

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 39 of 2012 (O&M)

Paramjit Singh
... Appellant(s)

Versus

Ishar Singh
... Respondent(s)

AND

2. Regular Second Appeal No. 496 of 2012 (O&M)

Ishar Singh
... Appellant(s)

Versus

Paramjit Singh
... Respondent(s)

Date of Decision : 21.03.2016

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. B.R.Bansal, Advocate
for the appellant (In RSA-39-2012) and
for respondent (In RSA-496-2012).

Mr. Chanchal K. Singla, Advocate
for the respondent (In RSA-39-2012) and
for the appellant (In RSA-496-2012).

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Shekher Dhawan, J.

This order of mine shall dispose of two regular second appeals i.e. Regular Second Appeal No. 39 of 201, filed by Paramjit Singh, plaintiff/appellant and Regular Second Appeal No. 496 of 2012, filed by Ishar Singh, defendant/appellant as both the appeals have arisen out of common judgment & decree dated 28.9.2011, passed by learned District Judge, Patiala. For the purpose of adjudication, facts are being taken from Regular Second Appeal No. 39 of 2012.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiff Paramjit Singh had filed a suit for specific performance of agreement of sale of suit land dated 13.6.2000 (Ex.P2) and the Court of first instance dismissed the suit on the ground that plaintiff was not ready and willing to perform his part of the agreement. Plaintiff preferred appeal against the said judgment and the Court of first appeal partly accepted the appeal, thereby setting aside the judgment & decree dated 10.8.2007, passed by the Court of first instance and suit of the plaintiff was decreed partly for refund of ₹ 2,00,000/- along with interest at the rate of 9% per annum from the date of advancement of earnest money i.e. 13.6.2000 till realization of the amount with proportionate costs. Being aggrieved by this judgment, two separate appeals have been filed i.e. one by plaintiff/appellant-Paramjit Singh (Regular Second Appeal No. 39 of 2012) and another by the defendant/appellant-Ishar Singh (Regular Second Appeal No. 496 of 2012).

Learned counsel for the plaintiff/appellant-Paramjit Singh, while assailing the findings recorded by the Court of first instance as well as the Court of first appeal, submitted that first Appellate Court partly decreed the suit for recovery of ₹ 2,00,000/- without considering the additional evidence available on the file. It had come on the file that plaintiff was always ready and willing to perform his part of the agreement and he was having ready cash for that purpose. It had also come in the statement of witness that he had taken cash from his commission agent. More so, readiness and willingness is to be established from the entire pleadings of the parties and the evidence available on the file and not to be decided on any mathematical formula that a party should plead and prove in specific words. On this point, reliance was place upon the judgment rendered by this Court in ***Parmod Bhushan Pal v. Bachan Singh 2006(2) RCR (Civil) 381.***

Learned counsel for the appellant/plaintiff further submitted that as regard to readiness and willingness and execution of the agreement the evidence is to be read into its entirety. On this point, reliance was placed upon the judgment rendered by this Court in ***Jamaluddin v. Ram Avtar and Another 2011(2) Law Herald 1275.***

Learned counsel for the appellant/plaintiff further submitted that execution of the agreement was duly proved, whereas the Court of first instance dismissed the suit in its entirety and the Court of first appeal modified the relief to the extent that plaintiff was entitled to receive a sum of ₹ 2,00,000/-, the amount which was received by the

defendant and the said findings are required to be set aside and suit of the plaintiff for specific performance of agreement (Ex.P2) be decreed and appeal be accepted.

While arguing on these points, learned counsel for the defendant/appellant submitted that the Court of first instance had rightly dismissed the suit as plaintiff has failed to prove the due execution of agreement as well as readiness and willingness on his part to perform the agreement. Learned counsel for the defendant/appellant further submitted that the plaintiff has taken altogether contradictory pleas in the plaint as well as in the legal notice. At the first instance, plaintiff had filed a suit for specific performance of the agreement with the main plea that suit land was to be sold for a total consideration of ₹ 3,00,000/-. Thereafter, application for amendment of the plaint was filed which was allowed on the ground that suit land was agreed to be sold at the rate of ₹ 3,00,000/- per acre. However, in the legal notice dated 11.12.2000, plea was taken that the suit land was to be sold for a total sum of ₹ 3,00,000/-. To the contrary, stand of the defendant was that in fact defendant had borrowed ₹ 2,00,000/- from the plaintiff and the said amount has already been repaid. There is absolutely no evidence available on the file that plaintiff was having sufficient amount available so as to pay the earnest money and to pay the balance sales consideration. To the contrary, it has come on the file that plaintiff was having a sum of ₹ 96,000/- only. But there is nothing on the file that any amount was not actually paid in the presence of any witness and on

that ground, judgment & decree dated 28.9.2011, passed by the first Appellate Court is liable to be set aside.

