

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

RSA No.3494 of 2010 (O&M)

Date of Decision.10.08.2016

Kanwaljit Singh and another

.....Appellants

Vs.

Fuljit Kumar and others

.....Respondents

2. RSA No.3495 of 2010 (O&M)

Kanwaljit Singh and another

.....Appellants

Vs.

Vijay Kumar and others

.....Respondents

3. RSA No.3496 of 2010 (O&M)

Kanwaljit Singh and another

.....Appellants

Vs.

Gurpal Singh and others

.....Respondents

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Kabir Sarin, Advocate
for the appellant(s).

Mr. Rajinder Sharma, Advocate
for respondent Nos.1, 6, 8 to 10 in RSA No.3494 of 2010.
for respondent Nos.1, 2, 7, 9, 11 in RSA No.3495 of 2010 and
for respondent Nos.5 and 7 to 10 in RSA No.3496 of 2010.

Mr. Ashok Singla, Advocate
for respondent No.2 and 5 in RSA No.3494 of 2010.
for respondent Nos.3 and 6 in RSA No.3495 of 2010
for respondent Nos.1 and 4 in RSA No.3496 of 2010.

Mr. A.C. Jain, Advocate
for respondent No.12 in all appeals.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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.

This order of mine shall dispose of three regular second appeal bearing Nos.3494 to 3496 of 2010. The appellants-plaintiffs are aggrieved of the judgment and decree of the lower Appellate Court whereby judgment and decree of the trial court granting the discretion under Section 20 of the Specific Relief Act, has been set aside.

Mr. M.L. Sarin, Senior Advocate assisted by Mr. Kabir Sarin, Advocate appearing for the appellants submits that the agreement to sell dated 29.09.1993 was entered into between defendants Nos.1 and 2 and plaintiff No.3, Ashwani Kumar Bansal. In the aforementioned agreement, Ashwani Kumar Bansal, plaintiff No.3, had entered into agreement to sell dated 29.09.1993 with defendant Nos.1 and 2 in respect of land measuring 71 kanals 13 marlas for a total consideration of ₹26,88,875/- lacs against the payment of ₹1 lac as earnest money. The stipulated date for execution and registration of the sale deed was 30.11.1993. The defendants sold the property vide sale deeds dated 31.03.1994 and 11.04.1994 and the defendants i.e. the subsequent vendees taken the plea of the bona fide purchasers in the written statement but the same was negated by the trial Court, for, they were residents of the same village and therefore, they had the knowledge of existence of the agreement to sell.

The trial court found that the appellants-plaintiffs had been ready and willing to perform their part of the agreement and in exercise of discretion under Section 20 of the Specific Relief Act, the trial Court decreed the suit but the lower Appellate Court reversed the same allowing the appeal filed by the defendants, holding that the defendant Nos.3 to 8 were bona fide purchasers. The lower Appellate Court had assigned no

reasons, much less, discussed the evidence while setting aside the judgment and decree of the trial Court. He has relied upon the judgment of the Supreme Court rendered in **S.Sankaran V.D Kausalya JT 2007(4) SC 251** and **Jagdish Singh Vs. Madhuri Devi (2008) 10 SCC 497.**

He further submits that once the trial Court exercised the discretion under Section 20 of the Specific Relief Act, the lower Appellate Court has to be very circumspect in reversing the same unless and until there is gross illegality, perversity or misreading of the agreement. In respect of his contention, he relies upon the judgment of the Hon'ble Supreme Court in **A.C.Arulappan Vs. Smt. Ahalya Naik AIR 2001 SC 2783.**

As regards the argument with regard to rice in prices, the same was not the ground for declining the relief. No doubt, the suit was filed on 27.11.1996 viz-a-viz the target date of 30.11.1993 but since no objection has been taken with regard to the delay, therefore, in view of the ratio decidendi culled out from the judgment of Supreme Court in **S.V.R. Mudaliar (dead) by LRs and others Vs. Mrs. Rajababu F. Buhari (dead) by LRs and others AIR 1995 SC 1607,** the respondents-defendants could not take such plea, much less, could not have been taken into consideration by the lower Appellate Court. He further relies upon the ratio decidendi culled out in the judgment of Supreme Court in **K. Prakash Vs. B.R. Sampath Kumar AIR 2015 SC 9** to contend that once the trial Court has exercised the discretion, the lower Appellate Court should not interfere or exercise the discretion against the grant of specific performance on sympathetic consideration, much less, extraneous consideration.

