

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

RSA No.4727 of 2011 (O&M)

Date of decision : 18.10.2016

Hardev Singh

...Appellant

Versus

Gurinder Singh and another

..Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. Amarjit Markan, Advocate for the appellant.

Mr. P.S. Sekhon, Advocate for respondents.

\*\*\*\*

**AMIT RAWAL, J. (Oral)**

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby judgment and decree of the trial Court granting the discretionary relief under Section 20 of the Specific Relief Act, 1963, has been declined.

Mr. Amarjit Markan, learned counsel appearing on behalf of appellant-plaintiff submits that respondent had entered into agreement to sell dated 05.03.2002 in respect of land measuring 56 bighas 10 biswas for total sale consideration of ₹3,21,300/- against the receipt of earnest money of ₹1,70,000/-. The stipulated date for execution and registration of the sale deed was 15.03.2003 which was extended to 15.06.2003. Being holiday, appellant marked the presence on 16.06.2003 but the defendant did not

come forward. Accordingly, suit, with promptitude, was filed on 19.08.2003. The stand of the respondents-defendants in written statement was complete denial of the agreement. Rather, different stand, qua purchasing the cloth from the plaintiff was taken, and, in lieu thereof, entered into the security by averring that blank pronote thus alleged receipts were got signed, much less, fraud had also played upon them, but did not plead that the signatures were appended on blank stamp papers. The defendant attempted to prove on record earlier agreement dated 07.03.2001 allegedly entered into between the parties in respect of land measuring 22 bighas and odd area, but the aforementioned original agreement to sell has also not seen the light of the day as only photocopy been placed on record. The trial Court decreed the suit, but the lower Appellate Court has heavily relied upon the aforementioned documents, having not proved in accordance with law, much less, had no relevancy for the adjudication of the lis. The defendant has failed to prove signatures on the agreement, much less, even did not lead the evidence qua execution of the security, thus, judgment and decree of the lower Appellate Court is liable to be set aside, being perverse.

Per Contra, Mr. P.S. Sekhon, learned counsel appearing on behalf of respondents-defendants submits that no doubt the photocopy of the agreement to sell has been brought on record but the original was with the appellant-plaintiff and in this regard specific question was also posed. The execution of the previous agreement with the present agreement leaves no manner of doubt that parties had no intention to enter into the agreement to sell but it was only transaction for the purpose of securing the amount. All these factors have been taken into consideration by the lower Appellate

Court, thus, discretionary relief has rightly been declined, thus, urges this Court to affirm the findings rendered in judgment and decree under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Amarjit Markan, for, the alleged agreement to sell dated 07.03.2001 is in respect of land measuring 22 bighas and odd area though original of the same has not seen the light of the day or produced, much less, proved on record, in accordance with law. Even otherwise, it would be insignificant as the signatures on the agreement to sell in dispute have not been denied. The defendant had occasion to dispel and disprove the same by taking the assistance of the expert, or agency recognized by the Government but failed to take any steps. The plaintiff, feigned ignorance with regard to the execution of the agreement to sell dated 07.03.2001 when specifically subjected to cross-examination likewise was reply by the defendant, wherein he also feigned ignorance regarding execution of the previous agreement to sell dated 07.03.2001. If it is so, there was no need for lower Appellate Court to ponder upon the previous agreement to sell, which had no relevancy, much less, immaterial for the adjudication of the lis. The only question to be seen in suit for specific performance was that whether parties had actually entered into agreement to sell and had intention to purchase and sale of the land and also, if there is any readiness and willingness on the part of the plaintiff or not.

All these ingredients have been proved through the testimony of the attesting witnesses, and rightly so, the trial Court granted the

discretionary relief.

I am also of the view that findings given by the lower Appellate Court laying emphasis on previous agreement to sell is neither here nor there, much less, fallacious and perverse and is hereby liable to be set aside.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H*

**137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 – 29] ”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons aforementioned, judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Suit stands decreed. Resultantly, appeal stands allowed.

Decree sheet be prepared accordingly.

The appellant-plaintiff is directed to comply with the direction contained in the judgment and decree of the trial Court and shall deposit the entire sale consideration within a period of two months from the date of receipt of certified copy of the order and on deposit, shall be entitled to seek the execution and registration of the sale deed and in case, defendant does not come forward, he shall be entitled to seek the execution of the decree in accordance with law.

**18.10.2016**

*pawan*

**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**