

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

RSA No.1191 of 2010 (O&M)

Date of decision: 15.05.2017

Rajesh and others

... Appellants

Vs.

Ramphal (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. G.S. Gandhi, Advocate
for the appellants.

Mr. Vikrant Hooda, Advocate
for respondents No.2 to 4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the learned trial Court, vide its impugned judgment and decree dated 12.08.2004, dismissed the suit for possession by way of specific performance of agreement to sell dated 11.12.1996 and first appeal of the plaintiffs was also dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 24.10.2009.

Brief facts of the case, as recorded by learned first appellate Court in para 2 of its judgment, are that respondent/defendant No.1 executed an agreement to sell dated 11.12.1996 Ex.P1, vide which he agreed to sell his land

measuring 10 kanal 16 marlas situated in the revenue estate of village Munimpur (Kukrola), Tehsil and District Jhajjar in favour of the appellants. Plaintiffs for consideration of Rs.1 lac, which was received by him and he delivered the possession of the land to the appellants/plaintiffs at the time of execution of sale deed Ex.P1. As per agreement to sell Ex.P1, it was agreed between the parties that the sale deed would be executed upto 03.04.1998, respondent/defendant No.1 malafidely and illegally sold the disputed land to respondent/defendant No.2 vide sale deed 24.02.1998 Ex.D1. The appellants/plaintiffs were still ready and willing to execute the sale deed in their favour and prayed to declare sale deed Ex.D1 illegal, null and void.

Having been served in the suit, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the sale deed dated 24.02.1998 is illegal, null and void, not binding on the rights of the plaintiff on the ground alleged? OPP
- 1A. Whether the agreement to sell dated 10.12.1996 was ever executed by the defendant No.1 in favour of the plaintiffs? OPP
2. Whether the agreement to sell dated 10.12.1996 is a result of fraud, misrepresentation and is not binding on the right of the defendants? OPD
3. Whether the defendant No.2 has purchased the suit land being bonafide purchaser and is protected under Section 41 of the T.P.A. Act? OPD

4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
5. Relief.

In order to prove their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit of the plaintiffs was dismissed by the learned trial Court, vide its impugned judgment and decree dated 12.08.2004. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 24.10.2009. Hence this regular second appeal at the hands of the unsuccessful plaintiffs.

Notice of motion was issued and lower Court record was requisitioned.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would show that plaintiffs-appellants miserably failed to prove their pleaded case, by leading cogent and convincing evidence. Plead and argued case on behalf of the plaintiffs-appellants, right from day one, was that they were already in possession over the suit land. It was also the argued case on behalf of the appellants that they had paid the total amount of sale consideration to defendant No.1 on the date of agreement to sell dated 11.12.1996. If that was so, there was no scope of entering into an agreement to sell, either for the plaintiffs or for defendant No.1.

It is so said because once the plaintiffs were claiming themselves to

be in possession and the total amount of sale consideration had been paid by them, they would have insisted for registration of the sale deed itself instead of entering into an agreement to sell. However, they did not do so, for the reasons best known to them. When confronted with this peculiar fact situation to explain, learned counsel for the appellants had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is the settled proposition of law that plaintiff has to stand on his own legs. He cannot succeed on the alleged weakness of the case of the defendant. In the present case, plaintiffs failed to prove their pleaded case by leading cogent evidence. Witnesses of the plaintiffs have contradicted each other to such an extent that plaintiffs were bound to fail. Plaintiffs produced one attesting witness namely Bhani Ram as PW2, who could not prove due execution of the agreement to sell, in spite of the fact that he was father-in-law of the plaintiff-appellant Rajesh. He has admitted before the Court that neither he was knowing the vendor Ramphal-defendant No.1 nor the other attesting witness Sukhpal Advocate.

It also does not appeal to reason that as to why the plaintiffs did not produce the other attesting witness Sukhpal Advocate, who was very much available to them. When learned counsel for the appellants was asked to explain any reason in this regard, he had no answer and rightly so, it again being a matter of record. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law in passing the impugned judgments and decrees and the same deserve to be

upheld, for this reason also.

So far as the judgments of the Hon'ble Supreme Court in **Union of India Vs. M/s Chaturbhai M. Patel & Co., AIR 1976 Supreme Court 712, A.C. Ananthaswamy Vs. Boraiah (dead) by LRs, 2004 (8) SCC 588, Shanti Budhiya Vesta Patel and others Vs. Nirmala Jayprakash Tiwari and others, 2010 (3) RCR (Civil) 262** and judgments of this Court in **Jagjit Singh Vs. Pritam Singh and others, 1994 LJ 171, Joginder Singh and others Vs. Nidhan Singh and another, 1996 PLJ 307, Ram Dass Vs. Shisha Singh, 2001 (3) RCR (Civil) 433, Harnek Singh Vs. Kanshi Ram, Vol.CXLIX-(2008-1) PLR 210 and Balwant Singh Vs. Karnail Singh, Vol. CLXII-(2011-2) PLR 269**, relied upon by learned counsel for the appellants are concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the appellants, being distinguishable on facts.

It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao 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, the 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 earlier 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 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."

Appellants, being the plaintiffs, onus was on them to prove their case. Defendant No.1 has denied the execution of agreement to sell, pointing out that the Advocate took his signatures on some blank papers. In such a situation, a heavy onus was on the plaintiffs to produce Sukhpal Advocate as attesting witness of the agreement to sell, however, they failed to do so, for the

reasons best known to them. Attesting witness Sukhpal Advocate was not produced in the witness box by the plaintiffs, without there being any justified reason. Thus, plaintiffs were bound to fail. This is what has been rightly held by the learned Courts below, while passing the impugned judgments and decrees and the same deserves to be upheld, for this reason as well.

