

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.3217 of 2013
Date of decision:17.4.2017**

Manga Singh and others

...Appellants

Versus

Jagjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.T.S.Khaira, Advocate for the appellants.
Mr.V.M.Gupta, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendants are in a regular second appeal, in a suit for possession by way of specific performance of agreement to sell dated 18.6.2005, against the concurrent findings of facts recorded by both the learned courts below.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the plaintiff/respondent filed a suit for possession of land measuring 18 Kanal 8 Marla comprised in Khewat No.206, Khatauni No. 246, Khasra No.6//2, 2/23; 18//3 with all rights appurtenant thereto, situated at village Allaur, Tehsil Khanna, District Ludhiana through specific performance of agreement to sell dated 18.06.2005. He also sought relief of permanent injunction, restraining the defendants themselves, through agents from alienating, creating any sort of charge and from changing existing nature of property in dispute, on the grounds that defendants being owners, entered into an agreement to sell dated 18.06.2005 for the sale of property in dispute with plaintiff. Defendants received Rs.2,00,000/- as earnest money from plaintiff and agreed to execute and get the sale deed registered on or before 31.12.2005.

Plaintiff remained ready and willing to perform his part of the contract and attended the office of Sub-Registrar in this regard but defendants did not turn up. The defendants were threatening to alienate the property in dispute to some other person. They were requested many times to admit the claim of the plaintiff and to desist from their illegal designs, but they paid no heed.

Defendants were served in the suit. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication, denying the averments taken by the defendants.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether defendants executed agreement to sell dated 18.06.2005 in favour of plaintiff?OPP
2. Whether plaintiff was always ready and willing and is still ready and willing to perform his part of the contract?OPP
3. Whether plaintiff is entitled to specific performance of the agreement to sell?OPP
4. Whether plaintiff is entitled to injunction as prayed for?OPP
5. Whether signatures of defendants were obtained on blank papers as security for loan transaction? I so, its effect; OPD
6. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has

duly proved his case. Accordingly, suit of the plaintiff for possession by way of specific performance of the agreement to sell dated 18.6.2005 was decreed by the learned trial Court, vide its impugned judgment and decree dated 8.2.2012.

Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 4.4.2013. Hence this second appeal, at the hands of the defendants.

Placing reliance on the judgment of the Hon'ble Supreme Court in **Jayakantham & others Vs. Abya Kumar, 2017 SCC Online SC 157** and a judgment of this Court in **Sukhmander Singh and another Vs.Mandeep Singh and others, 2015 (2) RCR (Civil) 781**, learned counsel for the appellants submits that in spite of due execution of the agreement to sell having been proved, followed by readiness and willingness of the plaintiff to perform his part of the contract, it was not necessary for the learned courts below to grant a decree of specific performance against the defendants-appellants, in view of the provisions contained in Section 20(2) of the Specific Relief Act, 1963 ('the Act' for short). He further submits that since it was a case of extreme hardship, plaintiff was not entitled for specific relief. He prays for allowing the present appeal, by setting aside the impugned judgment.

Per contra, learned counsel for the respondent, while placing reliance on the judgment of this Court in **Darshan Singh Vs. Dalip Kaur and others, 2015(1) CCC 674**, submits that when the defendants-appellants entered into an agreement to sell with the plaintiff-respondent, they were fully aware about the nature of property which was intended to be sold by

them. He further submits that once the appellants have already executed the sale-deed in favour of the plaintiff-respondent and possession of the suit property was also handed over, appellants had no case either on facts or in law. He prays for dismissal of the appeal.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned judgments and decrees passed by both the learned courts below deserve to be upheld, for the following more than on reasons.

It has gone undisputed before this Court that in compliance of execution of the impugned decree, appellants-defendants have already executed the sale-deed dated 15.10.2014 in favour of the plaintiff-respondent. This sale-deed was registered in compliance of the appropriate orders passed by the learned executing court. It has also gone undisputed that as a consequence of registration of abovesaid sale deed dated 15.10.2014, actual physical possession of the suit property has already been handed over by the appellants-defendants to the plaintiff-respondent on 24.4.2015, on depositing the requisite amount of compensation by the plaintiff, for the standing crops of appellants.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that plaintiff-respondent has duly proved his case, by leading cogent and convincing evidence. Arguments raised by the learned counsel for the appellants have been found wholly misplaced and not worth acceptance. It is so said because concurrent findings recorded by both the learned courts

below have been found duly supported by sound reasons, which do not call for any interference, at the hands of this Court. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well with their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Coming to the judgments relied upon by the learned counsel for the appellants, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the appellants, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be 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 **Padmasundara Rao (Dead) 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.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“The main stress given by the ld. Counsel for the appellants that the appellants has taken specific plea of hardship because the suit land is only source of income of the appellants to earn their livelihood and further contended that

