

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

RSA No.1987 of 2009 (O&M)

Date of decision : 08.04.2016

Bagicha Singh

...Appellant

Versus

Gurcharan Singh

...Respondent

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. H.P.S. Ghuman, Advocate for the appellant.

Mr. Salil Bali, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby suit seeking specific performance of agreement to sell dated 10.03.2004 has been decreed and he is called upon to execute and register the sale deed on receipt of balance sale consideration.

Mr. H.P.S. Ghuman, learned counsel appearing on behalf of appellant-defendant submits that agreement to sell aforementioned was emphatically denied and it was stated that it was loan transaction of sum of Rs.4000/- which was paid along with interest in presence of Kartar Singh.

During all this period, duly signed/thumb marked blank stamp papers were

asked to be returned but the plaintiff refused to do so and thus converted it into agreement to sell and filed the suit. Even otherwise, assuming for argument sake contents of the agreement to sell is admitted, the ingredients of Section 16(c) have not been proved. The Trial Court ought not to have exercise the discretion under Section 20 of the Specific Relief Act, 1963 and thus urges this Court to formulate substantial question of law as culled out in memorandum of appeal.

Mr. Salil Bali, learned counsel appearing on behalf of respondent-plaintiff submits that stipulated date of registration and execution of sale deed is 28.05.2004. Defendant having failed to perform his part of the agreement, suit was instituted on 16.07.2004. Plaintiff approached the office of Registrar for marking the presence but defendant did not come and left with no other option to get his presence marked and got the affidavit attested through the Notary. Stray statement in the cross-examination cannot be read in isolation but the pith and substance of the pleadings accompanied by affidavit has to be seen whereas on the other hand, witnesses of the appellant-defendant has miserably failed to prove the repayment of loan, as in the testimony of Kartar, it surfaced that loan was taken 10 days after Baisakhi that would be 23.04.2004, whereas agreement was executed on 10.03.2004 and thus urges this Court to affirm the findings rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no substance and merit in the appeal, for, it is settled law and as well as ratio decidendi culled out by judgment of this Court rendered in *Jora Singh Vs. Lakhwinder Kumar and*

others, 2011(1) RCR (Civil) 130, Lal Chand Vs. Tek Chand, 2013(5) RCR (Civil) 104, where the defendant denies, the agreement to sell cannot take up the plea of readiness and willingness. Both plaintiff and defendants are strangers. No stranger would extend the loan until and unless the respondent-plaintiff is proved to have been registered money lender, therefore, plea of alleged taking of loan has not been corroborated by any other circumstantial or attenuating circumstances. Appellant has not able to belie his signatures on the agreement to sell containing the receipt of earnest money of Rs.40,000/-. There is emphatical denial with regard to the extension of the loan in para 5 of the preliminary objection by way of rejoinder. Readiness and willingness has to be seen from the date of agreement till the filing of the suit and during the pendency of the suit. Aforementioned plea reveals that after expiry of the target date, suit was filed. Mere inadequacy of consideration as well as explanation given under Section 20 of 1963 Act would not denied the discretionary relief to the plaintiff. Aforementioned view of mine is supported by the judgment of Hon'ble Supreme Court in *Azhar Sultana Vs. B. Rajamani, 2009(2) RCR (Civil) 123*.

Keeping in view the aforementioned facts and circumstances, I do not intend to differ with the findings rendered by both the Courts below based upon appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination by this court.

Appeal is dismissed.

08.04.2016

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**(AMIT RAWAL)
JUDGE**