

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 1

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

Date of Decision: 11.07.2016

1. RSA No.1175-A of 1991 (O&M)

Smt. Sant Kaur (deceased) through LRs ...Appellant(s)

Vs

Balwinder Singh and othersRespondents

2. RSA No.1477 of 1991 (O&M)

Smt. Sant Kaur (deceased) through LRs ...Appellant(s)

Vs

Balwinder Singh and othersRespondents

3. CR No.1665 of 1991 (O&M)

Shamsher Singh and othersAppellants

Vs

Balwinder Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

**Present:Mr. S.S. Swaitch, Advocate
for the appellants in RSA No.1175-A of 1991 &
for the petitioners in CR No.1665 of 1991.**

None for respondent Nos.1 and 2.

**Mr. G.S. Bhatia, Advocate
for respondent Nos.3 to 7 in CR No. 1665 of 1991 &
for appellants in RSA No.1477 of 1991.**

1. Whether Reporters of local papers may be allowed to see the judgment ?

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 2

2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment RSA Nos.1175-A, 1477 of 1991 and CR No.1665 of 1991 are being decided as common issue is involved in all these appeals. Common facts are being noted in order to understand the controversy in a proper way.

[2]. Brief facts as gathered from the record are that a civil suit for possession by way of specific performance was filed by plaintiffs-Balwinder Singh and Dalbara Singh sons of Nirmal Singh against Sant Kaur widow of Balbir Singh. According to the plaintiffs an agreement to sell was executed on 13.09.1984 in respect of 4 *Kanals* 6 *Marlas* of land for a total sale consideration of Rs.15,500/- and earnest amount to the tune of Rs.7,000/- was allegedly paid at the time of execution of the agreement. The target date for execution of sale deed was fixed on or before 15.06.1985 on receipt of remaining sale consideration. Plaintiffs alleged that defendant did not execute the sale deed despite readiness and willingness on their part. The suit for specific performance came to be filed on the basis of agreement to sell dated 13.09.1984 with regard to 4 *Kanals* 6 *Marlas* of land as mentioned in the plaint.

[3]. Defendant was proceeded against *ex parte* on

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 3

07.03.1987. Thereafter plaintiffs proceeded to adduce the *ex parte* evidence by examining Harbans Singh Deed Writer as PW-1 and Sajjan Singh attesting witness as PW-2. Balwinder Singh one of the plaintiff himself stepped into the witness box as PW-3. The Scribe and attesting witnesses viz. Harbans Singh and Sajjan Singh proved the execution of agreement to sell in favour of the plaintiffs. The witnesses stated that the agreement to sell (Ex.P-1) was executed in favour of the plaintiffs after admitting the contents of agreement to sell and payment of Rs.7,000/- as earnest amount. One of the plaintiff Balwinder Singh also proved the agreement to sell executed by the defendant. Perusal of the agreement would reveal that the area so agreed to be sold was 4 *Kanals* 6 *Marlas* of land out of 52 *Kanals* 6 *Marlas* of land comprised in *Khasra* Nos.14/21/2/22/2, 22/3, 23/1/1, 3/2, 28/4,5,6,7,14/1 and 15/1.

[4]. After appraisal of the evidence, trial Court dismissed the suit vide judgment and decree dated 06.10.1988 by holding that as per *jamabandi* (Ex.P-4) for the year 1980-81, Sant Kaur was not found to be owner of *Khasra* No.28/14/1 and 15/1. In the remaining land, Sant Kaur was having only 82 shares out of 722 shares in total. The total land mentioned in the *jamabandi* (Ex.P-4) was 36 *Kanals* 2 *Marlas* in which defendant Sant Kaur was having 82/72 shares which came to less than 4 *Kanals* 6

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 4

Marlas as agreed to be sold by way of an agreement to sell. Trial Court observed that agreement to sell was vague as it did not disclose the area of each *khasra* numbers which the defendant agreed to sell to the plaintiffs. It was held by the trial Court that agreement to sell was not legally enforceable for want of title of the defendant to the land in question and the land being discrepant with regard to the area of each *khasra* numbers which was allegedly agreed to be sold. The vagueness in agreement to sell was not curable.

