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

RSA-4303-2009(O&M)

Date of decision : 29.04.2016

Ajit Singh and others

... Appellants

Versus

Gurdial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.C. Nagpal, Advocate
for the appellants.

Mr. S.C. Thatai, Advocate
for the respondent(s) .

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

AMIT RAWAL, J. (ORAL)

CM No.13041-C-2009

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

CM stands allowed.

RSA-4303-2009

The appellants-defendant Nos.3 and 4-the subsequent vendees, are in regular second appeal against the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 11.10.1994 in respect of the land measuring 17 kanals 10 marlas has been decreed and the

defendant No.1-vendor-Jiwan Bai, has been called upon to get the sale deed executed and registered, after receiving the balance sale consideration.

Mr. S.C. Nagpal, learned counsel appearing on behalf of appellants-defendant No.3 and 4 submits that they are the *bona fide* purchasers for a valuable consideration as aforementioned land was purchased vide sale deed dated 02.11.1994 (Ex.P-9). The sale deed does not mention about the execution of the prior agreement to sell dated 25.09.1994, but the said agreement to sell has been brought on record as Ex.D-3. The agreement to sell, in question, dated 11.10.1994 envisages the condition of handing over the possession to the vendee, but both the Courts below have rendered a finding that the plaintiff has failed to prove the same. Even otherwise, the agreement to sell was not executed by Jiwan Bai, original vendor. She had executed a General Power of Attorney dated 31.05.1994 in favour of her son Banta Singh for the purpose of effecting partition. On realizing the omission of Banta Singh, the GPA was cancelled vide cancellation deed dated 14.10.1994. At the time, when the suit was filed, there was no GPA. The sale deed in favour of the appellant was in respect of the land measuring 12 kanals, because thereafter, the respondent(s)-plaintiff(s) by filing the suit for injunction sought interim stay, thereafter, filed the suit for specific performance. He further submits that where the agreement to sell is more than 20 years' old, discretionary relief should not be granted. In case, other party has any intention to get the property, they be called upon to pay heavy amount of compensation. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in **"V.Muthusami (dead) by LRs V/s Angammal and others" (2002) 3 SCC 316** and submits that the

following substantial questions of law arises for determination:-

1. Whether the discretion relief under Section 20 of the Specific Relief Act, 1963, can be granted in respect of the agreement to sell executed on 11.10.1994, being 20 years' old, in the absence of any compensation.
2. Whether the judgment and decree of both the Courts suffers from illegality and perversity.

Mr. S.C. Thatai, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the sale deed (Ex.P-9) dated 02.11.1994, is ploy as the plaintiff(s) seeking the execution of the agreement to sell dated 11.10.1994, for, it does not envisage the execution of the previous agreement to sell dated 25.09.1994 (Ex.D-3), in fact, appellants-defendant Nos.3 and 4 are not the *bona fide* purchasers for a valuable consideration, as they are none-else, but the brother of Jiwan Bai and the maternal uncle of Banta Singh. In the written statement, Jiwan Bai admitted the execution of the GPA, thus, the exhibition and proving of GPA would pale into insignificance. He further submits that both Courts below, being the last court of fact and law, after examining the oral and documentary evidence, granted the discretionary relief which cannot be disturbed by exercising the powers under Section 100 of the Code of Civil Procedure, thus, urges this Court for affirming the findings, under challenge, as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book.

After hearing the arguments at length, this Court called upon the Mr. S.C. Thatai, counsel for the respondent(s)-plaintiff(s) whether his clients are willing to compensate the appellants-defendant Nos.3 and 4. On

instructions, having obtained from the respondent(s)-plaintiff(s), an offer to pay ₹ 5,00,000/- was made, but the same is not acceptable by Mr. S.C. Nagpal's clients as price of the property, during the period, has increased phenomenally and is almost more than Crores. An effort was made to further increase the offer from ₹ 5 Lacs to ₹ 15 Lacs, but the respondent(s)-plaintiff(s) did not accept the same on the ground not able to pay the sum of ₹ 15,00,000/-.

Accordingly, I proceed to decide the appeal on merits.

It is a settled law, where a dispute in respect of agreement to sell of 20 years' old reaches at the stage of regular second appeal, whether in such circumstances, this Court can remain oblivious of all the subsequent and attenuating circumstances for exercising discretion under Section 20 of the 1963 Act, I am of the view that since, the respondent(s)-plaintiff(s) has failed to offer any reasonable amount for the purpose by granting compensation, the discretionary relief cannot be granted. Even otherwise, the agreement to sell in favour of the appellants-defendant Nos.3 and 4, is prior to 25.09.1994 (Ex.D-3), whereas the present agreement to sell is not by the vendor, but by her Power of Attorney as noticed above, more so, the Power of Attorney had already been cancelled on 14.10.1994. The suit was filed on 02.02.1995, whereas the sale deed dated 02.11.1994 is in respect of 12 kanals. With the passage of time, this Court cannot remain a mute spectator, in respect of agreement to sell, having been entered two decades back, while exercising the discretion.

Keeping in view the aforementioned facts and circumstances of the case, the judgment and decree of both the Courts below exercising the discretion is hereby set aside. The substantial questions of law as noticed

above are answered in favour of the appellants-defendant Nos.3 and 4 and against the respondent(s)-plaintiff(s).

However, the respondent(s)-plaintiff(s) shall be entitled to refund of earnest money of ₹ 40,000/- along with interest @ 9% till its realization. It is also made clear that since, the respondent(s)-plaintiff(s) has also paid the balance amount, therefore, they shall also be entitled the refund the same.

With the aforesaid observations, the appeal partly allowed.

29.04.2016
yogesh

(AMIT RAWAL)
JUDGE