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

**RSA-4225-2012 (O&M)
Date of decision : 13.12.2016**

Malkiat Kaur

... Appellant

Versus

Manpreet Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Samya Singh, Advocate and
Ms. Harbani Shinh, Advocate
for the appellant(s).

Mr. Maharaj Kumar, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

The appellant(s)-defendant(s) being the LR of Harminder Singh is in regular second appeal against the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 17.05.2001 in respect of suit property described therein, has been decreed by both the Courts below.

Mr. Vikas Bahl, learned Senior Counsel assisted by Ms. Samya Singh and Ms. Harbani Shinh, learned counsel appearing on behalf of the appellant(s)-defendant(s), submits that Harminder Singh, the alleged vendor, had gone missing on his trip to Sri Hemkunt Sahib and in this regard, a DDR dated 30.06.2001 (Ex.DW-3/A) was lodged. The suit against the dead person was not maintainable, yet decreed *ex parte* on 17.02.2003.

No doubt the application for setting aside the *ex parte* judgment and decree was moved and by disclosing, aforementioned fact. Even the LRs of Harminder Singh were also brought on record. However, in this process, the appellant(s)-defendant(s) have been able to obtain a decree as per the provisions of Section 107 of the Indian Evidence Act, viz-a-viz the factum of death of Harminder Singh, who was legally declared as dead vide judgment and decree 17.03.2010. The alleged agreement to sell, though, specified that Harminder Singh was the owner of 1/4th share, but the defendant(s)-vendee(s) would be entitled from Khasra No.215 measuring 4 bighas. The Courts below have also abdicated in reading Khasra No.118 (5-11) as Khasra No.218 (5-14). There is no evidence to that effect. The contents of the agreement to sell, if according to the Courts below have been proved, have to be read as it is, there cannot be any interpretation. The total area is measuring 44 bighas 6 biswas. The factum of death was also got published in the Newspaper in Punjab Tribune, in fact, the appellant(s)-defendant(s) had not kept the factum of missing/alleged death of Harminder Singh closed to their chest on concealment thereof. The target date for execution and registration of the sale deed was kept one year on payment of ₹ 95,000/- as earnest money against the total sale consideration of ₹ 2,00,000/-. All these factors would reveal that it was a loan transaction and the parties had not intended to perform their part of the agreement to sell. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in “S. Rangaraju Naidu V/s S. Thiruvarakarasu” 1995 (3) RRR 298.

He further relies upon the judgment rendered by this Court in

“Bhagwan Singh (deceased) rep. By LRs V/s Nawab Mohammad Iftikhar

Ali Khan and others” 1982 PLR 668, to contend that the contract of sale has to be definite, in essence, in the absence of definite expressions, the contract had become un-executable, therefore, discretionary relief under Section 20 of the Specific Relief Act could not have been granted.

He further submits that the suit against the dead person is not maintainable and in support of his contentions, he relies upon the *ratio decidendi* culled out by the judgment of the Hon'ble Allahabad High Court in **“Ram Singh V/s Board of Revenue, U.P. Allahabad and others”, 1964 AIR (Allahabad) 310** and the judgments of this Court rendered in **“Chanchal Singh V/s Smt. Gurnam Kaur and others” 2011 (2) PLR 212** and **“Nachhattar Singh V/s Darshan Singh and others” 2011(1) CivCC 726**.

The judgment and decree of the lower Appellate Court is not in conformity with the provisions of Order 41 Rule 31 CPC and in support of his contentions, he relies upon the *ratio decidendi* culled out by the judgment of this Court in **“Smt. Harjit Grewal and others V/s Dr. Vinod Kumar Batra and others” 2010 (5) RCR (Civil) 340**.

It has resulted into a great hardship as considerable time has been spent and therefore, adequate remedy qua Court below was to refund the earnest money along with interest. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Bal Krishan and another V/s Bhagwan Das (dead) and others” 2008 (2) RCR (Civil) 732**.

