

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

**RSA No.483 of 2012 (O&M).
Date of Decision: 02.03.2017.**

Paramjit Singh (deceased) through his legal heirs Surjit Kaur etc.

....Appellant.

VERSUS

Rajesh Kumar and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. V.K. Sachdeva, Advocate
for the appellant.

Mr. Om Pal Sharma, Advocate
for respondent No.1.

SNEH PRASHAR, J.

The instant regular second appeal was filed assailing the judgment and decree dated 17.10.2011 passed by learned Additional District Judge, Hoshiarpur vide which the appeal filed by appellant-defendant No.1 Paramjit Singh (hereinafter referred to as “defendant No.1”) was dismissed and the judgment and decree dated 02.06.2009 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur in Civil Suit No.130 of 1999 decreeing the suit for joint possession of respondent-plaintiff Rajesh Kumar (hereinafter referred to as the “plaintiff”), was upheld.

The relevant facts are that a suit for joint possession by way of

specific performance of agreement to sell dated 24.03.1995 was filed by the plaintiff. The agreement to sell was alleged to have been executed by defendant No.1 in respect of land measuring 46 Kanals 05 Marlas for a consideration of Rs.4,70,000/-, out of which an amount of Rs.2,90,000/- i.e. Rs.2,60,000/- in cash and Rs.30,000/- through a cheque was paid as part payment at the time of execution of the agreement to sell. The balance amount was to be paid at the time of execution and registration of the sale deed on or before 31.08.1995. It was also pleaded that the land was mortgaged with bank and the mortgage was to be got redeemed by defendant No.1 prior to execution of the sale deed. Possession of the land was to be delivered by defendant No.1 to the plaintiff by 15th day of the month of 'Jeth'. Alleging that he was ready and willing to perform his part of the contract, but defendant No.1 committed breach of the terms and conditions of the agreement, the suit was filed.

Defendant No.1 appeared and contested the suit raising various legal preliminary objections. He also pleaded that the agreement to sell was nothing but a forged and fabricated document to grab his land. According to him on 24.03.1995, he was a minor and was not competent to enter into any agreement. Payment of sale consideration amount was also denied by him.

Mohammad Yakub was impleaded as defendant No.2 as he was alleged to have purchased the suit property after execution of the agreement to sell in question. He too contested the suit by filing written statement and claimed to be in possession of the suit property. He also pleaded that he was a bonafide purchaser for consideration and had no knowledge about any agreement between the plaintiff and defendant No.1.

Plaintiff filed replication to the respective written statements

filed by the defendants. On the rival contentions of the parties, issues were framed and the case was adjourned for evidence of the parties. The plaintiff led his ocular and documentary evidence taking almost 8 years. Three opportunities were given to defendant No.1 for his evidence, but as he failed to produce any evidence, his evidence was closed by order and the case was decided by learned trial Court vide judgment and decree dated 02.06.2009.

Feeling aggrieved, defendant No.1 preferred an appeal, but the same was dismissed by learned Additional District Judge, Hoshiarpur vide judgment and decree dated 17.10.2011.

Still unsatisfied, the appellant-defendant No.1 preferred the instant regular second appeal.

The submissions made by Mr. V.K. Sachdeva, learned counsel representing the appellant and Mr. Om Pal Sharma, learned counsel representing respondent No.1 have been heard and record perused.

As the matter was opened for arguments, learned counsel for the appellant-defendant No.1 argued that no proper opportunity was granted by learned trial Court to defendant No.1 to adduce his evidence and he was deprived of his legal and adequate right to defend the case. Even the three opportunities as envisaged under Order XVII Rule 1 of the Code of Civil Procedure (for short, "CPC") were granted to him on payment of costs that too within a period of almost 1½ months.

Learned counsel for appellant-defendant No.1 contended that his objection that learned trial Court committed undue haste in deciding the case was not considered by learned first appellate Court as well and his appeal was dismissed.

With the said facts in the background, learned counsel

contended that atleast one proper opportunity should be given to defendant No.1 to prove the defence set up by him.

