

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

R.S.A.No.1691 of 2016 (O&M)

Date of Decision: June 02, 2016

Suraj Bhan & others

...Appellants

Versus

Shiv Dutt & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.A.K.Chopra, Senior Advocate with
Mr.Ankit Midha, Advocate,
for the appellants.**

**Mr.Manoj Kaushik, Advocate,
for the caveators.**

AMIT RAWAL, J.

Notice of motion.

**Mr.Manoj Kaushik, Advocate, who is on the caveat, accepts
notice on behalf of the respondents.**

**Appellant-defendants are aggrieved of the judgments and
decrees of both the Courts below, whereby the suit for possession by way
of specific performance of the agreement to sell dated 5.12.2005, has**

been decreed.

Mr.A.K.Chopra, learned Senior Counsel assisted by Mr.Ankit Midha, Advocate for the appellants, in support of the grounds of appeal, raised the following submissions:-

- 1) Though in the written statement, the execution of the agreement to sell dated 5.12.2005 was admitted in respect of land measuring 16 kanals (two acres), agreed to be sold for a total sale consideration of ₹13.00 lacs, but it was stated in the agreement that the earnest money of ₹1.50 lacs would be paid before the Sub Registrar;
- 2) It is also pleaded and categorical case that the appellant-defendants refused to accept the earnest money of ₹1.50 lacs as agreement was only in respect of one acre and not two acres of land. This fact has not been noticed and, therefore, readiness and willingness, much less provisions of Section 16 (c) of the Specific Relief Act, 1963 (for short “1963 Act”) had not been complied with;
- 3) The scribe of the agreement and the receipt was Sunder Singh Advocate. The target date for execution and registration of the sale deed was 1.3.2006, but the respondents did not appear before the Sub Registrar. The

plea of the plaintiffs that the Sub Registrar was not available on the date of payment of the earnest money, i.e., 5.12.2005 has totally been shattered in view of the evidence brought on record that on that date, about 8-9 sale deeds were registered by the Sub Registrar. “Always been ready and willing” is the basic ingredient of Section 16 of 1963 Act for seeking specific performance of the agreement to sell. Though, the suit was filed on 25.4.2006, but once the factum of earnest money of ₹1.50 lacs has not been proved, therefore, the Courts below ought not to have exercised the discretion under Section 20 of 1963 Act. The respondent-plaintiffs have also wrongly deduced the statement of Suraj Bhan (DW-4) regarding the alleged admission of acceptance of his signatures on agreement to sell (Ex.P1) and receipt (Ex.P2);

4) It is a categorical case that the signatures of the appellants were taken by the respondent-plaintiffs by way of fraud as the intention was to sell only one acre of land and not two acres. Both the Courts below have also been influenced by the documents Ex.DX, Ex.DY and Ex.DZ. The appellants had deposited certain amounts totalling ₹1.50 lacs to pay the loan raised against the suit land as the

documents have not been proved in accordance with law and, thus, urges this Court for formulation of the substantial questions of law as culled out in the grounds of appeal.

Mr.Manoj Kaushik, learned counsel for the respondent-plaintiffs submits that the ingredients of Section 16 (c) of 1963 Act had been proved by bringing on record the affidavit dated 1.3.2006 attested by the Executive Magistrate and then after the expiry of the target date, suit was filed on 25.4.2006. Since the appellant-defendants have not denied the signatures on the receipt and the agreement to sell, it cannot volte-face and take up the plea of non-payment/receipt of ₹1.50 lacs. The appellant-defendants have failed to perform their part of the agreement owing to the change in the value of the property in the market. The agreement to sell clearly prescribes the area and, therefore, the plea of selling one acre land is an afterthought and, thus, prays for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr.Chopra, for, the respondent-plaintiffs have, through oral and documentary evidence, proved the ingredients of Section 16 (c) of 1963 Act inasmuch as that the appellant-defendants have not been able to belie the signatures on agreement (Ex.P1) and

receipt (Ex.P2). No independent evidence has been led to disbelieve the contents of the receipt of not having received ₹1.50 lacs on the premise that the land agreed to be sold was only one acre and not two acres. Agreement to sell has also been proved through the testimony of scribe PW-3 Sunder Singh Advocate and attesting witness PW-4 Sumer Singh Namberdar. Even the sum of ₹1.50 lacs has been proved through documents Ex.DX, Ex.DY and Ex.DZ.

In my view, the filing of the suit immediately after the expiry of the target date shows readiness and willingness. The present case squarely falls within the parameters of the ratio decidendi culled out by the Hon'ble Supreme Court in **Sita Ram & others Versus Radhey Shyam, 2007 (4) RCR (Civil) 533**. Respondent-plaintiffs had been ready throughout, i.e., from the date of execution of agreement to sell, during the pendency of suit, till passing of the decree. I do not find any illegality and perversity in the impugned judgments and decrees. The findings rendered by the Courts below are based upon the oral and documentary evidence. The same are accordingly affirmed. No substantial question of law arises for determination.

Appeal stands dismissed.

June 02, 2016
ramesh

(AMIT RAWAL)
JUDGE