

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

RSA No.5447 of 2016 (O&M)

Date of decision : 19.10.2016

Rajiv Sharma and another

...Appellants

Versus

Kaptan Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Anil Kshetarpal, Sr. Advocate with
Mr. Piyush Aggarwal, Advocate for the appellants.

Mr. R.S. Sharma, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

Notice of motion.

Mr. R.S. Sharma, Advocate accepts notice on behalf of respondents.

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Piyush Aggarwal, learned counsel appearing on behalf of appellants-defendants submits that respondents-plaintiffs had instituted a suit for possession by way of specific performance of agreement to sell dated 09.12.2004 executed by defendant No.1-Prem Chand in favour of plaintiff allegedly for total sale consideration of ₹5,00,000/- per acre against the payment of earnest money of ₹1,82,000/-. The stipulated date for execution

and registration of the sale deed was 15.05.2005. On receipt of the aforementioned notice, defendant No.1-Vendor filed written statement and denied the execution of agreement to sell but admitted the fact that he had already entered into agreement to sell dated 04.06.2004 with defendant No.3. The aforementioned fact has not been noticed by the Courts below. Courts have gone beyond the pleadings and relied only upon statement of the witnesses and as well as of Prem Chand. Pleadings would carry more weight than the statements in the cross-examination, as person may tell lies, but the documents would not. Once defendant No.1-Vendor admitted his signatures on the agreement to sell and the sale deed, it did not lie in the mouth of the plaintiff to challenge the aforementioned sale deed and agreement to sell. The findings of the lower Appellate Court while setting aside the judgment and decree of the trial Court granting the alternative relief to respondent(s) is not sustainable in the eyes of law, much less, perverse for without any evidence, formed the opinion that it was antedated.

No evidence has been come on record, much less, register to show who purchased stamp paper, thus, lower Appellate Court ought not to have exercised the discretion under Section 20 of the Act. In fact, Vendor-defendant No.1 had executed agreement to sell dated 04.06.2004 against the payment of earnest money of ₹1,10,000/-. However, no target date for execution and registration was fixed but again on 20.10.2004 another amount of ₹2,00,000/- was paid which was acknowledged by the Vendor and the target date 25.04.2005 was fixed, whereas, sale deed, aforementioned was to be executed on 20.04.2005. There is no complaint by

the defendant No.1 regarding fraud or misrepresentation. Respondents-plaintiffs despite execution of the sale deed, filed the suit after expiry of 10 months. He is stranger to the aforementioned purchase.

He further submits that after execution of the aforementioned sale deed, suit at the instance of the daughter of Vendor was filed by invoking the provision of Section 22 of the Hindu Succession Act, however, same was also dismissed. All these factors reveals that defendant No.1 had acknowledged the execution of the agreement to sell dated 04.06.2004 which is prior in time. The trial Court rightly granted the alternative relief, whereas, lower Appellate Court has abdicated in granting the discretionary relief and thus, urges this Court for setting aside of the judgment and decree under challenge.

Per Contra, Mr. R.S. Sharma, learned counsel appearing on behalf of respondents-plaintiffs submits that lower Appellate Court being last Court of fact and law, had an occasion to examine the attesting witnesses of the agreement to sell and as well as of the sale deed and found contradiction, therefore rightly ignored the admission of the Vendor-Prem Chand. Though in paragraph No.27, he states that his evidence can not be relied upon, on the premise that respondents-plaintiffs had proved agreement to sell dated 09.12.2004 by examining Rameshwar, attesting witness. Even the agreement to sell was scribed by Dhirender Singh Sehrawat Advocate. He further submits that agreement to sell dated 04.06.2004 has not been scribed by any proper scribe. Even he did not know target date thus it was thus antedated one and rightly so held to be a sham transaction. Even prior to filing of the suit, legal notice was also served in the month of

December 2005. Suit was accordingly filed on 13.03.2016. Plaintiff had only come to know about sale deed executed by the vendor in favour of defendant when he filed suit for possession seeking specific performance and rightly so sale deed has been set aside. The findings of fact by the lower Appellate Court should not be interfered and urges this Court for affirming the same by dismissing the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Anil Kshetarpal, for, in order to justify the findings and reasoning of mine, it would be apt to reproduce the paragraph No.7 of the written statement filed by defendant No.1-Prem Chand in suit filed by respondents-plaintiffs, which reads thus:-

