

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

RSA No.1450 of 2014 (O&M)

Date of decision : 31.05.2016

Gurbhej Singh and others

...Appellants

Versus

Gurminder Kaur and others

...Respondents

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, Sr. Advocate with
Mr. Kushagra Mahajan, Advocate for the appellants.

Mr. Suresh Mankotia, Advocate for the respondent Nos.1 to 5.

Mr. A.P.S. Sandhu, Advocate for respondent No.6.

AMIT RAWAL, J. (Oral)

The appellant-defendant Nos.2 to 5 are aggrieved of the decretal of the suit seeking possession by way of specific performance of the agreement to sell dated 29.06.2001 in respect of land measuring 51 kanals 6 marlas whereas decree has been granted only in respect of 31 kanals 14 marlas.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Kushagra Mahajan, learned counsel appearing on behalf of appellant submits that defendant No.1-Vendor had entered into agreement to sell with the respondent-plaintiff of aforementioned agreement to sell for total sale consideration of ₹7

lacs per acre against the payment of ₹5,50,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 30.01.2002. The agreement to sell also envisages the condition of payment of another ₹10 lacs on 28.09.2001. The instant suit has been filed on 06.05.2004. However no doubt during the subsistence of the agreement to sell, the vendor had sold the land in question to the appellant vide four sale deeds dated 13.09.2002 and one on 16.09.2002. The factum of the sale deed was in knowledge of the respondent-plaintiff, which surfaced in the cross-examination, whereas the Courts below had declined the plea of the appellant-defendant-subsequent vendees, despite agreement to sell has been proved therefore ought to have been granted the decree of refund of earnest money along with reasonable interest. It is settled law that subsequent vendees can always set up plea of readiness and willingness. The pleadings qua readiness and willingness as per the provision of Section 16(c) of 1963 Act is conspicuously wanting. Except the bald averments that respondents-plaintiffs have always been ready and willing, no explanation or any evidence has come forth in not filing the suit immediately, suit was also not preceded with any legal notice and thus urges this Court for formulation of the following substantial questions of law:-

1. Whether the appellant-defendants No.2 to 5 being subsequent vendees are bona fide purchaser for valuable consideration?
2. Whether the respondents-plaintiffs had always be ready and willing to perform agreement to sell?
3. Whether the respondents-plaintiffs are entitled to refund of the earnest money?

Mr. Suresh Mankotia, learned counsel appearing on behalf of respondent submits that agreement to sell, aforementioned, has been proved

through the testimony of attesting witnesses namely Rachhpal Singh and Gurminder Kaur. After having noticed the aforementioned fact, the Courts below have exercised the discretion under Section 20 of the 1963 Act, whereas appellants have miserably failed to prove the ingredients of Section 41 of the Transfer of the Property Act. Once the sale deed is during the subsistence of the agreement to sell, therefore, the appellants can only claim damages against the vendee but cannot protect the sale deed. The vendor had once denied the execution of the agreement to sell, therefore the plea of readiness and willingness is not available to the subsequent vendees and urges this Court for affirming of the findings under challenge.

Mr. A.P.S. Sandhu, learned counsel appearing on behalf of Vendor submits that agreement to sell was specifically denied. In fact there was agreement between the respondents-plaintiffs and defendant No.1. The Defendant No.1 had sold the property vide 5 sale deeds aforementioned in favour of the appellant. Impugned judgments and decrees of the Courts below are not sustainable.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr. Jain, for, on going through the pleadings in the plaint and as well as cross-examination, I am of the view that respondent-plaintiff miserably failed to prove the ingredients of Section 16(c). For the sake of brevity, relevant portion of the suit, reads thus:-

“Even before stipulated dated i.e. 30.1.2002 the plaintiffs approached the defendant No.1 and offered her the balance sale consideration xxx xxx in the jamabandi for the year 2001-2002 and in the alternative suit for the recovery of Rs.11 lacs and also for permanent injunction restraining the

defendants from alienating/mortgaging or creating any charges over the property in question. and also money for the purchase of the stamp papers required for the execution and registration of the sale deed. But there was no satisfactory answer from the side of the defendant no.1 and the plaintiffs were simply put off. However on 30.01.2002 i.e. the date fixed for the execution of the sale deed in terms of the agreement in question, the plaintiffs remained present in the office of the Sub Registrar Amritsar right from 9 AM to 5 PM but the defendant No.1 did not turn up and the plaintiffs then were left with no other alternative except to get their presence marked which they did accordingly by swearing in an affidavit before the Sub Registrar Amritsar. Although the plaintiffs were ready with the balance sale consideration and have also taken the money required for the purchase of the stamp papers and also the money required towards other incidental and collateral charges but the defendant did not turn up and thus the sale deed could not be executed in favour of the plaintiffs in terms of the agreement in question. Defendant No.1 thus has violated the terms & conditions of the agreement in question and the fault lays with her. The plaintiffs always remained ready and willing to perform their part of the contract and are still ready and willing to do so but the defendant No.1 did not remain ready and willing to perform her part of the contract and thus violated the terms and conditions of the agreement in question and committed breach of the same.”

Gurminder Kaur in cross-examination admitted that she know about the agreement to sell yet could not give explanation for filing the suit after lapse of two years. Sale deed in favour of the appellant as noticed above are of September 2002 whereas present suit has been filed on 06.05.2004. It is settled law that as per the ratio decidendi culled out by the Hon'ble Supreme

Court in *Sita Ram Vs. Radhey Shyam*, 2007(4) RCR (Civil) 533 that the respondent-plaintiff has to be ready and willing throughout i.e. from the date of execution of the agreement to sell, till the filing of the suit, during the pendency of the suit and till the passing of the decree.

In view of aforementioned, I am of the opinion that the respondents-plaintiffs have failed to prove the aforementioned ingredients, thus, Courts below ought not to have exercise the discretion under Section 20 of 1963 Act. Since agreement to sell has been proved, much less, the payment of earnest money, I am of the view that respondents-plaintiffs are entitled to refund of earnest money along with interest at the rate of 6% but not the discretionary relief.

Accordingly, judgment and decree of both the Courts below are hereby modified. Judgment and decree of specific performance is hereby set aside. However, suit is decreed to the extent of alternative relief aforementioned.

Question of law No.3 as noticed above is answered in favour of respondents-plaintiffs and against appellants-defendants and questions of law Nos.1 and 2 are answered in favour of appellants-defendants and against the respondents-plaintiffs.

Appeal stands partly allowed.

Decree sheet is ordered to be prepared.

31.05.2016

pawan

**(AMIT RAWAL)
JUDGE**