

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

RSA No.4848 of 2016

Date of Decision.23.09.2016

Sukhbir

.....Appellant

Vs.

Ajit Singh

.....Respondent

Present: Mr. Ram Pal Verma, Advocate
for the appellant.

Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate
for the caveator/respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit seeking possession by way of specific performance of agreement to sell dated 09.03.2010 with respect to 9 kanals 11 marlas of land i.e. 1/4th share of the total land described in the suit, has been decreed by both the Courts below.

Mr. Ram Pal Verma, learned counsel appearing for the appellant submits that the agreement to sell aforementioned envisage that viz-a-viz total sale consideration of ₹32 lacs, a sum of ₹31,50,000/- had been paid. In fact, the agreement to sell was emphatically denied and it was categorically sated that in the year 2004, the appellant had taken loan of ₹1,50,000/- from the respondent-plaintiff with interest @1 ½%. He submits that the respondent-plaintiff before filing of the suit, sent a legal notice

dated 13.07.2010 and it was replied on 20.07.2010, exhibited as P9, wherein the obtaining of the land was specifically pleaded. No sane person would after payment of almost entire sale consideration would fix the date of execution and registration beyond four months. In fact, the intention of the parties was not to enter into agreement to sell but the signatures on the stamp paper at the best would be treated as security, thus, there was no question of readiness and willingness on the part of either of the parties.

He further submits that only one attesting witness and scribe had been examined whereas others not, as the plaintiff was afraid of surfacing of the truth. Witnesses DW1 to DW7 have been examined in this regard but the Courts below has brushed aside the aforementioned witnesses. The fact of the land having been acquired under the erstwhile Land Acquisition Act, 1894 has been brought to the notice of this Court vide application moved by invoking the provisions of Order 41 Rule 27 CPC and copy of the notice under Section 9 of the 1894 Act has been attached. He submits that in view of the aforementioned fact, the appellant had no saleable right and interest in the suit property and therefore, the agreement to sell cannot be executed. All these facts are essential and necessary for adjudication of the *lis*, thus, urges this Court for setting aside the judgments and decrees under challenge by formulating the substantial questions of law as culled out in the memorandum of appeal.

Per contra, Mr. Sunil Chadha, Senior Advocate assisted by Mr. Chetan Bansal, Advocate appearing for the caveator-respondent submits that it is not a case where the appellant-defendant had been illiterate or was not knowing the intricacies of the agreement to sell, in as much as, he had served the Haryana Police Department for almost 26 years and thereafter he

was dismissed. The stand taken in the reply was that Ex.P9 does not specify the name of the document writer on the premise that Devender Singh was not available whereas on the contrary, DW7 Satyavir Jangra stated that the alleged document *viz-a-viz* loan transaction dated 13.07.2004 did not bear the thumb impression or signature of the respondent-plaintiff. It is a self-serving document, therefore, cannot be looked into and rightly so, had been brushed aside. The plaintiff had proved the readiness and willingness as much as from the expiry of the target date dated 08.07.2010 whereas the appellant-defendant did not appear, on the contrary affidavit marking the presence had been proved on record as Ex.P3. The suit was filed with promptitude i.e. on 05.08.2010. One of the attesting witness and scribe, as indicated above, had been examined. Both the Courts below being courts of fact and law have examined the evidence threadbare and found that there had been compliance of provisions of provisions of Section 16(c) of the Specific Relief Act, 1963 and therefore, exercised the discretion.

He further submits that the identical situation had arisen before the Hon'ble Supreme Court where during the pendency of the suit, the land had been acquired and the Hon'ble Supreme Court after discussing the provisions of Sections 21(2), (4) and (5) of the 1963 Act held that the plaintiff is entitled to take all the benefits of compensation along with interest and solatium, much less, the costs of litigation incurred by the actual vendor for recovery of the amount. He submits that in the present case no explanation has come forth as to whether any effort had been made at the behest of the appellant-defendant and therefore, he is not entitled to compensation. In support of his contention he has relied upon the ratio decidendi culled out from the judgment of Hon'ble Supreme Court in

Jagdish Singh Vs. Natthu Singh (1992) 1 SCC 647, thus, urges this Court for confirming the findings rendered by the Courts below by dismissing the second appeal.

I have heard learned counsel for the parties and appraised the paper book. Before advertng to the question which has arisen during the pendency of the present appeal, it would be apt to reproduce relevant portion of para 9 and 14 of the judgment of Hon'ble Supreme Court in **Jagdish Singh's case** (supra):-

“....The High Court issued these consequential directions.

"If the decree for specific performance of contract in question is found incapable of being executed due to acquisition of subject land, the decree shall stand suitably substituted by a decree for realisation of compensation payable in lieu thereof as may be or have been determined under the relevant Act and the plaintiff shall have a right to recover such compensation together with solatium and interest due thereon. The plaintiff shall have a right to recover it from the defendant if the defendant has already realised these amounts and in that event the defendant shall be further liable to pay interest at the rate of twelve per cent from the date of realisation by him to the date of payment on the entire amount realised in respect of the disputed land."

We are afraid the approach of the High Court is perhaps somewhat an over simplification of an otherwise difficult area of law as to the nature of relief available to a plain tiff where the contract becomes impossible of specific performance and where there is no alternative prayer for compensation in lieu or substitution of specific performance. While the solution that has commended itself to the High Court might appear essentially just or equitable, there are certain problems both of procedure and of substance in the administration of the law of specific relief particularly in the area of award of an alternative relief in lieu or substitute of specific performance that require and compel consideration, especially in view of some pronouncements of the High Courts which have not

perceived with precision, the nice distinctions between this branch of the law as administered in England and in India.

14. We accordingly confirm the finding of the High Court that Respondent was willing and ready to perform the contract and that it was the Appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs.1,50,000 (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal-claims for compensation.”

The reading of the aforementioned paras reveal that where situation had arisen before the Courts below that in case plaintiff is not able to succeed on the ground of readiness and willingness, the entire situation would have been different but if a vendee is always ready and willing though the vendor had lost the saleable right or interest then the vendee would be entitled to all the amount of compensation including the element of interest and solatium awarded etc. He would not only be entitled to refund of the earnest money along with interest, in essence, he is deemed to have been stepped into the shoes of the vendor. Similar situation has arisen in the present case.

As per the facts indicated above, I am of the view that the appellant-defendant has failed to prove/dispel the thumb impression on the agreement to sell that was obtained on blank stamp paper. The stamp paper contains two leaves. The thumb impression on the documents appears to have been appended after the document had been written. If at all, the appellant was so sure about the same, he could have taken the action immediately as per law. In my view, the appellant-defendant has not been

able to rebut the authenticity of the document whereas on the contrary the witnesses, as noticed above, have been subjected to cross-examination but they stuck to their stand. It is conceded position on record that the appellant-defendant was working as Constable in the Haryana Police and served for 26 years. He cannot be said to be innocent person and novice to all these proceedings. The story of signing on the blank papers is difficult to believe.

In view of the aforementioned, the respondent-plaintiff shall be deemed to have stepped into the shoes of the vendor and shall be entitled to entire amount of compensation along with solatium and interest etc. owing to the acquisition of land instead of decree for specific performance qua agreement to sell. With the aforementioned modification, the second appeal is disposed of. All the findings of the Courts below qua readiness and willingness shall remain intact, in essence, the contract is held to be validly executed.

(AMIT RAWAL)
JUDGE

September 23, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No