

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

**RSA No.4418 of 2013 (O&M)
Date of decision:12.01.2016**

Gurdev Singh

Vs.

... Appellant

Dara Singh @ Darbara Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Kanwal Goyal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for specific performance of the agreement to sell dated 30.03.2005 in respect of land measuring 16 kanals 15 marals, has been decreed.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Kanwal Goyal, Advocate, in support of the grounds of appeal has raised multi-fold arguments which are enumerated herein below:-

i) Two witnesses of the agreement to sell, namely, Raghbir Dass and Harbans Singh tendered their affidavits in evidence but did not appear for cross examination. No doubt, Raghbir Dass after tendering his affidavit, had died.

ii) Both the Courts below have committed illegality and perversity in not referring to the contents of the written statement, whereby, it was specifically mentioned that the stipulated date for execution and registration of the sale deed was before Baisakhi, i.e., 13.04.2005 and not 30.05.2005. In essence, the contents of the agreement were emphatically denied, though, signature on the agreement to sell was admitted, much less, receipt of earnest money amounting to ₹1,00,000/-.

iii) In support of aforementioned contentions, he relied upon the judgment of this Court in **Bawa Singh and others vs. Harnam Singh and others 2009(5) RCR (Civil) 183** to contend that mere exhibition of the document cannot be dispense with its proof as the contents have to be proved.

iv) He has also drawn attention of this Court to the record of the Courts below which shows that passport of the appellant-defendant had expired on 22.05.2005 and therefore, in any case, he could have been available on the alleged stipulated date.

v) The other attesting witness, namely, Harbans Singh has not come forward for cross examination, as such, respondent-plaintiff failed to prove the execution of the sale deed. Thus, substantial question of law arises for determination of the present appeal.

I have heard learned Senior counsel and appraised the impugned judgments and decrees of the Courts below, as well as,

case law cited at bar and am of the view that the appeal deserves to be dismissed for the following reasons:-

The stand taken in the written statement is that the appellant is a retired Government Teacher and he did not know Punjabi Language. It would be apt to reproduce para 2 of the written statement which reads thus:-

“2. That para No.2 of the plaint is incorrect hence denied except the fact that defendant is the owner of the land in dispute but the rest of the para is denied. It is submitted that defendant did sign the agreement to sell dated 30.3.2005, but the rest of the para is denied. The true facts are that the defendant agreed to sell the land in dispute @ Rs.20 lacs per acre to the plaintiff and agreed to receive the remaining sale consideration at the time of execution of regular sale deed on or before 13.3.2005 that is before Baisakhi of 2005. It is noteworthy that it was made clear to the plaintiff thereby showing his passport is going to expire on 20.5.2005 and he is to return to America via England on 16.4.2005. As such the land defendant agreed to sell the land in dispute @ of Rs.20 lacs per acre and date for execution of the sale deed was fixed on or before 13.3.2005. The photocopy of passport is attached herewith. As such, it is wrong to state that defendant ever agreed to sell the land in dispute @ Rs.10

lacs per acre. However, an amount of one lac was received by defendant as earnest money. Thus whole of the para is denied accordingly. Sub parawise reply is as under:-

I That sub para No.1 of this para of the plaint is correct that defendant agreed to sell the land measuring 16 kanals 15 marlas owned by him.

II That sub para No.II of this para of the plaint is incorrect hence denied. It is wrong to state that an amount of Rs.one lac was fixed as rate of sale of the land per acre as alleged nor any amount of Rs.20,75,000/- was ever fixed as sale consideration but on the other hand, defendant after receiving the amount of Rs. One lac as earnest money, agreed to sell the land in dispute @ Rs. 20 lacs per acre. Even if the plaintiff is able to prove the execution of the alleged agreement to sell then it is submitted that plaintiff might have got entered the amount of Rs.10 lacs as rate of sale with regard to the land in dispute per acre in connivance with witnesses and deed writer as defendant does not know Punjabi script and is aged person born on 08.04.1927. Plaintiff might have entered this alleged term by taking advantage of old age as well as defendant has no knowledge of Punjabi script. Thus whole of the para is denied. It is also wrong

to state that defendant ever agreed to execute regular sale deed on or before 31.5.2005. It is submitted in this context that as stated above, defendant clearly told plaintiff at the time of alleged agreement to sell that his passport is to expire on 22.5.2005. He is definitely bound to go back to USA on 16.4.2005, therefore, defendant agreed to execute the regular sale deed as alleged up to 13.3.2005 that is before Baisakhi of 2005. Therefore, question of agreeing to sell the land in dispute on or before 31.5.2005 does not arise at all.

III That the sub para No.III of this para of the plaint is also incorrect hence denied. Detail reply has been given in this context in sub para No.ii as stated above, which may be read as part and parcel of the present reply.

IV That sub para No.IV of this para of the plaint is also incorrect hence denied. The allegations in this para are false and the same are not admitted to be correct.

V That sub para No.V of this para of the plaint is also incorrect hence denied. That allegations in this para are false and the same are not admitted to be correct. The plaintiff was never ready and willing to perform his part of the contract. Plaintiff was not ready with remaining sale consideration. So much so that the plaintiff even told the defendant that he can get the remaining sale

consideration from this relative in UK while going to USA back. As such, plaintiff was never ready and willing to perform his part of the contract. Thus whole of contents of the para No.2 is denied as a whole.

On going through the contents of para 2 of the written statement, it is manifest that execution of the agreement to sell, has been admitted, much less, receipt of earnest money but came out with story that the target date for execution and registration of the sale deed was not 30.05.2005 as owing to the expiry of the passport on 27.05.2005 but it was before Baisakhi. Though the appellant-defendant has made a complaint to the police as a result thereof, an FIR No.40 dated 12.04.2006 had been registered, ultimately, entailed into acquittal of the accused/respondent-plaintiff. The mode and manner of stand taken in the written statement reveals that appellant-defendant had taken a different stand than what has been referred to in the agreement to sell by taking up two pleas which read thus:-

- a) Stipulated date of execution and registration of the sale deed was not on 30.05.2005.
- b) The land was not agreed to be sold for a total consideration of ₹10,00,000/- but was for ₹20,00,000/-.

On going through the contents of the agreement to sell, the stipulated date for execution and registration of the sale deed has been mentioned in English language, i.e., 30.05.2005 and not in vernacular. I am of the view that since the appellant-defendant has

admitted the agreement to sell and has not emphatically denied the contents of the agreement to sell, therefore, the ratio decidendi culled out by this Court in **Bawa Singh's case (supra)** would not apply. Even otherwise, there is no dispute with regard to ratio decidendi culled out by this Court that mere exhibition of the document cannot be dispensed with its proof. The non-appearance of Harbans Singh for cross examination would not be material, in view of categorical stand taken in the written statement. The appellant-defendant has also not discharged the onus in corroborating the averments made vis-a-vis rate, as well as, execution and registration of the sale deed. Since he was aware of expiry of his passport, he could have executed a Power of Attorney in favour of any person for execution and registration of the sale deed and also for receipt of the balance sale consideration.

Keeping in view the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 12, 2016
savita