The abovesaid taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and different High Courts, including this Court: -

1. ***Joseph Johan Peter Sandy Vs. Veronica Thomas Rajkumar and another, 2013 (3) SCC 801 (SC).***
2. ***Garre Mallikharjuna Rao (D) by LRs and others Vs. Nalabothu Punniiah, 2013 (4) SCC 546 (SC).***
3. ***Joseph George Vs. Chacko Thomas, 1992 CivCC 140 (Kerala).***
4. ***Muhammed Vs. Velyudhan, 2001 (2) RCR (Civil) 211 (Kerala).***
5. ***Santokh Singh Vs. Kishan Singh, 1991 (2) CurLJ (CCR) 75 (P&H).***

Facts of the case in **Nalabothu Punniiah's** case (supra) before the Hon'ble Supreme Court were very close to the facts of the case in hand. In fact, plaintiffs failed to discharge their initial onus, which would always be on the plaintiffs. Unless the plaintiffs would sufficiently discharged their initial onus, burden of proof would not shift on the defendants. In this view of the matter, it is unhesitatingly held that the learned Courts below were well justified in recording their concurrent findings of facts, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The

relevant and cogent findings recorded by the learned Additional District Judge in para 10 of the impugned judgment, which deserve to be noticed here, read as under: -

*“I have heard the rival contentions of both the parties and have gone through the case file minutely, it is settled law that the appellant/plaintiff has to prove his case by leading cogent, convincing and reliable evidence. In case title **Punjab Urban Planning and Development Authority Vs. M/s Shiv Saraswati Iron and Steel Re-rolling Mills, Latest Judicial Reports 1998 (3) Supreme Court, 106**, it has been held by Hon'ble Supreme Court that as per Section 101 of the Evidence Act, it is the plaintiff who has to prove its case and he must succeed or fall on his own case and he cannot take the benefit of the weakness of the defendant's case to get a decree. For proving the execution of agreement to sell Ex.P1 in their favour, the appellants/plaintiffs have examined Advocate Jugan Singh as PW1 and Bhani Ram as PW2 but their testimonies are not convincing and believable as PW1 in the cross-examination has failed to disclose the name of the typist from whom the agreement was got typed by him and he has further failed to disclose who had written LTI Dhani Ram on Ex.P1 below the thumb impression of Dhani Ram. PW1 explained that his munshi has got written LTI Dhani Ram on Ex.P1 but it is very strange to note that, PW1 has failed to disclose the name of his munshi. Moreover, he deposed that no register has been maintained by him for registering the documents written by him and Ex.P1 was written by Sh. P.K. Chauhan, Advocate. Similarly,*

testimony of PW2 Bhani who is father-in-law of appellant/defendant Rajesh cannot be believed being interested witness as he stated that he did not know Ramphal and Sukhpal Advocate. This witness has failed to disclose whether Sukhpal Advocate was present at the time of execution of agreement to sell Ex.P2 or that he put his signature on it. Sukhpal Advocate was not examined by the appellants/plaintiffs in support of their case. From the testimonies of both PW1 and PW2, the execution of agreement to sell Ex.P1 is not proved on record. It is settled law that in agreement to sell though does not create an interest in land, it creates a personal obligation of a fiduciary character which can be enforced not only against the vendor but against a purchaser for consideration with notice and a volunteer. Ordinarily, a transferee of immovable property could obtain only whatever right his transferor hand. The transferee cannot be in a better position than the transferor, but the obligation cannot be enforced against a transferee for consideration without notice of the obligation. Section 19 of the Act among other things states that, specific performance of a contract can be enforced against the other party or any person claiming under him by a title arising subsequent to the contract except a transferee for the value who had paid his money in good faith and without notice of the original contract. Thus, it is clear that an agreement to sell cannot be enforced against a subsequent transferee for consideration and without notice. Support in this regard can also be taken from the case cited as Joseph George Vs. Chacko Thomas, 1992 (3) Kerala High

Court, 187. *On the other hand respondent/defendants have admitted the execution of sale deed dated 24.02.1998 and specifically denied the execution of agreement to sell Ex.P1. Thus, the sale deed Ex.D1 executed by respondent/defendant No.1 in favour of respondent/defendant No.2 is legal and valid and respondents/defendants No.2 to 4 are proved as bonafide purchaser of the suit land. The burden is upon the appellants/plaintiffs to prove the execution of the agreement to sell Ex.P1 but they have failed to discharge the onus. In case titled **Muhammed Vs. Velyudhan 2001 (2) Kerala High Court, 801,** it has been held that as per Section 114 of the Evidence Act, 1972, presumption-burden of proof-suit for specific performance of agreement – Defendants denied execution of agreement – Contended that they had signed only a blank paper and stamp paper- Party who wants to obtain relief has to prove its case – Duty of plaintiff to produce evidence to prove execution of agreement – If plaintiff discharge this burden sufficiently then onus will shift on the defendant to prove that he had not executed the agreement. In view of the foregoing discussion and findings, I am of the considered view that there is no illegal or infirmity in the judgment and decree dated 12.08.2004 passed by the learned trial Court.”*

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for

entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

15.05.2017
vishnu

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