

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2101 of 2011 (O&M)

Date of Decision: November 16, 2016

Joginder Singh

...Appellant

Versus

Daljit Singh & others

...Respondents

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

Present: Mr.S.K.Bajaj, Advocate,
for the appellant.

Mr.Sandeep Khunger, Advocate and
Ms.Sukhpreet Grewal, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the non-grant of discretionary relief under Section 20 of the Specific Relief Act, 1963 (for short “1963 Act”)

Mr.S.K.Bajaj, learned counsel for the appellant-plaintiff submits that vendor-defendant No.1 Daljit Singh had entered into an agreement to sell dated 5.2.2003 for sale of land measuring 14 kanals at the rate of ₹1,05,000/- per acre against the payment of earnest money of ₹40,000/-. The stipulated date for registration and execution of the sale deed was 24.6.2003. The attesting witnesses and as well as the scribe have been examined to prove the execution of the agreement to sell, but the Courts below have declined the discretionary relief on the ground that the appellant-plaintiff had been wanting compliance of provisions of Section 16

(c) of 1963 Act. He submits that the findings are not only perverse but erroneous, for, on stipulated date, i.e., 24.6.2003, the appellant had approached the office of Sub Registrar Arniwala Seikh Subhan, Tehsil Fazilka at 11.00 AM and remained present till the closing hours. His presence was marked at Fazilka and his son Kuldeep Singh and one Gurmit Singh were also present. He was ready and willing to perform his part of the contract and this aspect has been proved through service of legal notice dated 11.7.2003, but defendant No.1-vendor did not come present and was compelled to file the suit. Only the alternative relief has been granted which is totally alien to the oral and documentary evidence on record. Once the defendant has admitted his signatures on the agreement to sell, and did not prove the averment of alleged loan and, thus, for all intends and purposes, the Courts below ought to have granted the discretionary relief. In support of his contention, he has relied upon the following judgments:-

1. **Jora Singh Versus Lakhwinder Kumar & Ors., 2011 (2)**
Civil Court Cases 113 (P&H);
2. **Lal Chand Versus Tek Chand, 2013 (5) RCR (Civil) 104;**
3. **Balbir Singh Versus Manjit Kaur and another, 2013 (1)**
RCR (Civil) 740;
4. **Gurjit Singh and another Versus Tarsem Singh and another, 2012(4) RCR (Civil) 53;**
5. **Krishan Kumar Verma Versus Narender Prabhakar,**
2010 (1) RCR (Civil) 183;
6. **Gamdoor Singh Versus Ajaib Singh, 2013(2) RCR (Civil)**
569;
7. **Hodil Singh (Deceased) represented by Legal Heirs**

Versus Bhagwant Singh (Deceased) represented by Legal Heirs, 2010 (2) Civil Court Cases 608 (Allahabad);

8. R.V.E. Venkatachala Gounder Versus Arulmigu Viswesaraswami & V.P. Temple and another, (2003) 8 SCC 752;

9. Motilal Jain Versus Smt.Ramdasi Devi and others, AIR 2000 SC 2408.

He further submits that the appeal filed in this Court was accompanied by an application seeking condonation of delay of 109 days, which has been allowed *ex-parte* vide order dated 21.7.2011. Respondent No.3 was impleaded vide order dated 5.12.2014 under the provisions of Order 22 Rule 10 CPC being the subsequent vendee, in essence he cannot supplement any other plea what has been taken by the defendant-vendor and, thus, the judgments and decrees of both the Courts below are liable to be modified and the suit be decreed in toto.

Per-contra, Mr.Sandeep Khunger, learned counsel for respondent No.3 submits that the vendor had already parted with the land vide sale deed dated 17.6.2011 and the Regular Second Appeal was filed on 11.5.2011, which was accompanied by an application seeking condonation of delay, aforementioned, which had been condoned as defendant No.1 was not having any right, title and interest. The application moved in this regard was hotly contested, but the same has been allowed. The interim order was passed in August, 2011, whereas the sale deed, as noticed above, is prior in time, therefore, the provisions of Section 52 of the Transfer of Property Act would not apply. A valuable right has accrued as the land has been purchased for a considerable amount of consideration and, thus, it is in these

facts and circumstances, the alternative relief is perfectly legal and justified and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Bajaj as the order condoning the delay is *ex-parte*. The explanation given in the application, though has been noticed, but the fact remains that during the interregnum, third party right has been created in favour of respondent No.3 particularly when there was no interim order at that time, thus, it cannot be hit by doctrine akin to *lis pendens*.

As regards the readiness and willingness, the appellant-plaintiff has not been able to prove affidavit Ex.P2 regarding his presence in the office of Sub Registrar Arniwala Seikh Subhan and as well as at Fazilka, for, as no person from the concerned department has been examined. Even the persons alleged to have accompanied him have also not come forwarded to support his case. It is for this reasons that the appeal was filed with 109 days delay. The defendants did not appear and probably on this count delay was condoned. As noticed above, during the interregnum, there had been exchange of the land and respondent No.3 has been impleaded.

In my view, the appellant-plaintiff has not been able to prove the ingredients of Section 16(c) of 1963 Act and rightly so, has been held entitled to alternative relief. There is no dispute to the ratio decidendi culled out in judgment cited supra, but the facts of each and every case have to be seen. Averments in paragraph 7 of the plaint leave no manner of doubt that there had been, at any point of time or throughout readiness and willingness. For the sake of brevity, paragraph 7 of the plaint reads thus:-

“7. That the defendant was repeatedly asked to perform his part of the contract. A registered A/D notice 11-7-2003 was

also served upon the defendant in this regard. The plaintiff also requested the defendant not to alienate the suit property in favour of somebody else except the plaintiff but to no effect. Hence this suit.”

After serving of the notice, there is no reference or pleading as to what steps have been taken in this regard.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication. No ground for interference is made out.

Appeal stands dismissed.

November 16, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No