

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

**RSA No.1862 of 2014 (O&M)
Date of Decision: 19.10.2016**

Binder Singh

.....Appellant

Vs

Nirlap Kaur and others

.....Respondents

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

Present: Mr. R.K. Bansal, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No.5592-C of 2015

Prayer made in this application is for bringing on record the legal representatives of deceased/appellant Binder Singh, who died on 07.01.2015.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Binder Singh as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

RSA No.1862 of 2014 (O&M)

[1]. Defendant-appellant is in Regular Second Appeal against judgment and decree dated 25.01.2014 passed by District Judge, Kaithal whereby judgment and decree dated 08.04.2011 passed by Additional Civil Judge (Sr. Divn.), Guhla was set aside.

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for possession by way of specific performance. An agreement to sell was executed on 06.02.2006 whereby defendant agreed to sell the suit land to the plaintiff @ Rs.30,000/- per *marla*. The defendant received an earnest money to the tune of Rs.75,000/-. The target date for registration of sale deed was fixed as 05.04.2006. Balance sale consideration was to be paid at the time of registration of sale deed.

[3]. Plaintiff alleged that on the basis of mutual consent of both the parties, date for execution of sale deed was extended from 05.04.2006 to 22.09.2006. The decision regarding extension was taken on 25.03.2006. Additional money to the tune of Rs.50,000/- was also paid. On 19.09.2006 the date was further extended from 22.9.2006 to 25.03.2007. An additional amount of Rs.25,000/- was paid on 19.09.2006. In this way total

amount paid to defendant accumulated to Rs.1,50,000/- towards earnest money.

[4]. After paying the aforesaid earnest amount of Rs.1,50,000/-, the plaintiff always remained ready and willing to perform his part of contract. Even, before the target dated i.e. 25.03.2007. On 25.03.2007 was Sunday, therefore, plaintiff informed the defendant in respect of sale deed to be executed on 26.03.2007 and went to the office of Sub-Registrar, Guhla along with the balance sale consideration and requisite amount for stamp registration charges. Plaintiff waited for defendant till close of the office. Defendant did not turn up. Notice dated 25.04.2008 was served upon the defendant by the plaintiff and, thereafter another notice upon the defendant was served on 29.05.2008. Seeing the adamant attitude of the defendant, the suit was filed by the plaintiff.

[5]. The suit was contested by the defendant. Execution of agreement to sell was denied. Borrowing of Rs.30,000/- was alleged from Saravjeet Singh, real brother-in-law of the plaintiff. Aforesaid Saravjeet Singh allegedly obtained signature of the defendant on some blank papers and on the revenue stamp and the plaintiff in collusion with said Saravjeet Singh forged and fabricated the document of agreement to sell. Possession of the

house was never delivered to the plaintiff. Defendant claimed that the house always remained in his possession where his family is residing. Defendant never received any amount, nor executed the agreement to sell.

[6]. After necessary pleadings, both the parties went to trial on the following issues:-

- “i) Whether the plaintiff is entitled to a decree for possession by way of specific performance of the agreement to sell dated 06.02.2006? OPP*
- ii). Whether the suit is properly verified as per law? OPP.*
- iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
- iv) Relief.”*

[7]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[8]. After appraisal of the evidence, trial Court decreed the suit of the plaintiff only to the extent of money decree to the effect that plaintiff was entitled to recovery of Rs.3,00,000/- i.e. Rs.1,50,000/- as earnest money and Rs.1,50,000/- as consolidated damages as alternative relief. Defendant was directed to deposit the aforesaid amount within a period of three months from the date of judgment of the trial Court, failing which

the plaintiff was held entitled to recover the decretal amount along with interest @ 6% per annum from the date of decree till final realization of the amount.

[9]. The trial Court while granting alternate relief of recovery of amount took notice of the fact that three extension were given for execution of the sale deed. Even in the notice Ex.P-5 defendant was called upon to execute and register the sale deed on or before 12.06.2008. The last extension was provided for registration of sale deed was 25.03.2007. From 25.03.2007 till 12.06.2008, plaintiff remained silent and, therefore, the trial Court held that the plaintiff was not ready and willing to perform his part of contract. While considering hardship in terms of Section 20 of the Specific Relief Act (for short 'the Act') the trial Court passed the alternate relief of recovery of earnest amount along with damages.

[10]. Plaintiff through his legal representatives went in appeal before the lower Appellate Court. The lower Appellate Court on the basis of the stand taken by the defendant in the written statement held that once the execution of agreement to sell was denied by the defendant, question of readiness and willingness of the plaintiff cannot be pressed into service by the defendant. The lower Appellate Court accepted the appeal

thereby decreeing the suit in *toto* on the premise that the stand of the defendant did not fall under the ambit of Section 20 of the Act.

