

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

1. RSA No.1720 of 2007 (O&M)
Date of decision : 10.02.2016

Joginder Singh

...Appellant

Versus

Sukhbir Singh and ors.

...Respondents

2. CR No.3581 of 2015 (O&M)
Date of decision : 10.02.2016

Paramjit Singh

...Appellant

Versus

Sukhbir Singh and ors.

...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. K.B. Raheja, Advocate for the appellant.
(In RSA No.1720 of 2007)

Mr. O.P. Hoshiarpuri, Advocate for the petitioner.
(In CR No.3581 of 2015)

Mr. S.C. Chhabra, Advocate for the respondent Nos.1 and 2.
(In RSA No.1720 of 2007) & (In CR No.3581 of 2015)

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby suit seeking specific performance of the agreement to sell dated 09.08.1997 has been decreed and has been called upon to execute the sale deed vis-a-vis half share of the property agreed to be sold on the receipt of balance sale consideration.

Mr. K.B. Raheja, learned counsel appearing on behalf of appellant-defendant submits that respondent-plaintiff was given ample opportunity to prove its case but only 4 to 5 opportunities were given to the appellant-defendant. The closure of the evidence was challenged in the grounds of appeal by taking the aid of provision of Order 43 Rule 1-A of the Code of Civil Procedure, in essence, order dated 27.08.2003, whereby evidence has been closed. Lower Appellate Court has not discussed the same and thus, there is illegality and perversity. This Court at the time of motion hearing noticed that in pursuance to the agreement to sell, for half share of the appellant-defendant sale deed had been executed on 11.08.1997 and for remaining the half share, the sale deed was executed on 17.10.1997. The contents of the agreement to sell would also reveal that there were two rooms and three house power meters vis-a-vis the shop. The same has not been noticed by the Courts below and thus irreparable loss has been caused to the appellant-defendant. The appellant-defendant has sold the land measuring 5 kanals 15 ½ marlas vide sale deed dated 21.06.1999 to defendant No.2 and thus following substantial question of law arises for determination by this Court:-

1. Whether the judgment and decree of both the Courts below are not sustainable in the eyes of law as it suffers from illegality and perversity?
2. Whether the lower Appellate Court being last Court of facts and law was enjoined upon obligation to refer to the oral and documentary evidence?
3. Whether the judgment and decree of lower Appellate Court is justified in not referring to the zimni orders as well as challenge to the order dated 27.08.2003, whereby the evidence of the appellant-defendant was closed by order.

Mr. S.C. Chhabra, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that in pursuance to the judgment and decree, sale deed dated 24.10.2008 has been executed. However, during the pendency of the appeal, application bearing No.6475-C of 2014 was filed seeking the stay of the execution of the judgment and decree. This Court vide order dated 22.07.2015 dismissed the application after noticing the fact that Paramjit Singh-defendant No.2-Judgment Debtor had already filed the objections and same have also been dismissed. Agreement to sell has been proved through the testimony of PW1 Chandan Singh and PW2 Scribe. Defendants have failed to lead any evidence in support of their defence and cannot seek the remand of the matter as it would tantamount to reopening/denovo trial which is not permissible in the law and prays for dismissal of the appeal.

Mr. Raheja, in rebuttal cited following case law to contend that

in case of successors of defendant will suffer hardship whereas no hardship will be suffered by successors of plaintiff in case of non performance of the agreement:-

1. *Lajpat Rai Vs. Jorawar Singh, 2011(2) RCR (Civil) 445*
2. *Kusum Rani Vs. Yashwant Rai, 2006(2) RCR (Civil) 176*

to contend that where party to suit failed to produce evidence despite 13 adjournments, opportunity given to party to produce evidence subject to payment of cost.

I have heard learned counsel for the parties and appraised the paper book, case law and record of the Courts below.

From the perusal of zimni orders, it is evident that despite having given ample opportunity, the appellant-defendant did not submit list of witnesses, much less, process fee & diet money. For the sake of brevity, zimni orders starting from 08.01.2003 to 27.08.2003 are reproduced hereinbelow:-

“Present:- Counsel for the parties.

One PW examined. Oral PE closed by counsel for plaintiff. File is adjourned to 27.2.2003 for evidence of defendant and for tendering documents by the plaintiff. Dws be summoned by filing PF/DM/List of witnesses.

Date: 8.1.2003

Sd/- ACJ(SD)/

FZR

Present:- Counsel for the parties.

Neither any DW produced nor PF/DM and list of witnesses filed. As requested case stands adjourned to 7.4.03 for entire DE at own responsibility and also for tendering documents by the plaintiff.

27.2.03

Sd/- ACJ(SD)

Present:- Counsel for the parties.

No DW produced again. Documents also not tendered by the plaintiff. Last opportunity is granted for tendering documents by the plaintiff and for DE at own responsibility on 3.6.03.

7.4.03

Sd/- ACJ(SD)

Present:- Counsel for the parties.

No DW produced in spite of last opportunity. As requested by Sh. V. Madhar counsel for defendant another last opportunity is granted for entire DE at own responsibility on 27.8.03 subject to Rs.500/- costs.

3.6.03

Sd/- ACJ(SD)

Present:- Mr. M.R. Singla, Counsel for the plaintiff.

Mr. V. Madhar, and Sh. R.S. Dhillon Counsel for the defendants.

Neither costs paid nor any DW produced inspite of last opportunity. Despite availing 4 effective opportunities. Defendants have failed to adduce any evidence. Neither any PF/DM nor any list of DWs filed. No justification is made out to further adjourn this case for evidence of the defendant. Hence, the same is closed u/o 17 Rule 1 CPC. Now to come up on 3.9.03 for arguments.

27.8.03

Sd/- ACJ(SD) ”

The plea of Mr. Raheja, would also reveal that agreement to sell was emphatically denied on the premise that it was forged document i.e. fraud had been played which does not have any substance or any reasons as appellant had not taken any steps to prove or corroborate. In my view, the trial Court has rightly exercised the discretion under Section 20 of the Specific Relief Act. The sale deed dated 21.06.1999 is during the currency

of the agreement, whereas suit was filed on 28.08.1998, therefore, defendant No.2 cannot take plea of bonafide purchaser. No suggestion has been put to the aforementioned witnesses, PW1 Chandan and PW2 Scribe with regard to the execution, much less, receipt of the earnest money. There is another aspect of the matter, vis-a-vis hardship, the appellant has already executed the sale deed on 11.08.1997. There is no dispute to ratio decidendi culled out in the aforementioned judgments but the fact remains that list of witnesses and diet money had been deposited, thus, defendant failed to contest suit diligently.

In view of the aforesaid observation, substantial question of law as noticed above are answered in favour of respondent-plaintiff and against the appellant-defendant.

Appeal is dismissed.

Revision at the instance of the defendant No.2 who is stated to have file objection against the execution of the judgment and decree. Since main appeal filed by the vendor, has been dismissed, no ground is made out for interference. Order cannot be said to be without jurisdiction.

Accordingly, revision petition is also dismissed.

10.02.2016

pawan

(AMIT RAWAL)
JUDGE