

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

**RSA No.1356 of 2015(O&M)
Date of Decision-20.10.2016**

Amarjit Singh and others ... Appellants

Versus

Jagdev Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for the appellants.

Mr. Vikas Bahl, Sr. Advocate with
Mr. Narender Vadhera, Advocate and
Ms. Japneet Kaur, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff filed a suit for specific performance of the agreements to sell dated 24.05.2007 and 18.12.2007 in respect of land measuring 65 kanals 8 marlas. Permanent injunction was also sought restraining the defendants from dispossessing the plaintiff from the suit land as well as from alienating the suit property. In the alternative, plaintiff sought recovery of the amount. Plaintiff also alleged that during pendency of the suit, an application under Order 6 Rule 17 CPC was allowed by the trial Court and relief of possession was allowed to be sought by way of amendment.

[3]. On 24.05.2007, defendants agreed to sell the land measuring 65 kanals 8 marlas to the plaintiff @ Rs.6 lacs per acre for a total sale consideration of Rs.49,05,000/-. Defendants received Rs.25 lacs as earnest money. The agreement to sell was executed in the presence of attesting witnesses. Possession of the suit land was also delivered to the plaintiff at the time of execution of agreement to sell dated 24.05.2007. The agreement was scribed by Sukhdev Singh Sewak, Advocate and the same was read over to the defendants in the presence of the attesting witnesses. Defendants after understanding the same, admitted the correctness of the agreement and after receiving an amount of Rs.25 lacs as earnest money signed/thumb marked the same.

[4]. Target date for execution and registration of the sale deed was fixed as 25.05.2008 on payment of balance sale consideration. It was agreed between the parties that if the plaintiff failed to get the sale deed executed, the earnest money would be forfeited. In the event of default on the part of the defendants, plaintiff would be entitled to double of the earnest money. Plaintiff also asserted that out of the total amount, the land measuring 22 kanals 18 marlas was already under mortgaged with possession with the plaintiff for a sum of Rs.3 lacs vide mortgage deed dated 21.05.2003. On the request of the defendants, further amount of Rs.11 lacs was paid by the plaintiff to the defendants on 18.12.2007 and a new agreement dated 18.12.2007 was executed between the parties. This new agreement was scribed by Sukhdev Singh Sewak, Advocate and was attested

by the witnesses and signed and thumb marked by the defendants. In this way, total amount of Rs.36 lacs was received by the defendants as earnest money, remaining sale consideration was to be paid at the time of execution and registration of sale deed on or before 25.05.2008.

[5]. Plaintiff asserted that he was always ready and willing to perform his part of obligation. Plaintiff got served a legal notice on 05.05.2008 through his Advocate, requesting the defendants not to create encumbrance over the suit property and not to alienate the same and also to get the sale deed executed and registered in favour of the plaintiff as per terms and conditions of the agreement to sell. Plaintiff also requested the defendants to come to the office of Sub Registrar, Bathinda on 27.05.2008 as 25.05.2008 and 26.05.2008 were holidays. Notice was duly received by the defendants. Plaintiff attended the Sub Registrar on 27.05.2008 along with requisite amount of balance sale consideration as well as amount towards other miscellaneous expenses. Plaintiff waited for the defendants from 9 a.m to the evening, but the defendants did not turn up. Plaintiff got his presence marked by way of getting the affidavit attested from the Sub Registrar, Bathinda. Plaintiff also served a registered notice on the defendants on 30.05.2008, requesting the defendants to execute the sale deed within a stipulated period of 10 days. The notice was duly received by the defendants, but no response was given.

[6]. Plaintiff also submitted that in alternative he was now entitled to double of the earnest money. Plaintiff was in possession of the suit property, but during pendency of the suit i.e in the intervening night of 24/25.03.2012, defendants illegally dispossessed the plaintiff and the police did not take any action due to political clout of the defendants. Plaintiff was in possession of the property on account of agreement to sell as well as on account of mortgage deed No.1934 dated 21.05.2003. With this background, suit came to be filed.

[7]. Suit was contested by the defendants on all customary pleas i.e. non maintainability of the suit, limitation etc. Suit was claimed to be false and frivolous. Plaintiff never approached the defendants for extension of date for sale on 25.07.2004 or 27.05.2007. It was admitted by the defendants that the land was mortgaged in favour of the plaintiff and possession was also delivered. It was asserted by the defendants that in fact they had received a loan of Rs.10,000/- from the plaintiff, but the same was already repaid. Plaintiff has illegally tried to get a sale deed executed by way of mis-representation. Defendants were ready to pay the mortgage amount and get the land redeemed. Defendants claimed themselves to be illiterate and rustic persons and the plaintiff after taking benefit of the same, illegally procured some documents allegedly towards loan transactions of Rs.11,000/- and get the same executed as one of the sale of their land.

