2.2016**

**Hari Singh**

**---Appellant**

**vs.**

**Sohan Lal and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. Amit Jain, Advocate
for the appellant

Mr. Gautam Mittal, Advocate
for Ms. Alka Sarin, Advocate
for respondents No. 1 to 3

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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**Rekha Mittal, J.**

The present regular second appeal has been directed against the concurrent findings recorded by the courts below whereby suit filed by the plaintiffs-respondents for possession by way of specific performance of the agreement to sell dated 23.12.1983 has been decreed by the learned trial court vide judgment and decree dated 31.1.1987 and the findings recorded by the learned trial court have been affirmed in appeal vide judgment and decree dated 7.8.1987 passed by the Additional District Judge-II, Faridabad.

The facts relevant for disposal of the present appeal are that the respondents filed a suit claiming that the appellant-defendants agreed to alienate suit land to the extent of 2/3rd share of land measuring 19 kanals 6 marlas situated in village Chirawata, Tehsil Palwal, District Faridabad for a sale consideration of Rs. 40,000/- vide agreement dated 23.12.1983. A sum of Rs. 20,000/- was paid as earnest money at the time of agreement to sell and a sum of Rs. 10,000/- was paid on 14.12.1981 as initially the appellant wanted to mortgage the land in dispute with the respondents and a receipt to this effect was also executed. Thereafter, a sum of Rs. 3000/- was paid by the respondents on behalf of the appellant vide receipts dated 21.5.1984 and 31.5.1984. The respondents always remained ready and willing to purchase land on payment of balance sale consideration of Rs. 7000/- but the appellant-defendant intentionally did not appear before the Sub Registrar on the stipulated date i.e. 5.6.1984.

The appellant filed the written statement, challenged locus standi to file the suit; suit being not maintainable. He has denied execution of agreement to sell, receipt of an amount of Rs. 30,000/- and deposit of Rs. 3000/- on account of loan.

The learned trial court, on due consideration of pleadings of the parties, issues framed for determination, evidence adduced and submissions made by respective counsel determined liability of the appellant to execute sale deed in favour of the respondents-plaintiffs on the basis of agreement to sell dated 23.12.1983 on receipt of balance sale consideration of Rs. 7000/- as the plaintiffs have already paid Rs. 30,000/- plus deposited an amount of Rs. 3,000/- to discharge liability qua loan in regard to the suit land. The appeal preferred by the appellant did not find favour with the first appellate court and as a result, the Additional District Judge, Faridabad concurred with the findings of the learned trial court on all material aspects of the case.

Still feeling dissatisfied, the matter has been carried in appeal filed in the year 1987 that has now matured for arguments.

Counsel for the appellant has assailed the findings of the courts below in regard to documents i.e. agreement of mortgage dated 14.12.1981 (Ex. P1), agreement dated 23.12.1983 (Ex. P2) on few counts. It has been argued that in the agreement of mortgage Ex. P1, there is no reference to land in respect whereof the parties intended to create mortgage. The agreement dated 23.12.1983 has been prepared on a stamp paper that was purchased on 15.7.1982 meaning thereby that the stamp paper was about 18 months old. The suit has been filed in respect of land measuring 19 kanals 6 marlas whereas in the agreement, the total land has been described to be 18 kanals 12 marlas. As per the agreement, an amount of Rs. 20,000/- was stated to be paid on the day of agreement. Vaishakhu Ram, petition writer, alleged scribe of agreement of mortgage Ex. P1, agreement to sell Ex. P2 and receipt Ex. P3 has deposed that an amount of Rs. 30,000/- was paid on 23.12.1983. Another submission made by counsel is that evidence of Narender Kataria, Handwriting and Finger Print expert is not worthy of consideration as thumb impressions on the disputed document are super imposed, therefore, could not be properly compared.

Counsel, in the alternative, has submitted that in case the findings recorded by the courts below are found to be meritorious, the respondents should be directed to pay market value of the property to enable specific performance of the agreement in question. In support of his contention, he has referred to judgments of the Hon'ble Supreme Court **Satya Jain (dead) through Lrs. and others vs. Amis Ahmed Rushdie (dead) through Lrs. and others 2013(1)R.C.R.(Civil) 369** and **Zarina Siddiqui vs. A. Ramalingam alias R. Amarnathan 2015(1)SCC(Civil) 660.**

Counsel for the respondents, on the contrary, has supported the judgments passed by the courts below with the submission that civil dispute is to be decided on the basis of balance of probabilities and the courts below have rightly held that the balance lies in favour of the respondents and their claim is liable to be accepted. No question of law much less a substantial one has been raised when otherwise, it is not open in the second appeal to re-appreciate the entire evidence for the purpose of taking a different view.

With regard to claim of the appellant to market price of the suit property by relying upon judgment of the Apex Court in **Satya Jain (dead) through Lrs. and others' case (supra),** it is argued that the appellant cannot be allowed to take advantage of his own wrong who initially did not come forward to execute the sale deed in discharge of his contractual obligation and later kept the matter alive despite having lost in both the courts. In addition, it is argued that the respondents filed the suit for possession by way of specific performance few days after expiry of the target date and the litigation upto the first appellate court was decided in the year 1987.

I have heard counsel for the parties and perused the records.

There cannot be any quarrel with the settled position in law that an appeal preferred under Section 100 of the Code of Civil Procedure is required to be heard on merits only if a substantial question of law arises for adjudication. On appreciation of submissions made by counsel for the appellant, I am unable to find that the present appeal raises any question of law much less a substantial one.