appellant Manga Singh @ Gurmangat took a loan of Rs. One lac from the respondent and the respondent obtained signature of the appellants on blank papers for security purpose and later on the respondent in collusion with the stamp vendor, deed writer and witnesses, procured a forged and fabricated document but these contentions are no tenable because the appellant no.1 Manga Singh, while appearing into the witness box, tendered his duly sworn affidavit Ex.DA wherein he specifically stated that the respondent and witnesses of the alleged agreement are members of land mafia and they are regularly threatening them and forced them to sell their land on very low price from the market rate. From the perusal of written statement filed by appellants in this case, reveals that the first stand taken by them are that appellant Manga Singh @ Gurmangat took a loan of Rs. One lac from the plaintiff/respondent and other stand taken by them are that the plaintiff/respondent and witnesses of the agreement are members of land mafia and they are regularly threatening them and forced them to sell their land on a very low price from the market. If the respondent/plaintiff was the member of the land mafia, they why the appellants approached him for getting the loan and they signed on the blank papers. Furthermore, it is not the plea of the appellants/defendants that the respondent/plaintiff is money lender and he used to give the loan on interest to the persons in the locality and in this respect, he procured the signatures of the persons who had taken loan from him as a security purpose. The appellants/defendants have failed to produce or prove any evidence on the file that they took the loan from the respondent/plaintiff and for the security purpose, they have signed on some blank stamp papers. On the other hand, the respondent/plaintiff has duly proved on file agreement Ex.P1 while examining PW2 who is the marginal witness of the agreement and he has specifically stated the agreement Ex.P1 has been scribed by the deed writer on the instance of

appellants and after admitting the contents of the same as correct, the appellants no.1 and 2 have duly signed and appellant no.3 has thumb marked on the same and they received a sum of Rs. Two lacs as an earnest money from the respondent/plaintiff. Moreover DW1 Manga Singh, in his cross-examination, has admitted that agreement to sell Ex.P1 bears his signatures on both the pages. It is correct that the agreement to sell Ex.P1 bears the signature of his brother Mehnga Singh. It is correct that her sister Bachan Kaur has put her thumb mark on the agreement of sale. It is correct that in the agreement of sale, the Khasra number of their property had been mentioned as per Jamabandi supplied by them. He further stated that when they put their signatures upon Ex.P1, they admitted the same to be correct. When the appellants themselves admitted that in the agreement, the Khasra number of their property has been mentioned as per the Jamabandi supplied by them and they put their signature after admitting the contents of the agreement Ex.P1 being as correct, they how they are saying that they took the loan from the appellants and for the security purpose, they have signed on some blank papers. Moreover, the property mentioned in the agreement is an agriculture land. No specific plea in written statement has been taken by the appellants regarding hardship. There is no evidence on record which would show that the appellants did not foresee the hardship. The fact that the appellants do not own any other agriculture land except the suit land would hardly constitute hardship justifying denial of decree of specific performance. The present case is not the one where the appellants did not foresee the hardship when the contract was entered between the parties. Mere inadequacy of consideration or onerousness of contract cannot be a ground of constitute hardship on appellants.”

Agreement to sell Ex.P1 has been duly proved on record.

Readiness and willingness of the plaintiff-respondent to perform his part of

the contract was also duly established. So far as alleged hardship is concerned, defendants-appellants cannot claim any ignorance in this regard. The suit property was not a residential house but agricultural land. No specific averment or plea was raised by the appellants regarding the alleged hardship which might have attracted the provisions of Section 20 of the Act.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1. Sri. V. Dhayalan Vs. Sri Muniswamy, 2010 (2) ICC 248;***
- 2. Nirmala Bala Ghose and another Vs. Balai Chand Ghose, 1965 AIR (SC) 1874;***
- 3. K.M.Madhavakrishnan Vs. S.R.Swami and another, 1995 AIR (Madras) 318;***
- 4. Rachhpal Singh and others Vs. Pushpa and others, 2010 (8) R.C.R. (Civil) 1988;***
- 5. Babu Ram @ Durga Prasad Vs. Indra Pal Singh, 1998 (4) R.C.R. (Civil) 1;***
- 6. M/S J.P.Builders and anothers Vs. A. Ramadas Rao and another, 2011 (1) R.C.R. (Civil) 604.***
- 7. Nirmal Singh Vs. Darshan Kumar @ Sudershan Kumar through his LRs and others (P&H:)***
- 8. Darshan Singh Vs. Dalip Kaur and others, 2015(1) CivCC 674 (P&H)***

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

17.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No