Learned counsel for respondent No.1-plaintiff resisted the submissions made by learned counsel for appellant-defendant No.1 on the ground that the second appeal on question of facts is maintainable only where the findings of Courts below stand vitiated by non consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of facts are found to be perverse. The High Court cannot interfere with the concurrent findings of facts in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower Courts. To support his arguments, learned counsel relied upon **Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board & Ors., 2010(13) SCC 216.**

It is, indeed, surprising to note that the way learned trial Court handled the case when it reached the stage of defendant evidence. The suit was filed on 29.08.1999. Some time was spent in service of the defendants and filing of written statements by them and thereafter issues were framed on 14.09.2000. The case for evidence of the plaintiff for the first time was posted to 12.01.2001. As many as 16 effective opportunities were availed by the plaintiff for producing his ocular and documentary evidence in a period of more than 8 years and in between he also twice applied for amendment of his pleadings and fortunate for him, every time his application was allowed. The plaintiff closed his evidence on 09.04.2009 and the first opportunity given to defendant No.1 for his evidence came on 23.04.2009. Suddenly, the trial was expedited to the extent that while according second opportunity for evidence of defendant No.1, last opportunity was given to him. Though

there was a gap of almost one month between the first and the second date given, but while allowing third opportunity a very short adjournment of just eight days was given that too subject to payment of Rs.500/- as costs. As 07.05.2009, was declared holiday and the case was taken up on 08.05.2009, when it was not fixed for evidence, a four days' more time was given and the case was posted to 12.05.2009. On the said date, defendant No.1 paid the costs imposed on him, yet he failed to procure just one more opportunity for his evidence and the evidence was closed. On the very next date of hearing i.e. 02.06.2009 rebuttal evidence was closed, arguments were heard and the suit of the plaintiff was decreed by pronouncing judgment.

Indeed, proviso to Order XVII Rule 1 CPC provides for granting not more than three opportunities to a party during hearing of a suit, but it is a settled proposition of law that the provision is purely directory and not mandatory in nature. Its object is only to discourage taking of unnecessary adjournments by the parties. Adjournments not beyond three times is salutary so long as the parties stick to the schedule. It would not be judicious to close the evidence of a party merely because three opportunities had been exhausted. The provision is not a mandate that takes away power of the Court to grant more than three adjournments in case a justified reason for seeking adjournment is explained by a party. In the eventuality that a sufficient reason is explained, if required to maintain the discipline, the other party can be compensated with costs for the inconvenience caused to it.

Reverting to the instant case, it has already been observed above how over anxiety and haste was shown in conducting the proceedings

certainly led to serious prejudice to the case of defendant No.1. When the plaintiff had been given 8 years to lead his evidence, there appears no ground to justify the order of learned trial Court in closing the evidence of defendant No.1 within a period of 1½ months.

Section 100 CPC postulates that a second appeal lies to the High Court only when the case involves a substantial question of law but in a case where the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the voice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse and the issue of perversity itself is a substantial question of law. Section 103 CPC provides that in a second appeal, if the evidence on record is sufficient, the High Court may determine any issue necessary for disposal of the appeal which had either not been determined by the lower appellate Court or by both i.e. the Court of first instance and the lower appellate Court or which had been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100 CPC. Thus, Section 103 CPC is to be pressed in service when it is found that the finding(s) of fact recorded by the Court(s) below stood vitiated because of perversity.

The principles of natural justice cannot be applied without reference to the relevant facts and circumstances of the case. The Court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of a particular case. In the case in hand, as discussed above, it is apparent from the facts and circumstances of

learned trial Court or by learned first appellate Court by not according adequate opportunity to the appellant-defendant to present his case/ evidence.

In the said state of facts, prayer of learned counsel for appellant-defendant No.1 for an opportunity to defendant No.1 to adduce evidence to prove the defence set up by him cannot be declined.

This Court is conscious of the fact that the case pertains to the year 1999, but when it is apparent that defendant No.1 has been made to suffer because of the over anxiousness shown by learned trial Court in deciding the case so much so that he could produce no evidence and could not even examine himself, an opportunity to him to prove his defence is justified.

Accordingly, the appeal is allowed, the judgment and decree dated 02.06.2009 passed by learned trial Court as well as the judgment and decree dated 17.10.2011 passed by learned first appellate Court are set aside. The case is remanded back to learned trial Court with the direction to grant adequate opportunity to the appellant-defendant No.1 to produce his evidence. Not more than two effective opportunities would be allowed to him and the case shall be decided within three months from the date of receipt of this judgment.

Since the main appeal itself has been allowed, all the accompanying applications stand disposed of accordingly.

02.03.2017.

jitender sharma

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**