

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

**RSA No.1407 of 2016 (O&M)
Date of decision: 18.05.2016.**

Harbhajan Singh

...Appellant

Vs.

Bachan Singh & others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Present: Mr. M. S. Kang, Advocate
for the appellant.

JITENDRA CHAUHAN, J.

This regular second appeal has been filed by the plaintiff against the judgment and decree dated 02.09.2015, passed by Additional District Judge, Jalandhar vide which the appeal filed by the plaintiff was partly allowed and the suit of the plaintiff was partly decreed for alternative relief of recovery of Rs.5,70,000/- along with interest @ 9% per annum and the judgment and decree dated 20.10.2012, passed by Civil Judge (Junior Division), Nakodar was partly modified.

In brief, the plaintiff filed suit for possession by way of specific performance of the agreement to sell dated 23.05.2003. It was pleaded by the plaintiff that Kakka Singh predecessor-in-interest of the

defendant Nos. 1 to 4 entered into an agreement to sell land measuring 25 kanals 12 marlas situated in the area of village Bangiwal/345, Tehsil Nakodar, District Jalandhar. The total sale consideration was fixed at Rs. 6 lacs. An amount of Rs.5,70,000/- was received by Kakka Singh as earnest money. The remaining amount of Rs.30,000/- was to be paid at the time of execution of the sale deed. The sale deed was to be executed on or before 27.12.2004. On the stipulated date, the plaintiff appeared before the Sub-Registrar but Kakka Singh did not turn up. Hence, the present suit. The plaintiff also challenged sale deed dated 02.06.2006 in respect of 8 kanals land out of the suit land executed by Kakka Singh in favour of defendant No.5.

Upon notice, the defendants appeared and filed written statement. The stand of the defendants No.1 to 4 was that the agreement to sell was never executed by Kakka Singh. The same was result of fraud and fabrication.

After appraisal of evidence, the learned trial Court dismissed the suit vide the judgment and decree dated 20.10.2012 holding that the agreement to sell was not scribed by a regular deed writer; the plaintiff failed to remember the denomination of the stamp paper on which the agreement was scribed; the spacing between the lines towards the end of the document was in reducing term and; the plaintiff failed to examine the stamp vendor as witness.

Feeling aggrieved, the plaintiff filed appeal before Additional District Judge, Jalandhar. The lower appellate Court vide the judgement

and decree dated 02.09.2015 partly allowed the appeal and the plaintiff was held entitled to recovery of the earnest money of Rs. 5,70,000/- along with interest @ 9 % per annum. The reasoning adopted by the lower appellate Court was that the agreement to sell stood proved, however, the readiness and willingness to perform his part of the contract was not proved by the plaintiff. The document was a money transaction and was executed by Kakka Singh as a security. Since the plaintiff was not held entitled to specific performance of the agreement, therefore, he was entitled to the alternative relief of recovery of the earnest amount.

Feeling dissatisfied, the plaintiff has filed the instant regular second appeal against the aforesaid judgments and decrees.

It is contended that both the Courts below have erred in declining the relief of specific performance of the agreement to sell. Once the execution of the agreement to sell was proved and the lower Appellate Court had come to the conclusion that it was proved as per law, it ought not to have declined the relief of specific performance.

I have heard the learned counsel for the appellant and have gone through the case file very carefully.

This Court has minutely gone through the case file. The trial Court dismissed the suit holding that the agreement to sell was not proved as the plaintiff failed to tell the exact denomination of the stamp paper; the agreement to sell was not scribed by a regular deed writer; there was a spacing between the lines towards the end of the

document. The reasoning given by the trial Court did not find favour with the lower appellate Court and the lower appellate Court held that the agreement to sell was proved. However, the lower appellate Court held that the plaintiff failed to prove that he was ready and willing to perform his part of the contract. It was recorded by the lower appellate Court that the mere appearance before the sub-Registrar for getting the sale deed executed and registered is not sufficient to prove the readiness and willingness. That apart, the main ground which weighed with the lower appellate Court is that the plaintiff paid an amount of Rs.5,70,000/- as earnest money to Kakka Singh and the amount left to be paid was only Rs.30,000/-. It appears strange that a person would pay the substantial amount of Rs.5,70,000/- out of Rs. 6 lacs and would leave the small amount of Rs. 30,000/- to be paid after one and a half year. This creates a serious dent in the case of the plaintiff. The nature of the document was held to be a money transaction and rightly so, for the following reasons :-

- (i) the suit for specific performance of agreement to sell was filed after almost two years and seven months. No explanation is forthcoming as to why the plaintiff waited for such long period;
- (ii) In his replication, the plaintiff admitted in clear terms that defendant No. 5 had purchased the land measuring 8 Kanals from Kakka Singh for valuable consideration vide sale deed Ex. P4 dated 02.06.2006. Consent of the

plaintiff to sale deed Ex. P4 is writ large. Defendant No. 5 is indeed a bona fide purchaser for consideration without notice;

(iii) It is intriguing that plaintiff was in Government service on the date of agreement to sell. In **Jagir Singh and ors. Vs. Chanchal Singh through his LRs and ors. 1984 SLJ 471**, this Court has held that a Government servant cannot enter into an agreement to purchase land without previous sanction of the Government. Admittedly, no such sanction was ever applied or obtained by the plaintiff. Thus, the plaintiff is not entitled to claim specific performance of agreement to sell Ex. P2, on this score alone.

(iv) Moreover, it is settled position of law that grant of a decree for specific performance of contract is not automatic and is one of discretion of the Court and the Court has to consider whether it will be fair, just and equitable. Court is guided by principle of justice, equity and good conscience. Reliance in this regard can be made to **Gobind Ram Vs. Gian Chand AIR 2000 SC 310**. In the instant case, the learned lower Appellate Court has properly exercised discretion not to decree specific performance.

Therefore, the learned appellate Court has rightly ordered the

refund of the amount received by the defendant. There is no question of law much less substantial question of law involved in the present regular second appeal. In the final analysis, this Court finds no merit in this appeal and consequently, it is dismissed.

18.05.2016
SN

(JITENDRA CHAUHAN)
JUDGE