[8]. On merits, it was denied that the defendants had ever agreed to sell their land to the plaintiff. Execution of agreement to sell was denied. In fact, plaintiff misrepresented that receipt of amount of Rs.11,000/- was being executed. Defendants had mortgaged their land for a sum of Rs.3 lacs vide mortgage deed dated 21.05.2003. No agreement was executed. Only a sum of Rs.10,000/- was received by the defendants as loan which they have already repaid. Defendants submitted that since there was no agreement to sell, question of execution of sale deed did not arise, nor question of any readiness and willingness arise. No notice was served upon the defendants. In case of any notice having been served, the same was claimed to be illegal as the defendants were illiterate and rustic villagers. Defendants showed their willingness to pay an amount of Rs.3 lacs towards mortgage amount and get the land redeemed. All the remaining material averments were denied altogether.

[9]. After filing replication, both the parties went to trial on the following issues:-

“1. Whether plaintiff is entitled to relief of specific performance of agreement dated 24.05.2007 and 18.12.2007 or in alternative for recovery of Rs.72 lacs as prayed for? OPP

2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP

3. Whether the plaintiff is entitled to relief of possession as prayed for? OPP

4. Whether the agreement of sale dated 24.05.2007 is not enforceable? OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Whether the suit is barred by limitation? OPD

7. Relief.”

[10]. In support of his case, plaintiff got examined PW1, Deepak Sharma HRC, PW 2 Harbans Singh, Stamp Vendor, PW 3 Bhola Ram, Stamp Vendor, PW 4 Shailender Goyal, Registration Clerk, PW 5 Balbir Singh and plaintiff himself appeared as PW 6. PW 7 Surinder Pal, Patwari and PW 8 Harbaksh Singh Mander were examined before closing the evidence by the plaintiff. Per contra, defendants got examined Gurmail Kaur as DW 1 and thereafter, closed the evidence.

[11]. Trial Court found due execution of agreement to sell and held that the plaintiff was entitled to relief of possession of the suit property. Suit was decreed by the trial Court vide judgment and decree dated 22.03.2013. Defendants-appellants remained unsuccessful in their first appeal before the District Judge, Bathinda who dismissed the same vide judgment and decree dated 27.11.2014. That is, how, the present Regular Second Appeal came to be filed in this Court.

[12]. Appellants framed the following substantial questions of law in the grounds of appeal:-

“a) Whether under the specific relief fact to get a decree of specific performance the plaintiff has to prove continuous readiness and willingness and financial capacity to pay the balance amount?

b) Whether the plaintiff has to stand on its own legs and cannot take the benefit of weakness of the stand of the defendant?

c) Whether under the fact of the circumstances of the present case the respondent/plaintiff has failed to prove the factum of payment of earnest money to the present respondent appellant?

d) Whether the findings recorded by the Ld. Courts below are totally perverse and had been returned on the basis of non appreciation of the evidence and thus raised the substantial question of law itself?”

[13]. I have heard learned counsel for the parties and also perused the material on record.

[14]. Learned counsel for the appellants has vehemently argued that one of the attesting witness namely Balbir Singh (PW 5) has not supported the case of the plaintiff in his cross examination, therefore the execution of agreement to sell cannot be treated to be fully proved. Readiness and willingness on the part of the plaintiff was not proved inasmuch as that no income tax returns were produced showing the availability of the amount in question with the plaintiff. No amount was paid in the presence of Balbir Singh (PW 5). Plaintiff was required to prove his continuous readiness and willingness from the date of execution of agreement to sell till the

date of execution and registration of sale deed. The agreements to sell dated 24.05.2007 and 18.12.2007 were claimed to be result of forgery and were bogus transactions. Since the plaintiff had failed to prove that he was ready and willing to perform his part of contract, therefore, he should not have been granted the relief of specific performance as the plaintiff had failed to allege and prove continuous readiness and willingness to perform his part of contract. The onus was on the plaintiff to prove his readiness and willingness and the same should have been established throughout from his conduct.