As regards the cancellation of the agreement to sell and

forfeiture, no objection *viz-a-viz* the same has been taken, except a passing reference in para 8 of the written statement. The alleged legal notice was never received by the plaintiff No.3 Ashwani Kumar Bansal and therefore, the dictum of law laid down in *I.S. Sikandar (dead) by Lrs Vs. K. Subramani and others (2013) 15 SCC 27* would not be applicable to the facts and circumstances of the present case, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by formulating the substantial questions of law drawn in the memorandum of appeal.

On the contrary, learned counsel Mr. Rajinder Sharma, Mr. Ashok Singla and Mr. A.C. Jain, appearing for the respondents submit that there was a specific averment made with regard to cancellation of the agreement, much less, forfeiture of the earnest money in the legal notice dated 01.12.1993 Ex.D3 and the aforementioned legal notice has been proved to have been sent through registered post as the same was refused to accept by Ashwani Kumar Bansal. As regards the privity of the defendants with Ashwani Kumar Bansal, they further submit that there was no assignment clause giving authority to Ashwani Kumar Bansal to enter into subsequent agreement to sell dated 24.11.1993 and therefore, suit at the instance of plaintiff Nos.1 and 2 i.e. the subsequent vendees or so-called vendees deriving interest from Ashwani Kumar Bansal is not maintainable, much less, they have no locus standi to seek specific performance.

Though the suit had been filed by the alleged vendees i.e. Kanwaljit Singh and Satinder Kaur, plaintiff Nos.1 and 2, deriving interest from the agreement holder Ashwani Kumar Bansal i.e. plaintiff No.3, the present appeal filed independently by plaintiff Nos.1 and 2 is not

maintainable. They also rely upon the judgment of the Supreme Court in *I.S. Sikandar (dead) by Lrs Vs. K. Subramani and others (2013) 15 SCC 27.*

Agreement to sell has been admitted and the plaintiffs have failed to prove readiness and willingness, as no explanation has come forth for filing the suit as late as on 27.11.1996. Such an objection can always be taken as it is essential ingredient of Section 16(c) of the Specific Relief Act, 1963 for granting the discretion under Section 20 of the Specific Relief Act. They further submit that the lower Appellate Court has taken into consideration all the aforementioned facts and rightly discharged the obligation enshrined under Section 96 CPC, thus, urges this Court for confirming the judgment and decree passed by the lower Appellate Court by dismissing the second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. M.L. Sarin, Senior Advocate appearing for the appellants-plaintiffs and the appeals are liable to dismissed on the following grounds:-

- (i) No explanation has come forth in filing a suit as late as on 27.11.1996, which is essential ingredient of Section 16(c) of the Specific Relief Act, 1963 as the purport of the expression "readiness and willingness" is that the party seeking specific performance has to be ready and willing throughout i.e. from the date of execution of agreement, during its subsistence, during the pendency of the suit, much less, till passing of the final decree. The aforementioned view of mine is supported by the ratio decidendi culled out in the judgment of the Supreme Court in

Sita Ram and others Vs. Radhe Shyam 2007(4) RCR (Civil) 533.

(ii) In the suit, there is no challenge to the notice whereby the agreement had been cancelled and therefore, the ratio decidendi culled out in the judgment of Supreme Court in *I.S. Sikandar's case* (supra) squarely applies to the facts and circumstances of the present case. The refusal of the notice does not lie in the mouth of appellants-plaintiffs, who are not even privy of the notice, to rebut this plea. As contrary, they were deriving interest from the agreement holder Ashwani Kumar Bansal. Both the aforementioned plaintiffs have not even stepped into the witness box to discharge their onus but only plaintiff No.3 Ashwani Kumar Bansal stepped into the witness box.

(iii) There is another aspect of the matter. The agreement to sell does not contain assignment clause. In the absence of the same, Ashwani Kumar Bansal had no authority and power to enter into agreement to sell though he could have got the sale deed in favour of any other person and therefore, plaintiffs No.1 and 2 did not have the privity of the contract with the vendors to seek the specific performance of the agreement. There is specific objection in the written statement qua maintainability of the suit.

In view of the foregoing reasons, I am of the view that there is no illegality and perversity in the judgment and decree passed by the lower Appellate Court. There is no dispute with regard to applicability of the ratio decidendi culled out in the judgment of the Supreme Court in *I.S. Sikandar's case* (supra). Moreover, the fact remains that the aforementioned judgment rather go against the plaintiffs as the trial Court

had ignored all the aforementioned facts while decreeing the suit and therefore, the lower Appellate Court has rightly opined against grant of discretion qua specific performance. There is no substantial question of law arises for consideration in the second appeal. All the second appeals are dismissed accordingly.

(AMIT RAWAL)
JUDGE

August 10, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No