Despite there being no substantial question of law, it is necessary to deal with the submissions made by counsel for the appellant. The respondents have led sufficient evidence on record to prove that agreement of mortgage dated 14.12.1981 (Ex. P1), agreement to sell dated 23.12.1983 (Ex. P2) and receipt dated 23.12.1983 (Ex. P3) were executed by the appellant namely Hari Singh. The agreement to mortgage (Ex. P1) does not contain description of land, intended to be mortgaged by the appellant. The present lis does not pertain to enforcement of the said agreement, therefore, failure of the parties to give description of land to be mortgaged is of no consequence.

The agreement to sell was executed on a stamp paper that was purchased on 15.7.1982, counsel for the appellant has not submitted as to what is the adverse affect of agreement having been executed on a stamp paper that was purchased about 18 months prior to execution of the agreement. The matter would have been different had the appellant raised a plea that his thumb impressions were obtained on a blank stamp paper that was later used for preparing the agreement to sell. As the appellant has altogether denied his thumb impressions on the agreement to sell, use of stamp paper purchased earlier is of no avail particularly in the circumstances that receipt dated 23.12.1983 in regard to an amount of Rs. 20,000/- having been paid on 23.12.1983 and an amount of Rs. 10,000/- having been adjusted qua the amount paid vide agreement dated 14.12.1981 has been prepared separately.

Counsel has tried to point out a contradiction in the case by referring to the statement of Vaishakhu Ram, petition writer. Firstly, the witness has not so stated that an amount of Rs. 30,000/- was paid in cash in his presence on 23.12.1983 as he has stated that the amount was tasleem (acknowledged) in his presence and it was Rs. 30,000/-. Even otherwise, if the witness has committed a mistake in describing the amount, that is not sufficient to discard and disbelieve case of the respondents. Further more, in the present case, there is certainly reference to two payments totaling Rs. 30,000/-.

The contention of the appellant in regard to discrepancy in the area mentioned in the agreement to sell and subject matter of the suit is misconceived and merits rejection. In the agreement (Ex. P2), there is detailed reference to the land by khasra numbers and area agreed to be sold. On calculation, the total area comes to 19 kanals 06 marlas in place of 18 kanals 12 marlas, therefore, no fault can be found in the claim made by the respondents on the basis of agreement Ex. P2.

This brings the Court to plea of the appellant that the respondents should be directed to pay market value of the suit property in case their claim for specific performance of the agreement is affirmed. The agreement propounded by the respondents was executed on 23.12.1983 and as per the agreement, an amount of Rs. 30,000/- out of total sale consideration of Rs. 40,000/- had already been received by the appellant. The respondents have proved that they had deposited an amount of Rs. 3000/- in the bank to discharge outstanding liability qua loan taken by the appellant. The respondents were required to pay another amount of Rs. 7,000/- towards sale consideration and incur expenses required for registration of the sale deed. The target date for execution and registration of the sale deed was 5.6.1984 and it has been proved that the respondents appeared before the Sub Registrar, Palwal on the stipulated date for performance of their part of the contract. Not only this, the suit was instituted on 13.6.1984 just seven days after the date fixed for registration of the sale deed. The suit was decreed by the trial court on 31.1.1987. The appeal preferred by the appellant came to be decided by the Additional District Judge, Faridabad just within six months from the date of its institution. The appellant preferred the present appeal before this Court in the year 1987. As the appeal was admitted and in due course of time, it came up for hearing after about three decades, the question for consideration is whether it would be justified to ask the respondents to pay market value of the suit land despite delay in execution of the judgment and decree passed in their favour, in no manner is attributable to them. The answer, at the outset, appears to be in the negative. The mere fact that the Hon'ble Supreme Court of India in **Satya Jain (dead) through Lrs. and others' case (supra)**, in view of facts and circumstances of the case has allowed prevailing market price to be assessed by the trial Judge and the sale deed is to be executed on the basis of existing market price of property would not enure to benefit of the appellant in the circumstances of the present case as the appellant initially refused to perform his part of the agreement, denied its execution by way of written statement, filed repeated appeals before the Court. In **Satya Jain (dead) through Lrs. and others' case (supra)** claim of the appellants for specific performance of the agreement was dismissed by the Delhi High Court but the appeal was allowed by the Hon'ble Apex Court. Another important aspect to be noticed is that counsel for the plaintiffs-appellants offered that if required value of the property may be suitably enhanced. Counsel further indicated willingness of the plaintiffs to offer an amount of Rs. 6 Crores for the property as against the amount of Rs. 3.75 lakhs mentioned in the agreement, sufficient to indicate that price of the property had enhanced manifolds during interregnum, i.e. from 1970 to 2012.

In view of the peculiar facts and circumstances of the case, the Court balanced the equities by holding that the sale deed will now have to be executed for the market price of the suit property. In the case at hand, it is never be the plea of the appellant that the respondents are not entitled to seek specific performance of the agreement due to rise in prices much less their being substantial increase in price of the land in question.

Another distinctive feature of the instant case viz-a-viz the facts of referred authority is that the respondents have already paid a substantial amount of Rs. 33,000/- out of total sale consideration of Rs. 40,000/- more than 30 years ago whereas in **Satya Jain and other's case (supra),** only an amount of Rs. 50,000/- was paid out of total sale consideration of Rs. 3,75,000/- thus a substantial amount remained with the appellants for use, for more than four decades. In this view of the matter, I am unable to accept the submissions of the appellant that the appellant should be allowed present market value of the suit property in case his appeal is dismissed.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed with costs.

**(Rekha Mittal)**
**Judge**

**29.2.2016**
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