[15]. Learned counsel for the appellants by referring to **M/s J.P. Builders and another Vs. A. Ramadas Rao and another, 2011(1) Apex Court Judgments 307 (SC), Chodi Mahalakshmi Vs. Koppada Sathiraju and others, 2011(2) Civil Court Cases 841 (AP), Balwinder Kaur Vs. Bawa Singh and others, 2002(3) Civil Court Cases 215 (P&H), Prem Prakash @ Lillu and another Vs. State of Haryana 2011(3) Apex Court Judgments 135 (SC), Saygo Bai Vs. Chueeru Bajrangji, 2011(1) Apex Court Judgments 77 (SC) and Laxmibai (dead) through LRs and others Vs. Bhagwantbuva (Dead) through LRs and others, 2013(1) Apex Court Judgments 572(SC)** submitted that a continuous readiness and willingness on the part of the plaintiff was *sine qua non* for decreeing a suit for specific performance. The party seeking specific performance has to prove the terms and conditions of the contract and passing of consideration. In the absence of strict proof of payment of earnest money, valid execution of agreement to sell

cannot be presumed. Balbir Singh (PW5) did not support the case of the plaintiff in his cross examination inasmuch as that earnest money against the agreements was not paid in his presence. He even disown his examination-in-chief Ex.PW 5/A to the extent of contents of the same. The statement of the witness was required to be read as a whole. Part reading or appreciation of the deposition would lead to appreciation of the controversy out of context and the same would not serve any ends of justice. The stray admission in isolation in the statement cannot be given any credence as against meaningful appreciation of the testimony.

[16]. In nutshell, argument of learned counsel for the appellants was that the statement of PW 5 Balbir Singh should have been read and appreciated as a whole. Since the plaintiff had failed to prove the source of drawing huge amount of Rs.38 lacs, therefore adverse inference has to be drawn. Learned counsel further contended that lawful execution of agreements was not proved on the basis of statements of PW 5 and PW 8.

[17]. Per contra, learned counsel for the respondent vehemently submitted that testimonies of stamp vendors PW 2 and PW 3 and statement of PW 1 who produced the register of the stamp vendors would show that Amarjit Singh defendant had purchased the same on both the dates. Agreements to sell were executed. The signatures of Amarjit Singh appearing on the reverse side of both the agreements would prove the factum of genuineness of the same. If

no such transactions had ever taken place, there was no occasion for Amarjit Singh to purchase these stamps. The signatures of Amarjit Singh were duly proved by these witnesses. Amarjit Singh had not contradicted the same by appearing into witness box to deny his signatures.

[18]. It is true that one of the attesting witness namely Balbir Singh (PW 5) did not support the plaintiff's case in his cross examination. In his cross examination, the witness had deposed positively in favour of the plaintiff with reference to all material stages in the agreements to sell. At the time of cross examination, the witness had deposed contrary to his examination in chief as he was won over by the defendants. Since the witness was a hostile witness, therefore, his testimony in examination-in-chief cannot be treated to be inconsequential because he was a hostile witness at the time of cross examination. Signatures and thumb impressions appearing on agreements to sell were identified by this witness. The factum of possession being handed over to the plaintiff was proved from the statement of PW7, Surinder Pal, Patwari where rapat No.541/1 was entered in the registered and the same bore the signatures of Amarjit Singh, Manpreet Singh and Balbir Singh, Lambardar. Rapat was duly exhibited and proved on record as Ex.PW 7/A. Delivery of possession was proved on record with reference to material evidence. The factum of mortgage was also admitted by the parties, A story borrowing an amount of Rs.11,000/- was introduced by the defendants, instead of entering into the agreements to sell.

Defendants admitted their signatures on the agreements, but in different context i.e. in the process of acknowledging a loan. Expert witness Harbans Singh Mander (PW 8) had compared the signatures of Manpreet Singh and Amarjit Singh and thumb impressions of Gurmail Kaur on the agreements. Report of expert Ex.PW8/A clearly proved signatures and thumb impressions of the defendants on the agreements. No evidence to the contrary to the expert report was led by the defendants. Plaintiff had discharged the onus of proving agreements to sell and in the process of proving due execution of agreements to sell, plaintiff proved expert opinion on record. Thereafter, the onus shifted upon the defendants to prove that agreements were never executed.

