

219

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

RSA-5265-2012 (O&M)

Date of decision : 22.04.2016

Sanjay Kumar and another

... Appellants

Versus

Jaspal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Bhupinder Ghai, 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)

CM-14765-C-2012

For the reasons mentioned in the application, the delay of 280 days
in re-filing the appeal is condoned.

CM stands disposed of.

RSA-5265-2012

The LR's of defendant No.1, namely, Vimla Magu, are in regular
second appeal against the concurrent findings of fact, whereby the suit for
specific performance of agreement to sell dated 20.08.2003 in respect of plot
bearing No.320, Sector 30, Faridabad measuring 62 sq. yards has been decreed.

Mr. Adarsh Jain, learned counsel appearing on behalf the LR's of

defendant No.1 submits that the total sale consideration of the aforementioned property was ₹ 7,08,000/- and earnest money of ₹ 55,000/- was paid. As per the terms and conditions of the agreement to sell, the sale deed was effected within 60 days after getting formalities. The application for obtaining NOC from the concerned HUDA office was submitted on 18.09.2003, which was granted on 02.01.2004. No steps were taken by the respondents-plaintiffs to seek the specific performance, whereas the suit has been filed on 09.09.2005, thus, readiness and willingness was wanting as the execution of the agreement to sell has not been denied. He further submits that during the appellate stage, an application filed under Order 41 Order 27 of the Code of Civil Procedure was moved to prove on record the cancellation of the agreement and submission of an affidavit by the respondents-plaintiffs to the Haryana Urban Development Authority, the same has erroneously and in a most mechanical and fallacious manner, been dismissed. Even in this Court, permission of this Court for leading additional evidence to prove the affidavit granting NOC and transfer permission dated 08.12.2004 issued by the Haryana Urban Development Authority was sought. He submits that against the total sale consideration of ₹ 7,08,000/-, earnest money of ₹ 55,000/- has been paid, the discretionary relief under Section 20 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act') should not be granted. In support of aforementioned contentions, he relies upon the judgments of the Hon'ble Supreme Court rendered in *“Ramesh Chand (dead) through LRs V/s Asruddin (dead) through LRs and another”*, 2015 (4) RCR (Civil) 719 and *“Hemanta Mondal and others V/s Sri Ganesh Chandra Naskar”*, 2015 (4) RCR (Civil) 599 and urges this Court to formulate the following substantial

questions of law:-

1. Whether the respondents-plaintiffs had ready and willing to perform his part on the agreement.
2. Whether the respondents-plaintiffs have not been availed the remedy of seeking specific performance of the agreement strictly as per the terms and conditions of the agreement.
3. Whether the judgment and decree of both the Courts below suffers from illegality and perversity.

Mr. Bhupinder Ghai, learned counsel appearing on behalf of the respondents-plaintiffs submits that no doubt permission of NOC granted by the HUDA was addressed to the respondents-plaintiffs also, but the fact remains that preceding to the filing of the suit, a legal notice dated 05.08.2005 was sent and the same was replied, but not disclosed that she had already sold the property to a third party vide sale deed dated 30.11.2004. This fact only surfaced when the written statement was filed and accordingly, the suit was amended and declaration of the sale deed was sought. He further submits that against the aforementioned property, a loan was obtained from the National Institution in the month of January 2004 vide Ex.PW1/5 and PW1/10 and the sale deed dated 30.11.2004 is not in favour of a third party, but the daughter of the vendor. In support of his contentions, he relies upon the judgment of this Court rendered in *“Bhuru Ram V/s Dharampal and others” 2015 (2) RCR (Civil) 768* and *“Satya Pal Sharma and another V/s Jagjit Rai Verma”, 2012 (4) RCR (Civil) 216*, to contend that where the time is not the essence of the agreement to sell, the limitation would start from the date of refusal and therefore, the suit is well within the period of limitation and urges this Court

for affirmation of the findings rendered by both the Courts below.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the plea of Mr. Adarsh Jain, for the reason that the ratio decidendi culled out by the judgment rendered in **Ramesh Chand's** case (supra) and **Hemanta Mondal's** case (supra), where the Court granting discretionary relief under Section 20 of the 1963 Act was primary on the ground that in one of the case, the area was not clear and another case, the plaintiff had not taken any steps for redeeming the mortgaged land, as per the terms and conditions of the agreement. However, in this present case, no terms and conditions had been imposed upon the plaintiff except it was mentioned that the sale deed would be executed within 60 days after getting formalities.

It is matter of record that NOC was granted on 02.01.2004 after 60 days and therefore, the period of 60 days would be redundant as rightly noticed by both the Courts below. The additional evidence sought to be placed on record was within the knowledge of the appellant-defendant. No explanation has come forth to place on record the same, rightly so, the lower Appellate Court has dismissed the application and I am of the view that in case, additional evidence is allowed, it would tantamount to de novo trial, for the reason that the plaintiff was not in the need of money as attempt had been made to thwart the claim of the respondent-plaintiff by selling the land in favour of her daughter during the currency of the agreement to sell.

Keeping in view the aforementioned facts and circumstances of the case, I do not find any illegality and perversity in the judgment and decree of both the Courts below which are based upon the appreciation of oral and

documentary evidence. The substantial questions of law as noticed above are answered in favour of the respondents-plaintiffs and against the appellant-defendant. Accordingly, the judgment and decree of both the Courts below are affirmed.

With the aforesaid observations, the appeal stands dismissed.

22.04.2016
yogesh

(AMIT RAWAL)
JUDGE