While arguing further, learned counsel for the defendant/appellant submitted that right from the beginning, the defendant has come with the plea that he had borrowed a sum of ₹ 2,00,000/- from the plaintiff and admitted his signatures and in the background of said pleadings even the statement of Handwriting Expert was not of any help. As regard to genuineness of agreement (Ex.P2), the stamp vendor was examined as PW.1 and he had deposed in so many words that stamp paper was purchased by the plaintiff and not by the defendant and that fact also makes the version of the plaintiff doubtful.

To conclude, learned counsel for the defendant/appellant submitted that there was complete variance in the pleadings and amended pleadings from the side of plaintiff and the entire case of the plaintiff became doubtful and in such circumstances, suit for specific performance of agreement relating to immovable property is not to be decreed. On this point, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in ***Ganesh Shet v. Dr. C.S.G.K.Setty 1998(3) ALL MR 627.***

Learned counsel for the defendant/appellant also submitted that if a party to the contract denies his signatures on the agreement of sale, plaintiff cannot be granted specific performance thereof unless he proves the signatures of that party on the agreement and plaintiff has not been able to prove that fact by leading evidence and as such suit of

the plaintiff deserves dismissal. On this point, reliance has been placed upon judgment of this Court rendered in ***Shiv Charan v. Siri Ram and Another 2008(3) RCR (Civil) 454.***

Having considered the submissions made by learned counsel for the parties and having perused record of the case, this Court is of the considered view that plaintiff had sought specific performance of the agreement (Ex.P2). Law on the point is settled that for seeking specific performance of agreement, a party has to make out a clear cut case and to prove the same and if there is any variance in the pleadings and prove the same, specific performance of agreement of sale of suit property cannot be ordered. In case ***Ganesh Shet v. Dr. C.S.G.K.Setty*** (*supra*), Hon'ble the Apex Court observed as under:-

"23. As to the 'general relief' in suits for specific performance it is stated:

"In accordance with the general rules and its qualifications and limitations where the bill or complaint in a suit for specific performance contains a prayer for general relief, the court may grant relief consistent with the facts pleaded and proved and the court may in some cases grant or award partial relief."

In other words, other relief to be granted must be consistent with both pleading and proof, in suits for specific performance. The principles stated above under (a) and (b) appear to us to be the broad principles which are to be

borne in mind while dealing with exercise of discretion in cases of specific performance. We decide Point 3 accordingly."

In the case in hand, plaintiff had originally come with the plea that agreement of sale (Ex.P2) was relating to sale of suit land for a total sale consideration of ₹ 3,00,000/-. Thereafter, amendment was sought that agreement was for sale of suit land at the rate of ₹ 3,00,000/- per acre. A bare perusal of agreement (Ex.P2) established that there is interpolation on this point in the agreement, thereby making the case of plaintiff to be doubtful. This fact has also been admitted by the Handwriting Expert having been examined before the Courts below.

The Court of first appeal has already dealt with all these points while deciding the first appeal. In light of this background, plaintiff's plea in the original plaint and amended plaint as well as legal notice are at a quite variance and it is not a case where specific performance of such an agreement should be ordered and the Court of first appeal has rightly declined the relief of specific performance of the agreement. At the same time, the Court of first appeal ordered for payment of ₹ 2,00,000/- as a discretionary relief in a suit for specific performance as per the provisions of Section 20(1)(c) of the Specific Relief Act, 1963. The Court of first appeal has also rightly placed reliance upon the provisions of Section 33 of the Specific Relief Act and Section 65 of the Contract Act, 1872 which enables the Court to restore the benefit to the party or compensation to be paid if any instrument is

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cancelled or successfully resisted. To that extent, defendant is certainly liable to pay the amount, which he had received.

In view of above, judgment & decree dated 28.9.2011, passed by the first Appellate Court is affirmed and resultantly both the appeals are dismissed.

**(Shekher Dhawan)
Judge**

March 21, 2016

"DK"