[19]. Defendants did not lead any evidence to counter the positive evidence of the plaintiff. Out of three defendants, only one witness namely Gurmail Kaur-defendant appeared in the witness box. Other two defendants did not appear to depose in their favour. Even Gurmail Kaur while appearing as witness admitted in her cross examination that Amarjit Singh and Manpreet Singh are educated persons. Surprisingly, the male member preferred to keep away from the Court whereas they intentionally brought uneducated lady in the fray so as to deny the very execution of agreements in a very empathetical manner. The non-appearance of the defendants would lead to draw adverse inference against them. The cross examination of Gurmail Kaur would reveal her conduct to show that the same was not genuine. The execution of mortgage deed in respect of 12 kanals

18 marlas of land was an admitted fact as per stand of both the parties. The cross examination of Gurmail Kaur would show that even she had denied aforesaid mortgage which was admitted stand of the parties. The conduct of this witness was such that no reliance could have been placed on her testimony in cross examination. Since the plaintiff had already proved execution of agreements by way of preponderance of evidence, onus was rightly discharged whereas defendants failed to prove their case.

[20]. The non-appearance of the defendants before the Sub Registrar was an evidence to show that they were not ready and willing to perform their part of obligation. The alleged link evidence in order to establish resources to pay the amount for want of disclosure in income tax return was an issue *inter se* between department and the plaintiff. Defendants could not draw any benefit out of it, particularly when execution of agreements and passing of consideration were proved on record. Even, it was presumed that there was some violation under Tax Act, the same would have taken care by the competent authority under the Income Tax Act.

[21]. Learned counsel for the respondent further submitted that once the agreements to sell were proved, normal consequence would be to grant the decree for specific performance unless and until exceptions were carved out by the defendants in terms of Section 20 of Specific Relief Act. Since no such case existed, therefore, Courts below have rightly decreed the suit of the plaintiff.

[22]. Learned counsel for the respondent relied upon **Sewa Singh Vs. Partap Singh, 2014(4) RCR (Civil) 149, Ranbir Vs. Subhash, 2010(4) ICC 147, Santa Singh Vs. Binder Singh, 2007(1) RCR (Civil) 162, Lal Chand Vs. Tek Chand, 2013(5) RCR (Civil) 104, Surinder Singh (Dead) through LRs Vs. Anup Singh, 2002(1) RCR (Civil) 207** and **RSA No.4041 of 2014 decided on 31.10.2014 titled as Sukhpal Singh and others Vs. Mukesh Kumar and others** to contend that presence of signatures of Amarjit Singh in the register of the sale deed, later would attract presumption under Section 114 of the Evidence Act. The agreements were signed by three persons on behalf of the defendants. The statements of stamp vendors went unchallenged. The entries made in the register of stamp vendors could not be countered by Amarjit Singh-defendant, as he did not appear in the witness box. The signatures appearing on the agreements could not be denied by all the defendants. No expert evidence was led. There was a recital in the agreements in respect of receiving the earnest money. The onus was heavily on the defendants to prove that there was no consideration paid at the time of execution of agreements to sell. No evidence was led by the defendants to deny recital in the document which was otherwise proved by way of oral evidence as per Section 92 of the Evidence Act. The plea of defendants that the plaintiff was not ready and willing to perform his part of obligation cannot be accepted inasmuch as that once the plea of the defendants was of

denial of agreements to sell, they cannot raise the plea that plaintiff was not ready and willing to perform his part of obligation.

[23]. In nutshell, plea of denial in respect of execution of agreements would debar the defendants from raising plea of readiness and willingness as against the plaintiff. In the event of Balbir Singh-PW 5 having resiled in his cross examination and having been declared hostile witness, the Court cannot become helpless or a mute spectator. Court is competent to look into the facts and circumstances of the case and can cull out truth in order to see whether execution of agreements to sell was legally proved on the basis of statements and evidence of other witnesses. The statement of PW 5 as a whole including the examination-in-chief and the cross examination was not sufficient to discard the execution of agreements to sell. The plea of the source of payment having not mentioned as per income tax return would not negate the plea of plaintiff that he was not having any available balance to pay balance sale consideration. The plea was duly corroborated by the witnesses. Even otherwise, defendants having denied the factum of execution of agreements to sell cannot be permitted to raise plea of lack of readiness and willingness on the part of the plaintiff. Defendants were required to lead evidence in order to shatter the credibility of agreements and witnesses of the plaintiff. Plaintiff remained successful in establishing execution of agreements to sell with reference to statements of stamp vendors, statements of scribe,

statements of attesting witnesses and the plaintiff himself besides proving the expert opinion on record.