[11]. I have considered the submission made by both the learned counsel for the parties.

[12]. Evidently, the agreement to sell was executed on 06.02.2006. An earnest money to the tune of Rs.75,000/- was paid to the defendant at the time of execution of agreement to sell. The target date was fixed as 05.04.2006. On 25.03.2006 vide endorsement Ex.PW-1/A made on the overleaf of Ex.P-1, the date for execution and registration of sale deed was extended from 05.04.2006 to 22.09.2006. An amount of Rs.50,000/- was paid on 25.03.2006 towards additional earnest money. Thereafter on 19.09.2006 date was further extended from 22.09.2006 to 25.03.2007 and additional amount of Rs.25,000/- was paid towards earnest money.

[13]. Plaintiff served legal notice dated 29.05.2008 (Ex.P-5) upon the defendant calling upon him to execute the sale deed on or before 12.06.2008 i.e. about nine months after the last extended date i.e. 25.03.2007. Execution of agreement to sell has been proved on record and the trial Court on the basis of agreement to sell granted alternate decree for refund of the

amount. The defendant remained contended with the judgment and decree dated 08.04.2011 passed by the trial Court and did not prefer any appeal. Execution of agreement to sell was virtually admitted by the defendant.

[14]. The present appeal has to be considered in a narrow compass whether the case of defendant falls under any of the exceptions in terms of Section 20 of the Act. It is a settled principle of law that once the execution of agreement to sell is admitted or established, the normal consequences to decree the suit for specific performance to follow, unless and until a case of hardship is pleaded and proved by the defendant in order to attract exceptions carved out under Section 20 of the Act. The defendant did not venture to challenge the judgment and decree of the trial Court, rather his stand was of denial of agreement to sell. The defendant very emphatically pleaded that he had not executed any agreement to sell on 06.02.2006 in favour of the plaintiff, rather he had borrowed a sum of Rs.30,000/- from one Saravjeet Singh, who was real brother-in-law of the plaintiff. The signatures were obtained by Saravjeet Singh on some blank papers and on revenue stamps and thereafter agreement to sell was forged by the plaintiff in collusion with his brother-in-law Saravjeet Singh.

[15]. Apparently, the defendant having denied the very execution of agreement to sell cannot turn around to question readiness and willingness of the plaintiff to perform his part of contract. The defendant, who has denied the very execution of agreement to sell cannot take up the plea of readiness and willingness on the part of the plaintiff. Plea of hardship has to be pleaded and proved in the case. No evidence has been led by the defendant for proving the hardship, nor the hardship was made part of the defence. Once the execution of agreement to sell was proved and the plea of defendant having borrowed loan from Saravjeet Singh was disbelieved, the normal consequences of agreement to sell was of decretal of the suit. Defendant even gave suggestions to the plaintiff and his witnesses in respect of the loan which were denied by the plaintiff and his witnesses. The relationship with Saravjeet Singh was admitted by the plaintiff, however it was denied that he along with aforesaid Saravjeet Singh had fabricated any document of agreement to sell.

[16]. Defendant of his own in the cross-examination denied his version by deposing that he did not know even Saravjeet Singh, nor he took loan from him. By deposing in the aforesaid manner, the defendant even destroyed his case by not even taking the plea of doubt, in remote connectivity with the

agreement to sell which according to him was forged and fabricated and his signatures on the signed blank papers and some revenue stamp papers were obtained in the transaction of the loan. Defendant virtually gave up his case. The stand projected by the defendant in the context of obtaining signatures on blank papers and receipt etc. could not be substantiated by him by any evidence. Even the cross-examination of the plaintiff was destructive in nature.

[17]. Once the plea of signatures having taken on blank papers was admitted and the context in which said signatures were taken were not proved, it has to be taken that the defendant has admitted the signatures on agreement to sell. The denial raised by the defendant would not create any such plea to the benefit of the defendant on the threshold of Section 20 of the Act, particularly when plea of hardship was not pleaded and proved on record by the defendant. As a natural consequence of agreement to sell having been proved to the hilt, grant of specific relief is a necessary exercise to be ordered by the Court.

[18]. In view of above discussion, in my considered opinion the lower Appellate Court has not committed any illegality in decreeing the suit in *toto* in appeal. Consequently, I see no

reason to differ with the findings recorded by the lower Appellate Court. This appeal is accordingly dismissed.

October 19, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No