[5]. Feeling aggrieved against the judgment and decree dated 06.10.1988 passed by Sub-Judge Ist Class, Ludhiana the plaintiffs went in appeal before the lower Appellate Court. During pendency of the First Appeal before the lower Appellate Court, defendant Sant Kaur died and there was a contest between two sets of legal representatives of Sant Kaur. Both the sets of legal representatives claimed impleadment as legal representative of Sant Kaur. Vide order dated 11.01.1991, lower Appellate Court impleaded Ujjagar Singh, Darshan Singh, Sewa Singh, Tehal Singh and Amarjit Singh sons of Ram Ditta as legal representatives of Sant Kaur and substituted them in place of Sant Kaur. Another set of legal representatives, who claimed their right were Shamsher Singh, Amarjit Singh, Paramjit Kaur and Charanjit Kaur sons and daughters of Sh. Nagender Singh.

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 5

[6]. However lower Appellate Court reversed the finding by holding that Sant Kaur agreed to sell 4 *Kanals* 6 *Marlas* of land out of total ownership for consideration and, therefore, sale deed could have been executed in favour of the plaintiffs in respect of 4 *Kanals* 6 *Marlas* of land out of 36 *Kanals* 2 *Marlas* as shown in the *jamabandi* for the year 1980-81. Sant Kaur was co-sharer along with Mewa Singh and others and she had 82 shares out of 722 shares. She could have transferred her 82 shares out of 722 shares in respect of 36 *Kanals* 2 *Marlas* of land as shown in the *jamabandi* (Ex.P-4) for the year 1980-81. Lower Appellate Court held that the agreement was not vague enough to be executed. Sant Kaur hailed from village Zeerakh, Sub-Tehsil Malaud. The agreement to sell was executed at village Payal. Attesting witness Sajjan Singh hailed from village Maqsudaran whereas Amarjit Singh hailed from village Ghudani Kalan. None of the attesting witnesses hailed from the village of defendant. Even if, there was no cross-examination of the defendant, but the plaintiffs were required to stand on their own legs. That is how the present appeals and petition came to be filed before this Court.

[7]. RSA No.1175-A of 1991 has been preferred by Shamsher Singh, Amarjit Singh, Paramjit Kaur and Charanjit Kaur sons and daughters of Nagender Singh claiming

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 6

themselves to be legal representatives of Sant Kaur. Ujjagar Singh, Darshan Singh, Sewa Singh, Tehal Singh and Amarjit Singh, who were brought on record by the lower Appellate Court as legal representatives of Sant Kaur were impleaded as respondents. RSA No.1477 of 1991 has been preferred by Ujjagar Singh, Darshan Singh, Sewa Singh, Tehal Singh and Amarjit Singh against judgment and decree of lower Appellate Court and in CR No.1665 of 1991 the order dated 11.01.1994 passed by the lower Appellate Court was assailed by second set of legal representatives, who filed RSA No.1175-A of 1991.

[8]. Shamsheer Singh and others petitioners in CR No.1665 of 1991 claimed that they were the legal representatives of Sant Kaur being children of husband's brother of Sant Kaur. Another set of legal representatives Ujjagar Singh and others son of Ram Ditta were allowed to be impleaded as legal representatives of Sant Kaur by the lower Appellate Court claiming their right under Hindu Succession Act being children of brother of Sant Kaur. Here it has to be noticed that impleadment of legal representatives in the civil appeal was only with a view to proceed with the appeal. The *inter se* entitlement of different sets of legal representatives would not to be decided by the Appellate Court.

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 7

[9]. I have heard learned counsel for both the parties and have gone through the record of the case.

[10]. Agreement to sell was discrepant inasmuch as that the total land available with the defendant was not shown to be 36 *Kanals 2 Marlas*. *Khasra* numbers 28/14/1 and 15/1 were not found to be owned by the defendant Sant Kaur. The area of *khasra* numbers forming part of agreement to sell was also conspicuously missing. The pleadings based on agreement to sell could not be appreciated viz-a-viz. conversion of entitlement of Sant Kaur being co-sharer along with Mewa Singh in the land measuring 36 *Kanals 2 Marlas*. Defendant was co-sharer of 82 shares out of 722 shares. The judgment and decree passed by lower Appellate Court was not based on pleadings of the plaintiffs. Even though there was no rebuttal to the pleadings as the defendant was proceeded against *ex parte* still plaintiffs were to stand on their own legs. Even if, the execution of agreement was proved by the witnesses namely PW-1 Harbans Singh Deed Writer, PW-2 Sajjan Singh attesting witness, the grant of decree for specific performance was an equitable relief and the court below was not obligated to grant decree of specific performance merely because it was lawful to do so. Discrepancy viz-a-viz. the title of the defendant on two *Khasra*

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 8

Nos.28/14/1 and 15/1 in the total land ultimately reduced the entitlement of the defendant in the land so projected by the plaintiffs in the plaint. In the reduced land the defendant was co-sharer along with Mewa Singh. Since there was no pleadings on that aspect of the matter, it was not lawful to grant decree for specific performance, rather lower Appellate Court could have decreed the suit in appeal only to the extent of refund of double of the earnest amount by appropriate interest.