[24]. On the other hand, defendants remained passive in terms of their pathetic approach. Gurmail Kaur was only examined in the defendants' evidence. However, remaining defendants were educated persons, but they did not prefer to enter into the witness box. Even Gurmail Kaur deposed contrary to the stand taken by the defendants in the written statement. Even the factum of mortgage deed was denied in the cross examination. The evidence led by the defendants was not in consonance with the requirement of Sections 135, 137 and 138 of the Indian Evidence Act. In the amended written statement filed by the defendants, the first legal objection was taken with regard to the agreement to sell dated 24.05.2007 being not enforceable. The existence of agreement to sell was not denied, however in the later stand, the same was empathetically denied. In para No.17 of the amended written statement, defendants however took the plea of loan of Rs.10,000/- and the possession of the plaintiff was admitted when they recited that

“..... Defendants are ready to pay mortgage amount and get the land redeemed and also to get the possession of the land.....”.

[25]. In para No.8 of the written statement, defendants have admitted that some documents were allegedly got executed from them under the garb of illiteracy of the defendants and because of their rustic and simpleton nature. Evidently, two of the defendants

were educated persons and they did not enter into witness box. In view of aforesaid plea in the amended written statement, the factum of possession of the plaintiff during pendency of the suit was proved to the hilt and the plea of possession which was allowed by the trial Court by way of amendment in the plaint was a lawful exercise.

[26]. Even in para No.13 of the written statement, defendants took a stand that they shall take the possession of the land by any course of law. With the aforesaid stand taken in the amended written statement, the factum of possession of the plaintiff at the time of filing of the suit was established. Statement of Balbir Singh PW 5 was recorded at the time of tendering his affidavit Ex.PW5/A. The statement was made by the witness in the following manner:-

“..... I tendered into evidence my duly sworn affidavit Ex.PW5/A, the same may be read as part of my statement. I have seen original agreements to sell Exs.P1 and P2 in Court today and identified my signatures thereon as attesting witness.....”.

[27]. Perusal of the aforesaid statement would reveal that the witness not only deposed that his affidavit be treated as statement in examination-in-chief, but also admitted that his signatures were appearing on agreements to sell Exs.P1 and P2. The denial in respect of passing of consideration would not lend the case of the defendants nowhere particularly when the defendants had admitted their signatures on agreements Exs.P1 and P2. Since there was no rebuttal at the instance of the defendants, no such incriminating

nature of evidence from the cross examination of PW 5 could be extracted by defendants in order to dislodge the case of the plaintiff.

[28]. Perusal of cross examination of DW 1 Gurmail Kaur would reveal that both Amarjit Singh and Manpreet Singh were educated persons. The land of defendant No.3 and her sons was common. She admitted that she had sold the land, but she did not know the procedure of sale of land. She denied that she along with her sons had executed mortgage deed Mark-C1 in favour of the plaintiff. She pleaded ignorance as to whether her sons had executed Ex.P1 by appending their signatures in English. She denied the execution of rapat with the Patwari in respect of delivery of possession. However, she again pleaded ignorance with regard to execution of Ex.P2 by her sons by appending their signatures. Even she denied in a very empathetical manner that the possession of land subject matter of mortgage deed was ever delivered to the plaintiff, rather, her plea was that mortgage was never executed in favour of the plaintiff.

[29]. In view of aforesaid contradictory plea of the defendants, the case of the plaintiff was proved to the hilt. No substantial questions of law as projected by the appellants arise for determination of controversy in question as the plea raised with regard to readiness and willingness by the defendants cannot be raked up in the event of denial of agreements by the defendants. No such plea can be answered in view of stand of the defendants. Even otherwise, as per unrebutted evidence on record, the plaintiff was

proved to be ready and willing to perform his part of obligation. Substantial question No.(b) does not arise at all because there was no question of any weakness in the case of the plaintiff, rather evidence of the defendants was lacking on all material particulars. Question No.(c) was a pure question of fact and the same has been answered by the Courts below with reference to evidence. Question No.(d) was also based on evidence before the Courts below which cannot be presumed to have resulted in any perversity of any kind.

[30]. In view of aforesaid, no question of law much less substantial question of law arises in the appeal for consideration of this Court. This appeal is found to be totally devoid of merits and the same is accordingly, dismissed. All miscellaneous undecided applications are accordingly disposed of having culminated in the main judgment.

(RAJ MOHAN SINGH)
JUDGE

20.10.2016
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No