His another argument is that on bare looking of the agreement, it appears that the thumb-impressions of Harminder Singh were on a blank paper.

This Court while hearing the arguments called upon Mr. Vikas Bahl, as to whether any attempt was made to belie the signatures by taking the assistance/aid of the Government Agency or any Agency approved by the Government regarding comparison of the signatures and the answer was in "Negative". Thus, he urges this Court for setting aside the findings under challenge as there is gross illegality and perversity.

Per contra, Mr. Maharaj Kumar, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the agreement to sell has been proved to the hilt as one of the attesting witnesses proved the same despite extensive and horrendous cross-examination. Since the *khata* was joint, the respondent(s)-plaintiff(s) would be entitled to only share as mentioned in the agreement to sell and would be at liberty to seek the partition of the property. The appellant(s)-defendant(s) had moved an application under Order 9 Rule 13 CPC which was dismissed as withdrawn and thereafter, filed second application which was not maintainable, though it has been set aside and in this process, had obtained the decree of death under Section 107 of the Indian Evidence Act. The LRs were allowed to be impleaded on the application moved under Order 22 Rule 3 read with Order 1 Rule 10 CPC. The Courts below after appreciating the aforementioned fact granted the discretionary relief, thus, urges this Court for affirming the findings under challenge as there is no gross illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book and as well as the case law at bar and of the view that there is no merit and force in the submissions of Mr. Vikas Bahl, for, the term and condition of the agreement to sell leaves no manner of doubt that all the LRs of the vendor would be bound by the act done by their father. As per

decree dated 17.03.2010, Harminder Singh deemed to have been died and they are bound by his act. No effort has been made to get the signatures of Harminder Singh compared from any Expert Agency including that of the Government, thus, the recital thereof would be read as it is, which has been proved through the testimony of Mr. Ravinder Aneja. The jamabandi brought on record shows the joint *khata* of Harminder Singh along with other co-sharers. He had intended to sell the land measuring 4 bighas, but had specified Khasra No.215, which according to my view, could not have been in the absence of partition, particularly the khewat is joint. The findings of the lower Appellate Court terming Khasra No.118 (5-11) to be read as Khasra No.218 (5-14) is neither here nor there as the vendor had intended to part with the possession from khasra No.215. Any joint owner can sell his share to another party and the subsequent vendee would assume status of co-sharer, but possession only entitled would be symbolic as actual possession can be obtained by seeking partition in a competent Court of law. The readiness and willingness has also been proved as the agreement to sell is dated 17.05.2001 and one year was fixed for execution and registration of the sale deed. The suit had been filed on 07.09.2002.

There is no dispute to the *ratio decidendi* culled out in the judgments cited at bar/noticed above, it is not a case where the evidence brought on record reveals that the respondent(s)-plaintiff(s) was in the knowledge of the missing report of Harminder Singh. Even an application filed under Order 9 Rule 13 CPC did not disclose this fact and the appellant(s) being LR volunteered to implead as a party. The agreement to sell also contains the recital regarding all LRs being bound, thus, the *ratio decidendi* culled out in the judgments cited at bar would pale into

insignificance.

As regards the hardship, I am of the view that since the agreement to sell was dated 17.05.2001, noting prevented the appellant(s)-defendant(s) to come out with the some proposal to the respondent(s)-plaintiff(s), when they moved an application under Order 9 Rule 13 CPC at the first instance and later withdrew it and waited for a considerable time as late as in 2010 as *ex parte judgment* and decree is dated 17.02.2003 and after obtaining the decree on 17.03.2010 under Section 107 of the Indian Evidence Act, came forward. The description of the property, in view of the finding arrived at regarding 1/4th share, is proved through jamabandi (Ex.P-3). It reveals that the respondent(s)-plaintiff(s) would be entitled to only a share, therefore, the *ratio decidendi* culled out would not apply to the facts and circumstances of the present case.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

13.12.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**