[11]. Though no substantial question of law was framed in the appeal, however this Court proceeded to consider the following question of law:-

“Whether specific performance being a discretionary relief can be granted merely because it was lawful to do so without taking into consideration the vagueness in the agreement to sell?”

[12]. Evidently, the defendant was proceeded against *ex parte*. Plaintiffs could not demonstrate with regard to the title of the defendant viz-a-viz. *Khasra* Nos.28/14/1 and 28/15/1 which were made part of the agreement to sell. The total sale consideration was fixed for the land from *khasra* numbers which were depicted in the agreement to sell. The vagueness of the agreement to sell was writ large on the face of the record as the

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 9

lower Appellate Court tried to extract entitlement of the defendant out of joint land and ultimately granted contingent decree particularly when defendant was a co-sharer with Mewa Singh. Such a relief even though based on agreement to sell and the defendant being *ex parte* on record, did not qualify the grant of equitable relief as the defendant was found to be owner of less area besides the agreement to sell being vague enough to be executed as such. Even though the defendant was proceeded against *ex parte*, plaintiffs were bound to stand on their own legs. The lower Appellate Court also admitted that there was inadvertent mistake in the agreement to sell in mentioning the different *khasra* numbers, but decreeing the suit was not based on the pleadings of the plaintiffs.

[13]. In view of above discussion, this Court is of the considered view that though execution of agreement to sell was proved, but at the same time it was proved to be vague inasmuch as that two *Khasra* Nos.28/14/1 and 15/1 were not found to be owned by defendant. Secondly, defendant was found to be owner of less area and particularly the area of each *khasra* number was not mentioned in the agreement to sell.

[14]. In view of aforesaid anomalous situation, it was not desirable to decree the suit in *toto*, rather the defendant could have been obligated to return the double of the earnest amount

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 10

with appropriate interest thereon as damages because grant of specific performance is not an absolute right and the same could have been declined in appropriate cases where the Court ultimately found that it was not desirable to do so keeping in view the period undergone in the litigation.

[15]. In the instant cases, the agreement to sell was executed on 13.09.1984. After a period of about 31 long years of litigation the prices of the land have gone sky high. The escalation of value of the property and passage of time would give an unfair advantage to the purchasers while granting relief of specific performance, particularly in view of the fact that agreement to sell was vague enough to grant such a relief on merits.

[16]. Normally grant of specific relief cannot be denied once agreement to sell was proved, but in the instant cases, even though agreement to sell was proved, the same was found to be vague enough to incorporate full text of the land exactly owned by the defendant. Secondly, the area of each *khasra* number was not mentioned. The anomaly in the agreement to sell would definitely bring the case out of consideration in terms of exceptions, particularly when the period of about 31 long years have already gone by. Concept of hardship though required to be specifically pleaded by the defendant, but

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 11

even in case of defendant being *ex parte*, the plaintiffs were required to establish their right viz-a-viz. lawful contents of agreement to sell and correctness of the pleadings by evidence. Having considered the issue, this Court is of the opinion that the question of law so framed has to be answered against the plaintiffs.

[17]. The Civil Revision No.1665 of 1991 was the result of non-impleadment of legal representatives whose claim was based on inheritance of Sant Kaur as they claimed themselves to be sons of husband's brother of Sant Kaur. Since impleadment of legal representatives was with a view to see the progress of the litigation without meaning anything *inter se* between the rival legal representatives. Both the sets of legal representatives would be at liberty to establish their rights viz-a-viz. the property left by Sant Kaur in accordance with law. Consequently, the CR No.1665 of 1991 has become infructuous with the decision of the appeals on merits.

[18]. In the light of observation made above, I am of the view that the appeals filed by both the sets of legal representatives of Sant Kaur are required to be accepted. Accordingly, the appeals are allowed. Consequently, the impugned judgment and decree dated 24.01.1991 passed by Additional District Judge, Ludhiana is hereby set aside, thereby decreeing the suit filed by the

RSA Nos.1175-A & 1477 and CR No.1665 of 1991 (O&M) 12

plaintiffs for alternate relief of recovery of double of the earnest amount along with interest @ 9% from the date of agreement till actual realisation of the amount.

July 11, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**