

Regular Second Appeal No.652 of 2010 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.652 of 2010 (O&M)

Date of Decision: August 26, 2016

Kashmir Singh

...Appellant

Versus

Bachitter Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.M.S.Sachdev, Advocate,
for the appellant.

Mr.Malkeet Singh, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 14.9.1996 in respect of land measuring 8 kanals, i.e., 160/574 shares for a total sale consideration of ₹1,50,000/- against the receipt of earnest money of ₹90,000/-, has been decreed.

Mr.M.S.Sachdev, learned counsel for the appellant-defendant submits that the target date for execution of the sale deed was 30.3.1998, which was extended upto 30.3.1999. The appellant-defendant

was not given any effective opportunity to rebut the averments/lead

evidence in support of the defence. At the appellate stage, an application for additional evidence to place on record copy of receipt dated 11.3.1998, allegedly executed by the vendees, was sought to be placed on record to show that it was a loan transaction, but the same has erroneously been declined. The respondent-plaintiff has not been diligent/always been ready and willing to perform his part of the agreement, thus, the Courts below ought not to have exercised the discretion under Section 20 of the Specific Relief Act, 1963 (for short “1963 Act”). He further submits that the sale consideration is inadequate as the market value of the property is much more. The respondent-plaintiff has failed to prove the readiness and willingness, i.e., compliance of Section 16(c) of 1963 Act. In support of his contentions, relies upon **N.P.Thirugnananam (Dead) by L.Rs Versus Dr.R.Jagan Mohan Rao and others, (1995) 5 Supreme Court Cases 115, Smt.Raj Rani Bhasin and others Versus S.Kartar Singh Mehta, AIR 1975 Delhi 137, Ishar and others Versus Sheo Ram and others, 1987 PLJ 421, Kusum Rani Versus Yashwant Rai, 2006(1) RCR 285 and State of Punjab Versus Partap Singh, 2009(5) RCR (Civil) 159** and, thus, urges this Court for setting-aside of the findings.

Mr.Malkeet Singh, learned counsel for the respondent-

plaintiff submits that preceding to the filing of the suit, a legal notice

(Ex.P5) was sent, but it was returned back and Ex.P6 is the acknowledgment receipt. Agreement to sell has been proved vide Ex.P2, copy of the register of the Scribe, Ex.P3 receipt dated 14.9.1996, Ex.PW3/A and Ex.PW3/B copies of register of Scribe and Ex.P4 affidavit regarding marking of presence. Witness Hari Krishan Agnihotri has also been examined as PW2, much less Sadhu Ram PW-3. Even otherwise, the appellant-defendant cannot take up the plea of readiness and willingness in the absence of the denial of the agreement to sell. Even the additional evidence sought to be produced on record before the Lower Appellate Court is neither here nor there and it does not prove whether actually the receipt bore the signature of Bachittar Singh or is a created document. If at all, it is so, nothing prevented the defendants to deny the same and come with the plea by filing reply to the legal notice and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr.Sachdev.

Ex.P5 and Ex.P6 are the notice and the acknowledgment receipt. If at all, there was some truth in the written statement, it could have been rebutted from the register of the scribe. Receipt and agreement to sell have been proved through the testimony of the attesting witnesses.

The appellant-defendant had been negligent in not leading evidence in support of the defence. There is no dispute to the ratio decidendi culled out in the judgments cited supra, but the fact remains that once the appellant-defendant has denied the agreement to sell, in view of the judgment rendered in **Lal Chand Versus Tek Chand, 2013 (5) RCR (Civil) 104** and **Jora Singh Versus Lakhwinder Kumar & Ors., 2011 (1) RCR (Civil) 130**, he cannot take the plea at such stage.

In view of the evidence noticed above, the plaintiff has proved the ingredients of Section 16-C of 1963 Act and rightly so, the discretion under Section 20 of 1963 Act has been exercised. The Lower Appellate Court has rightly dismissed the application seeking additional evidence as the receipt is neither here nor there. The receipt apparently appears to be fresh and on an old paper. It, *prima-facie*, appears that it is a forged document.

No ground for interference is made out. No substantial question of law arises for determination.

Appeal stands dismissed.

August 26, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No