

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

RSA No.4691 of 2009 (O&M)

Date of decision : 26.05.2016

Surjit Kaur and others

...Appellants

Versus

Mehanga 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. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Ankit Midha, Advocate for the appellants.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Sanjeev Kumar Arora, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit at the instance of the respondent-plaintiff seeking specific performance of the agreement to sell dated 12.02.1997 in respect of land measuring 31 kanals 18 marlas for total sale consideration of ₹5,58,250/- against the payment of earnest money of ₹5,00,000/-, has been decreed by reversing the judgment and decree of the trial Court, whereby suit, aforementioned, had been dismissed.

Mr. Ashwani Kumar Chopra, learned Senior Counsel assisted with Mr. Ankit Midha, Advocate appearing on behalf of appellants submits

that Vendor Shangara Singh is none else but the father of the respondent-plaintiff. On the same date i.e. on 12.02.1997, two sale deeds Ex.D1 and Ex.D2 in respect of land measuring 24 kanals 15 marlas and 24 kanals 14 marlas, were executed. This fact has not been denied by the respondent-plaintiff. The stipulated date for execution and registration of the sale deed was 26.05.1999, whereas the suit has been filed on 11.05.2002. Readiness and willingness was conspicuously wanting. Shangara Singh who was alive at that time, filed written statement and denied agreement to sell. The agreement to sell does not contain the signatures of the vendee namely Mehnga Singh. There were two attesting witnesses Tarsem Lal and Bakshish Singh and allegedly scribed by Surender Kumar Narang against whom an FIR has been registered. Only Bakshish Singh and Surender Kumar Narang has been examined, whereas Tarsem Lal is common witness of both the aforementioned sale deed, but has been withheld for the unknown reasons.

Ratti Ram, witness of the sale deed categorically deposed that after the execution and registration of the sale deeds, all the parties went at home. The trial Court after examining oral and documentary evidence declined the relief but the lower Appellate Court has decreed the suit by placing burden upon appellant-defendant, for, respondent-plaintiff has failed to prove the thumb impression of Shangara Singh as it has been specifically denied and thus urges this Court for formulation of the following substantial questions of law:-

1. Whether the respondent-plaintiff was ready and willing to perform agreement to sell, much less, there had been compliance of provision of Section 16(c) of 1963 Act?
2. Whether the respondent-plaintiff has proved the agreement to sell in accordance with law?

3. Whether the agreement to sell in the absence of the signature of the vendee is valid contract or not?

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Sanjeev Kumar Arora, learned counsel appearing on behalf of respondent submits that lower Appellate Court being the last Court of fact and law examined the evidence threadbare and in extenso formed the opinion that respondent-plaintiff has discharged the onus of proving the agreement to sell, much less, readiness and willingness. The factum of the entire sale consideration of sale deeds and the agreement to sell had been proved as respondent-plaintiff was having ₹5,00,000/- and borrowed ₹1,50,000/- from the person and another ₹1,00,000/- through the mortgage of the Truck. It is not strange situation where the agreement to sell has been scribed by different scribe. The stamp papers for the registration of the sale deed are withdrawn from the treasury whereas for agreement to sell the same has been taken from the stamp vendor. Even stamp vendor has not been examined as the appellant-defendants were afraid of the truth.

He submits that relationship between the parties are of brothers as Mehnga Singh is born from the first wife whereas appellants are from second wife and thus urges this Court for affirming of the findings rendered by the lower Appellate Court, as no substantial questions of law arises for determination.

He further submits that it is not necessary that the agreement to sell should bear the signature of the vendee in case the attestation of the execution of the agreement to sell has been proved and this aspect has already been pondered upon by various Courts, including Hon'ble Supreme Court.

I have heard learned counsel for the parties and appraised the

paper book and of the view that there is merit and force in the submission of Mr. Chopra, for, it is incumbent upon the respondent-plaintiff to prove the thumb impression of Shangara Singh as the execution of the agreement to sell was specifically denied. Had any assistance of an expert been taken, perhaps the appellant-defendants would have discharged the onus in rebuttal. The readiness and willingness is also conspicuously wanting. No explanation has come forth that throughout i.e. during the lifetime of Shangara Singh, Mehnga Singh approached for execution and registration of the sale deed. Even suit is not preceded by any legal notice. No doubt filing of the suit before the expiry of the limitation does not entail into dismissal but of course for want of readiness and willingness. The statutory ingredients are required to be proved as language used in the statute is “Always being ready and willing”. Expression “always” has not been complied.

There is another aspect of the matter. Scribe of Ex.D1 and Ex.D2 vis-a-vis Ex.P1 is different. On enacting situation as on 12.2.1997, it is strange that after execution of the sale deed, all the parties went to different deed writer for the purpose of execution of agreement to sell. Such a proposition being mooted is not acceptable. Even source of ₹5,00,000/- and as well as borrowing of the amount as noticed above have not been proved except the self-serving statement of the plaintiff. Mehnga Singh had already got the land measuring 49 kanals 4 marlas i.e. 24 kanals 15 marlas + 24 kanals 14 marlas and the agreement to sell is only in respect of 31 kanals 18 marlas. The lower Appellate Court without appreciating the provisions of law fastened the liability by calling upon the appellant-defendants whereas the aforementioned requirement of discharge was upon respondent-plaintiff. In my view, the judgment and decree of the lower Appellate Court, having not noticed the

aforementioned statutory provision of law and attenuating circumstances, suffers from illegality and perversity.

Impugned judgment and decree of lower Appellate Court is set aside.

Substantial questions of law as noticed above are answered in favour of appellant-defendants and against the respondent-plaintiff.

Suit is resultantly dismissed.

Appeal stands allowed.

26.05.2016

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**(AMIT RAWAL)
JUDGE**