

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

RSA No.4581 of 2009

Date of decision : 07.04.2016

Kamal Singh and others

...Appellants

Versus

Diwan Chand (deceased through LRs) and others

...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. Binderjit Singh, Advocate for the appellants.

Mr. Sanjiv Gupta, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for specific performance of agreement to sell dated 10.06.1980, has been decreed in toto.

Mr. Binderjit Singh, learned counsel appearing on behalf of appellants submits that agreement to sell was in respect of land situated in Village Hijra Wan Khurd allegedly agreed to be sold at the rate of Rs.30,000/-, though, the entire sale consideration was paid but suit was filed only on 10.11.2006 after serving the notice dated 27.10.2006, which was specifically replied vide reply dated 06.11.2006. In support of his grounds of appeal, he has raised following submission:-

1. Even though time is not essence of the agreement, but right has been exercised in a reasonable time for seeking specific performance.
2. Filing of the suit after lapse of 26 years at a old price does not advance any justification, much less, no equity lies in favour of the respondent-plaintiff. In support of contention, relied upon judgment of Hon'ble Supreme Court rendered in *K.S. Vidyanadam and others Vs. Vairavan, AIR 1997 SC 1751*.
3. The witnesses have not proved the execution of the agreement to sell, for the reasons, that scribe of the agreement and the receipt are different.
4. The Handwriting Expert Anil Kumar Gupta has not performed its duty as required under the law, for, compared the signatures available on the agreement to sell with signature of deceased Harnam Singh, from the photocopy of the documents and the signatures were also in vernacular i.e. in Urdu whereas in cross-examination, he stated that it did not bear any signature.
5. Harnam Singh, though died on 09.12.1987 was not the owner of the property as he had applied for plot to respective allotting agency and the conveyance deed had been issued on 17.05.2006. By that time, interest devolved upon his LRs, therefore, trial Court rightly dismissed the suit in not granting the discretion, but the discretionary relief granted by the lower Appellate Court is not only arbitrary, but fallacious and is not based upon reasonable criterion, much less, tantamount to

comparative hardship. In support of contention, he has relied upon judgment of Hon'ble Supreme Court in *V. Muthusami (dead) by LRs Vs. Angammal and others, 2002(2) Indian Civil Cases, 340* and *A.C. Arulappan Vs. Smt. Ahalya Naik, 2001(4) RCR (Civil) 109*.

He further submits that in urban area, value of property has escalated manifold, therefore, it would not be equitable to grant discretionary relief of specific performance after long period of time. In this regard, he has relied upon ratio decidendi culled out by Hon'ble Supreme Court in *Vimaleshwar Nagappa Shet Vs. Noor Ahmed Sheriff & ors. 2011 (3) Civil Court Cases 673 (S.C.)* and thus urges this Court to formulate following substantial question of law for determination by this Court:-

1. Whether judgment and decree of the lower Appellate Court suffers from illegality and perversity in exercising the discretion under Section 20 of the Specific Relief Act, 1963 after expiry of more than 2 ½ decades?
2. Whether Harnam Singh could enter into agreement to sell as he was not owner of the property in question?
3. Whether respondent-plaintiff failed to discharge the onus vis-a-vis the signatures of Harnam Singh on the agreement to sell as in the written statement, it was specifically denied?

On the other hand, Mr. Sanjiv Gupta, learned counsel appearing on behalf of respondents submits that since time was not essence of the agreement, cause of action accrued only when the conveyance deed issued in favour of LRs of Harnam Singh was executed. Since date of conveyance

deed is dated 17.05.2006, legal notice was sent on 27.10.2006 and suit was filed on 10.11.2006, therefore, there cannot be any non-compliance of provision of Section 16(c) of 1963 Act. The attesting witnesses of the agreement to sell have withstood the wrath of the cross-examination and nothing contrary could be ascertained. All the witnesses have deposed in line in the averments in the suit. In order to lend support to his submission, he has relied upon provision of Section 13 of the 1963 Act and ratio decidendi culled out by Hon'ble Supreme Court in *Rathnavathi and another Vs. Kavita Ganashamdas, 2014(4) RCR (Civil) 904* to contend that Article 54 of the Limitation Act enables the parties to vindicate the grievance, much less, claims for specific performance as and when cause of action arises where agreement do not contain specific date qua registration and execution of the sale deed and in case entire money is paid, the vendor can be compensated in terms of money and *Laxman Tatyaba Kankate and another Vs. Smt. Taramati Harishchandra Dhatrak, 2010(3) RCR (Civil) 847* to submit that in case agreement to sell is pertaining of a long period and there has been considerable increase in the price of the land which cannot be the ground for denying the specific performance as the other party can be compensated and thus urges this Court for affirming the findings rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the opinion that there is no force, much less, substance in the submission of Mr. Binderjit Singh. No doubt the considerable period of time has lapsed from the date of execution till filing of the suit but the fact remains that conveyance deed was issued on 17.05.2006 and suit has been

instituted in November 2006. All the attesting witnesses of the agreement to sell have deposed as per averments of plaint, much less, proved the execution of the agreement to sell and payment of the agreed price. I am in agreement with the judgment, relied upon by both the parties that where in respect of agreement entered long time back, adverse party has reasonably compensated clause of compensation. No doubt over long period time, prices of the property increased considerably, therefore instead of calling upon the appellants-defendants to execute the sale deed on the basis of the already paid or price would be determined it in equitable but there has to be a element of compensation.

Accordingly, findings rendered by the lower Appellate Court is qua readiness and willingness, execution of the agreement to sell are affirmed with modification with following direction that respondent-plaintiff shall compensate the appellant-defendants with a sum of Rs.10,00,000/- (Ten lacs) in addition to sum of Rs.30,000/-. On receipt of Rs.10,00,000/- within a period of two months from receipt of certified copy of the order, the appellants-defendants shall execute and register the sale deed, failing which the respondent-plaintiff shall be at liberty to seek execution of judgment and decree in accordance with law.

Substantial questions of law as noticed above are answered in favour of respondent-plaintiff and against the appellants-defendants. Regular Second Appeal stands disposed of.

07.04.2016

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**(AMIT RAWAL)
JUDGE**