“7. That the plaintiff has not come to the Hon'ble Court with clean hands and has suppressed and concealed the true and material facts from this Hon'ble Court. That the facts of the case are that the answering defendant had borrowed a sum of Rs.1,00,000/- from Sh. Nand Kishore, the father of the plaintiff about 5 years ago i.e. Feb. 2001 for the marriage of the daughter of the answering defendant namely Savita which was performed on dated 25.2.01 at Village Harsaru Tehsil and Distt. Gurgaon solemnized with Kamal Kishore in the presence of Amar Singh resident of Village Garoli Tehsil and Distt. Gurgaon and the answering defendant had returned a sum of Rs.32,000/- as amount of interest to the father of the plaintiff Nand Kishore before his death i.e. two months before his death and the remaining balance amount of Rs.1,50,000/- with interest was paid by the answering defendant to the plaintiff in the presence of Harpal resident

of Village Harsaru Tehsil and Distt. Gurgaon etc. and the plaintiff had obtained the signatures on some papers of the answering defendant, but the plaintiff had misutilized the signatures of the answering defendant by way of preparing false and frivolous agreement of sale. The answering defendant had never executed any agreement of sale in favour of the plaintiff regarding the land in question nor had received any earnest money from the plaintiff nor agreed to sale his land in question. It is submitted that the answering defendant had already entered into agreement of sale of the land in question measuring 15 kanals 19 marlas of land out of his agricultural land comprising of khewat/khata No.37/40, Rect. No.55, Killa Nos.23/1 (0-15), Rect. No.73, Killa No.3/2 (7-12), 8/1 (7-12), total 3 kitas total land 15 kanals 19 marlas situated within the revenue estate of Village Harsaru Tehsil and Distt. Gurgaon and vide agreement of sale dated 4.6.04 and sale deed to this effect was executed vide Vasika No.1214 dated 20.4.06 registered in the office of Joint Sub Registrar Gurgaon executed by the defendant No.1 in favour of the defendant Nos.2 and 3 for a total sale consideration of Rs.11,00,000/- and mutation No.3036 dated 20.06.06 was sanctioned in favour of the defendants No.2 and 3 of the land in question. So the question of entering agreement of sale in favour of the plaintiff does not arise. Hence, the plaintiff has no right, title, interest and concern in the land in suit in any manner whatsoever. Hence, the suit of the plaintiff is liable to be dismissed on this score alone.”

The Lower Appellate Court has abdicated in not referring to the aforementioned averments. On perusal of the aforementioned thereof, it is evident that defendant No.1 had not denied the execution of the agreement to sell in favour of respondents-plaintiffs. Rather it was stated that plaintiff

misutilized the signatures of his which, tantamounts to admitting execution of agreement to sell and as well as execution of the sale deed in favour of appellants-defendant Nos.2 and 3. In view of the pleadings aforesaid, the evidence of the other witness is/was meaningless. Vendor did not make any complaint to authorities regarding some mischief or fraud having been played upon them or had ever been submitted. Even otherwise, it is a matter of record that daughter of Vendor as noticed above instituted the suit, under Section 22 of the Hindu Succession Act but same was dismissed, in essence, filed the suit challenging the sale deed. A sum of ₹10,000/- was paid in cash. It is meaningless that when there is no target date, an agreement can be in two ways either time being essence or otherwise. However on 20.10.2004 when additional sum of ₹2,00,000/- was paid, the target date was specified as 25.04.2005 and the sale deed has been executed on 20.04.2005. Target date in the respondent case was 15.05.2005. Once there is already breach, he could have instituted the suit but he waited for sometime and filed the same on 13.03.2006.

In my view, once it has been proved on record that there was prior agreement to sell in favour of appellants-defendant No.2 and 3 which has been admitted by Vendor, alternative relief granted by the trial Court is perfect, legal and justified.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the

Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 – 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by

Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons aforementioned, judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Accordingly, present appeal is allowed.

19.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No