

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

RSA No.4082 of 2010 (O&M)

Date of decision:27.08.2016

Amarjit Singh

... Appellant

Vs.

Mandeep Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Aakash Singla, Advocate and
Mr. Ashok Singla, Advocate
for the appellant.

Mr. G.S.Nagra, Advocate
for respondents No.1 to 5.

AMIT RAWAL J. (Oral)

Appellant - defendant No.1 is aggrieved of the concurrent findings of facts and law, whereby, civil suit No.302 of 1997 seeking possession by way of specific performance of the agreement to sell dated 16.08.1993 and consequential relief of permanent injunction, has been decreed by both the Courts below.

Mr. Aakash Singla, learned counsel appearing on behalf of appellant/defendant No.1, in support of grounds of appeal has raised the following arguments:-

- i) Both the Courts below have erroneously arrived at a finding that agreement to sell dated 16.08.1993 was admitted, whereas, it does not show that there has been gross misreading

of the written statement.

ii) The respondents failed to prove the payment of earnest money of ₹90,000/-, much less, did not even examine the handwriting expert *vis-a-vis* signatures of Attorney of the appellant.

iii) The readiness and willingness was conspicuously absent as the suit was filed on 16.01.1997, whereas, the target date for execution and registration of the sale deed was 15.01.1994. In this regard, no explanation has come forth in the pleadings and evidence.

iv) The affidavit dated 15.01.1994 has been attested by the Oath Commissioner and his register has not been brought on record, much less, the same has been lost. All these factors, if read in conjunction, there would not have been any occasion for the Court below to exercise the discretionary powers under Section 20 of Specific Relief Act, 1963 (hereinafter referred to as “1963 Act”).

He further submits that on the target date, the respondents were not present with the entire balance sale consideration and thus, urges this Court for setting aside the findings rendered by both the Courts below by formulating the substantial questions of law as culled out in the memorandum of appeal.

Mr.G.S.Nagra, learned counsel appearing on behalf of

respondents No.1 to 5 submits that Power of Attorney dated 12.04.1993 executed by vendor in favour of Kewal Singh had never been cancelled or revoked. Kewal Singh acted on the basis of the power given in the Attorney as an agent and he appeared in the witness box and admitted his signatures. The agreement to sell had the signatures of two attesting witnesses, namely, Gurmit Singh son of Harbans Singh and Gurmit Singh son of Avtar Singh. Though Gurmit Singh son of Harbans Singh has been examined by the defendants as DW1 and another Gurmit Singh as PW2. The testimony of the attesting witnesses, if read in entirety, would leave no manner of doubt that agreement to sell has been proved, much less, the payment of earnest money. Kewal Singh also admitted the signatures on the Power of Attorney. There has been a categorical pleading in paragraph 10 of the plaint regarding admission in the suit by the appellant for execution and registration of the sale deed but in the written statement, there has been a vague and evasive denial, therefore, the plaintiffs cannot be thrown out on the ground of readiness and willingness, much less, assume it for an argument sake, agreement to sell is deemed to have been denied, the defendants cannot take up the plea of readiness and willingness, in view of the ratio decidendi culled out by this Court in two judgments rendered in **Lal Chand vs. Tek Chand 2013(5) RCR (Civil) 104** and **Jora Singh vs. Lakwinder Kumar and others 2011 (1) RCR (Civil) 130**. He further submits that in pursuant to agreement to sell, sale deed has been executed and only possession has to be taken and thus, urges this Court for affirming the findings rendered by

both the Courts below as no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Aakash Singla, for the following reasons:-

It would be apt to reproduce paragraph 10 of the plaint and corresponding paragraph of the written statement:-

Para 10 of the plaint

“That the plaintiffs have several times thereafter requested the defendant No.2 to execute the sale deed of the suit land as per the terms of the agreement in their favour but the defendant No.2 has been avoiding the requests of the plaintiffs on one or the other pretext and has finally refused to do so on 13.1.1997. Hence the present suit.”

Para No.10 of written statement

“That the contents of para no.10 of the plaint are specifically denied.”

On joint reading of the aforementioned pleadings, the appellant had been very evasive in denial with regard to the specific averments made in paragraph 10. It is well settled law that when the pleadings are evasive, vague and not in consonance with the provisions of Order 8 Rule 5 of Code of Civil Procedure, the pleadings in the corresponding paragraph are deemed to be admitted, therefore, there is no force in the submission having not approached the Court seeking specific performance with promptitude.

Gurmit Singh son of Avtar Singh to a question in cross-examination had admitted that he had seen Kewal Singh while counting the money and thus, payment of earnest money of ₹90,000/- has been proved. Even in the cross examination, Kewal Singh was asked about the receipt of earnest money before appending the signatures and his reply was that he had received earnest money of ₹90,000/-, thereafter, he attested agreement Ex.P1, thus, there is no force in the submission of Mr. Singla that PW2 in one line examination-in-chief stated that he had not seen the payment of earnest money. The entirety of the evidence led has to be seen and not in piecemeal. The other attesting witness, namely, Gurmit Singh son of Harbans Singh, in cross-examination admitted that the typist, who typed the agreement Ex.P1 in his presence had read over the contents to the parties to *lis* and Kewal Singh, defendant No.2, Attorney of the appellant had signed Ex.P1 at two places after admitting its contents to be true and correct. DW2-Kewal Singh, in cross examination also admitted that he had appended the signatures at two places in evidence and he was subjected to detailed cross examination but the appellant had not been able to shatter his statement. In fact, he was suggested to the question whether he was still holding a Power of Attorney or not, the answer was in positive. The Oath Commissioner had also appeared and acknowledged his signatures on the affidavit. Non-production of the register would not be material as the Oath Commissioner has to deposit the register every year. If at all, the appellant had any apprehension regarding genuineness of the attestation, he could have summoned the

register. In my view, the respondents had been able to prove the ingredients of Section 16 (c) of 1963 Act and therefore, rightly so, both the Courts below have exercised the powers under Section 20 of 1963 Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 27, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No