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

**RSA-4845-2012 (O&M)
Date of decision : 07.09.2016**

Tulli Ram and another

... Appellants

Versus

Fateh Singh @ Fatehbir and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. Nipun Vashist, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant(s)-defendant Nos.1 & 2 are aggrieved of the judgment and decree of both the Courts below, whereby the suit seeking specific performance of agreement to sell dated 18.09.2000 executed by alleged attorney-holder Gulab Singh, whose attorney cancelled on 03.10.2000, has been decreed while exercising the discretion under Section 20 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act').

Mr. Amit Jain, learned counsel appearing on behalf of the appellant(s)-defendant(s) submits that the appellant(s)-defendant(s) had executed a General Power of Attorney dated 06.09.2000 in favour of their cousin Gulab Singh, who breached the trust and entered into an agreement

to sell dated 20.09.2000 with one Om Parkash. Before the aforementioned act could fructify into sale deed, GPA was cancelled vide cancellation deed dated 03.10.2000, yet the agent exceeded the jurisdiction and executed a sale deed dated 05.10.2000. The aforementioned act of the agent was challenged by filing the suit which was decreed vide judgment and decree dated 29.04.2005. The appellant(s)-defendant(s) was flabbergasted, upon receiving upon summons of the suit seeking specific performance of the agreement to sell dated 18.09.2000 purportedly by the power of attorney holder in favour of the respondent(s)-plaintiff(s)-Fateh Singh, vide which, Gulab Singh alleged to have received a sale consideration of ₹ 2,00,000/- against the total sale consideration of ₹ 2,20,000/- and the stipulated date of registration and execution of the sale deed was kept after two years.

He further submits that appellants-defendants have not examined the stamp vendor nor the register of the scribe to prove that actually agreement to sell was executed on 18.09.2000 or was antedated. If at all it was so, Gulab Singh was defendant in the earlier round of litigation could have disclosed of having entered into agreement to sell in question, therefore, it was an apparent collusion of respondent(s)-plaintiff(s)-Fateh Singh with Gulab Singh. The respondent(s)-plaintiff(s) also summoned Gulab Singh as a witness, but he did not come present, in fact he was afraid that truth may not surface. All these factors have not been taken into consideration by both the Courts below, thus, urges this Court for setting aside the judgment and decree under challenge.

Mr. Nipun Vashist, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the agreement to sell has been proved through the examination/testimony of the attesting witnesses, much less,

payment of consideration. Since, the respondent(s)-plaintiff(s) was put into possession, therefore, period of two years was kept for the registration and execution of the sale deed. All these acts done by the agent, have to be honoured and respected, in fact, there was an apparent collusion between the Gulab Singh and the appellants, being the cousin brothers. The readiness and willingness has also been proved as the target date was 18.03.2002 and the suit has been filed on 09.04.2002. All these facts have been taken into consideration by both the Courts below and rightly so, exercised the discretion under Section 20 of the Act by noticing that the ingredients of Section 16 (c) of the 1963 Act have been complied with, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that that there is a force and merit in the submissions of Mr. Amit Jain, for, the fact noticed above itself reveals, that there was an apparent collusion as Gulab Singh had caused a breach of trust reposed in him by the principal/appellant(s). His attorney had already been cancelled and earlier sale deed executed on that basis had as per the judgment and decree dated 29.04.2005 been set aside. Nothing prevented Gulab Singh-attorney-holder, who was the defendant in the earlier round of litigation, to disclose the factum of the agreement to sell in hand. If at all, the agreement to sell was entered on 18.09.2000, nothing prevented the respondent(s)-plaintiff(s) to examine the stamp vendor or his register. Even the scribe produced did not bring, on record, the register. All these factors are key for declining the discretionary relief, yet the Courts below did not appreciate the aforementioned facts. The judgment and decree dated 29.04.2005 (Ex.D-4) is part and parcel of the record of the Courts below.

The Court ought to have examined the contents thereof by noticing the conduct of the agent. It has also not been proved whether the consideration had allegedly been received by the attorney and passed on to the appellant(s)-defendant(s) or not. In my view, it is a fit case where the Courts below should not have exercised the discretion under Section 20 of the 1963 Act and at the best, once, the respondent(s)-plaintiff(s) have proved the amount of sale consideration of ₹ 2,00,000/-, they should have been held entitled to recover the amount from Gulab Singh-defendant No.3.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, 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, whether the 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. 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** applicability of Section 97 (1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

For the foregoing reasons, the judgment and decree of both the Courts below viz-a-viz the grant of discretionary relief i.e. the specific performance of agreement to sell dated 18.09.2000, are hereby set aside and are modified that the respondent(s)-plaintiff(s) are entitled to recover the

amount of ₹ 2,00,000/- along with interest @ 6% from Gulab Singh. The suit of the respondent(s)-plaintiff(s) is partly decreed. The decree sheet is ordered to be drawn.

With the aforesaid observations, the appeal stands disposed of.

07.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No