

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

RSA No.1264 of 1989
Date of decision : 24.02.2016

Sheela Kumari

...Appellant

Versus

Satya Devi 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. R.S. Tacoria, Advocate for the appellant.

Mr. Amarjit Markan, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellants-defendant is aggrieved of the concurrent findings of fact, whereby suit for specific performance of the agreement to sell dated 07.11.1983 in respect of house agreed to be sold for sum of ₹51,000/- has been decreed by both the Courts below and she has been called upon to execute and register the sale deed after receipt of balance sale consideration.

Mr. Tacoria, learned counsel appearing on behalf of appellant submits that during the pendency of the aforementioned Regular Second Appeal vide order dated 21.12.1989, sum of ₹10,000/- was paid to the

vendee, in essence, no cause of action subsists. No occasion arises for decreeing the judgment and decree of the Courts below. He further submits that owing to the long term litigation, price of the property has been escalated, therefore, decree for specific performance should not be upheld. In support of the contention, he has relied upon judgment of Hon'ble Supreme Court rendered in *Rattan Lal (since deceased) through his Legal Representatives Vs. S.N. Bhalla and ors.*, 2012(4) RCR (Civil) 283 and *Shanker Singh Vs. Narinder Singh and ors.*, 2012(1) RCR (Civil) 576.

He further submits that agreement to sell stipulated that in case the vendor do not perform his part of the contract, defendant is entitled to the amount of compensation, and therefore following substantial questions of law arises for determination:-

1. Whether the respondent-plaintiff was ready and willing to perform his part of the agreement?
2. Whether owing to escalation of the price during the interregnum, discretionary relief of Specific Relief Act can be granted, much less, upheld?

Mr. Amarjit Markan, learned counsel appearing on behalf of the respondents-plaintiff submits that plea of compensation, much less, does not lie in favour of appellant-defendants, for the reason, that sale deed dated 12.3.1991 is part of the house agreed to be sold and has already been sold to third party. The execution of the agreement to sell has been admitted. Suit was filed on 15.05.1984, whereas target date was 08.05.1984. Readiness and willingness has been proved to the hilt whereby trial Court exercised the jurisdiction under Section 20 of the Act.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal. It is now been held by the judgment rendered by Hon'ble Supreme Court in *P.D' Souza Vs. Shondrilo Naidu, (2004) 6 Supreme Court Cases 649*, where agreement provides for liquidated damages, parties cannot be prevented from seeking specific relief. Equity also does not lie in favour of the appellants-defendants as they have already sold part of the house to the third party as indicated above. Readiness and willingness has been proved vide agreement to sell dated 07.11.1983. The target date was 08.05.1984 and the suit was filed on 15.05.1984. A sum of ₹10,000/- handed over to the respondent-plaintiff, has again been returned back to the appellant-defendant as indicated in the order dated 26.08.2013. The order dated 21.12.1989 reads thus:-

“Present:- Mr. K.S. Kundu, Advocate

Mr. G.S. Cheema, Advocate.

Learned counsel for the appellant has paid a sum of Rs.10,000/- to the learned counsel for the respondent-decreeholder in Court, which has been accepted by the latter without prejudice to the claim of his client in the suit. The amount has been accepted under orders of this Court.

In this view of the matter, the execution of the decree under challenge is stayed.

Civil Misc. Application stands disposed of accordingly.

December 21, 1989

Sd/- Judge

The order dated 26.08.2013 is reproduced as under:-

Vide order dated 21.12.1989, execution of the decree under challenge was stayed. When the case was taken up for hearing on 18.10.2011, no body appeared on behalf of the appellant and the matter was adjourned to 8.11.2011 with a direction to the Registry that notice be issued to counsel for the appellant as also to the appellant for the said date with a clear stipulation that in the event of non-appearance of appellant or her counsel on the adjourned date, order dated 21.12.1989 would be re-called. When the case came up for hearing on 12.12.2011, a request was made on behalf of the appellant for adjournment. The matter was adjourned to 4.1.2012 with the condition that if the matter was not argued on that date, order dated 21.12.1989 would stand automatically vacated. Today, when the case came up for hearing, no one has put in appearance on behalf of the appellant. It seems that the appellant wants to delay decision of the appeal and thereby enjoy the fruits of the order of stay of execution, dated 21.12.1989.

Dismissed in default.

At this stage, Mr. Sumit Sheokand, Advocate has appeared and prays for recalling of the order. The order dismissing the appeal is recalled. However, learned counsel for the appellant prays for an adjournment. There seems to be no justifiable reason for allowing the request of adjournment.

Keeping in view the circumstances and in view of the order dated 12.12.2011 wherein it was specifically ordered that in the event of counsel for the appellant not arguing the matter on the adjourned date, order dated 21.12.1989 would stand automatically vacated.

In this situation, order dated 21.12.1989 staying execution of the impugned decree is rendered in-operative.

Learned counsel for the respondents prays that he be allowed to return the amount of ` 10000/- paid to him on behalf of the appellant.

In view of the order dated 21.12.1989 having become in-operational, the request is allowed, subject to all just exceptions.

Adjourned to 6.9.2013 for arguments.

August 26,2013

Sd/- Judge”

In view of such, position has been relates back to the stage as if there was no exchange of money during the pendency of the Regular Second Appeal.

Keeping in view the aforementioned facts, judgment and decree of both the Courts below are upheld. There is no illegality and perversity in the order under challenge.

Substantial questions of law as noticed above are answered in favour of respondent-plaintiff and against appellant-defendant.

Regular Second Appeal is dismissed.

Respondent-plaintiff is granted two months time to deposit the balance sale consideration and thereafter defendant-appellant shall execute and register the sale deed within one month in case if does not, then plaintiff shall seek the same through intervention of the Court.

24.02.2016

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**(AMIT RAWAL)
JUDGE**