

Civil Revision No. 4780 of 2014 (O&M)

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

Civil Revision No. 4780 of 2014 (O&M)

Date of decision: 31.1.2017

Subhash Kumar Bansal

... Petitioner

Vs.

Harvinder Singh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arun Jindal, Advocate
for the petitioner.

Mr. G.S.Toor, Advocate
for respondents No. 1 to 3.

Mr. S.S.Rangi, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the order dated 17.5.2014 (Annexure P-4) passed by learned trial court, whereby application of respondent No.4 under under Order 1 Rule 10, Order 22 Rule 10 read with Section 151 of the Code of Civil Procedure, ('CPC' for short), was allowed, impleading him as defendant in the suit filed by petitioner-plaintiff for possession by way of specific performance of agreement to sell.

Heard learned counsel for the parties.

Learned counsel for the petitioner, while placing reliance on a judgment of the Hon'ble Supreme Court in **Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. and others, 2008 AIR (SC) 2134** and a

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judgment of this Court in **Satpal Singh and others Vs. Vinod Kumar Chawla and others, 2011 (3) RCR (civil) 154**, submits that once respondent No.4 was stranger to the suit filed by the petitioner-plaintiff, being a third party, learned trial court exceeded its jurisdiction, while passing the impugned order. He further submits that since after passing the impugned order, respondent No.4 has filed his separate suit dated 24.7.2014 (Annexure P-6), the impugned order is patently illegal. He prays for setting aside the impugned order, by allowing the present revision petition.

Per contra, learned counsel for respondent No.4 vehemently contended that petitioner-plaintiff was trying to play smart. Defendants-respondents No.1 to 3 were in league with plaintiff-petitioner and nobody was there to protect the interest of respondent No.4-Sunil Kumar. He further submits that if the plaintiff and defendants No. 1 to 3 may collude with each other and decree is accordingly passed, it would be only respondent No.4 who shall be the sufferer. He also submits that since the plaintiff has not denied his signatures on later agreement to sell dated 25.4.2011 with respondent No.4, before filing the suit, respondent No.4 was very much a necessary party and was rightly impleaded as defendant by learned trial court. He prays for dismissal of the present revision petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since the impugned order passed by learned trial court is not suffering from any patent illegality or perversity, the same deserves to be upheld. Present revision petition is without any merit and the same is liable to be dismissed. To say so, reasons are more than one, which are being

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recorded hereinafter.

It is a matter of record that suit for possession by way of specific performance of agreement to sell dated 18.3.2011 was filed by the petitioner against respondents No.1 to 3. When respondent No.4 came to know about the pendency of the suit, he moved an application under Order 1 Rule 10 read with Section 151 CPC for getting himself impleaded as defendant No.4, alleging that before filing the suit, plaintiff had entered into an agreement to sell with him on 25.4.2011.

It is also a matter of record that petitioner has not denied his signatures on the later agreement to sell dated 25.4.2011 executed by him in favour of respondent No.4-Sunil Kumar, whereby he agreed to sell half share of the suit land in favour of respondent No.4. Even the stamp papers were also purchased by the petitioner in his own name, with a view to execute the agreement to sell dated 25.4.2011. Learned trial court has also recorded that at the time of execution of agreement to sell dated 25.4.2011, plaintiff-petitioner has received an amount of ₹52,50,000/- towards earnest money from Sunil Kumar-respondent No.4. Under the abovesaid peculiar fact situation, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned order, allowing application of defendant-respondent No.4 under Order 1 Rule 10 read with Section 151 CPC, and the same deserves to be upheld.

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the observations made and law laid down therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be

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examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. *"12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually*

decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on

which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a

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legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

Ed. *See Union of India VS. Amrit Lal Manchanda,*

(2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to peculiar fact situation obtaining on record of present case, it is unhesitatingly held that learned trial court committed no error of law, while passing the impugned order. It is so said, because if at a later point of time, plaintiff-petitioner and defendants No. 1 to 3 may collude

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with each other, respondent No.4 would be the only sufferer and that too, for none of his fault. Further, filing of separate suit by respondent No.4 at a later point of time would be hardly of any consequence so far as the impugned order is concerned. In fact, learned trial court was well justified to pass the impugned order, so as to avoid any multiplicity of litigation between the parties at a later point of time. Presence of respondent No.4 shall also facilitate the learned trial court to arrive at a just conclusion, with a view to do complete and substantial justice between the parties. In this view of the matter, it can be safely concluded that learned trial court proceeded on a factually correct and legally justified approach, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

31.1.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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