

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

**RSA No.3442 of 2013
Date of decision:9.5.2017**

Surmukh Singh

...Appellant

Versus

Swaran Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.J.S.Pannu, Advocate for the appellant.

Mr.Parminder Singh, Advocate for the respondent

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of specific performance of agreement to sell dated 13.6.2001 was dismissed by the learned trial court, vide its impugned judgment and decree dated 20.2.2009, granting alternative relief to the plaintiff for return of earnest money along with interest and also the impugned judgment and decree dated 22.8.2012 passed by the learned first appellate court, whereby first appeal of the plaintiff was dismissed and his suit was dismissed in toto, as he did not make any prayer in the plaint for alternative relief for return of earnest money.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that defendant entered into an agreement to sell his 6 bighas of land to the plaintiff for a sum of Rs.3 lacs along with share in water/tubewell and 10 horse power motor connection

along with passage and khal etc., receiving an amount of Rs.1,50,000/- as earnest money. The date fixed for execution of the sale deed was on or before 15.6.2003. The plaintiff was still ready and willing to perform his part of the contract. On 14/15.6.2003, there were holidays, so plaintiff remained present in the office of Sub Registrar, Kharar on 13.6.2003 and 16.6.2003, but the defendant did not turn up and then plaintiff got marked his presence by way of affidavit. The plaintiff also sent registered notice dated 25.6.2003, to which reminder dated 6.8.2003 was issued, but in spite of this, he did not come present to perform his part of the contract to execute the sale deed. Now, the defendant was threatening to alienate the suit property to some body else, to which he had got no right.

Having been put to notice, defendant appeared and filed his contesting written statement. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to possession as prayed for?
OPP.
2. Whether the plaintiff is entitled to injunction as prayed for?
OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the plaintiff has not come to the court with clean hands? 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 was not entitled for a decree of specific performance, as he failed to make out a

case for the said relief. However, amount of earnest money was directed to be returned to the plaintiff along with interest @ 6% per annum, vide impugned judgment and decree dated 20.2.2009

Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 22.8.2012. Since the plaintiff-appellant, as a matter of fact, did not make any alternative prayer in his plaint for return of earnest money, the learned first appellate court dismissed the suit of the plaintiff in toto. Hence this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the parties.

Relationship between the parties is not in dispute. Defendant used to sell his agriculture produce through commission agency of the plaintiff-appellant. Defendant used to borrow money from the appellant and the plaintiff-appellant used to advance loan to the defendant on interest. It has been so recorded by the learned trial Court in para 12 of its judgment at page 32 of the paper-book that defendant used to take money on interest @ 3% per annum from the plaintiff from time to time and used to return the same.

It is also a matter of record that agreement to sell in question was dated 13.6.2001. Vide writing as Ex.D1, defendant returned the amount of Rs.45,000/- to the plaintiff on 23.11.2002, that is more than one year and five months after the date of alleged agreement to sell. Thus, it becomes crystal clear that had the defendant ever intended to sell the suit land to the plaintiff, there would have been no occasion for him to return the money of Rs.45,000/- after more than a year from the date of agreement to sell.

Having said that, this Court feels no hesitation to conclude that both the learned courts were well within their jurisdiction to pass their respective judgments and decrees, declining the main relief for specific performance and the same deserve to be upheld.

A combined reading of both the impugned judgments and decrees passed by the learned courts below, would leave no room for doubt that the plaintiff-appellant tried to take undue benefit of his dominating position, being the commission agent of the defendant-respondent. In fact, both the learned courts below have recorded their concurrent findings of facts, which have been found based on sound reasons and do not call for any interference, at the hands of this Court. It is so said because it is the settled proposition of law that even if an agreement to sell is proved between the parties, it is not always necessary that decree of specific performance has to follow automatically in every given situation.

The legislature, in its wisdom, itself has carved out some exceptions in Section 20 of the Specific Relief Act. Instant one has been found to be a fit case, which shall fall within one of the exceptions under Section 20 of the Act. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below have committed no error of law, while passing their respective impugned judgments and decrees, declining the primary relief for specific performance and the same deserve to be upheld, for this reason also.

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 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“On the basis of revelations made by all the Pws, it has come to the surface that on 13.6.2001, signatures of the respondent/defendant were obtained on blank paper by the appellant/plaintiff, which seem to had been mis-utilized by him later-on by way of making writing in the shape of agreement to sell dated 13.6.2001, whereas, it is admitted by PW-1 Surmukh Singh that respondent/defendant borrowed an amount of Rs.40,000/- on interest at the rate of 3% per annum, which was admitted to have been returned by him on 22.11.2002, vide receipt Ex.D1. The plea of the respondent/defendant further gets strengthen from the receipt Ex.D1 as well as the plea that the document dated 13.6.2001 was to be returned on 23.11.2002 by the appellant/plaintiff on receiving the amount of Rs.9,000/- with interest. But, on the stamp paper purchased by the respondent/defendant on 13.6.2001, a writing in the shape of agreement to sell dated 13.6.2001 was reduced into writing by the appellant/plaintiff with the connivance of the witnesses, whom are related to the appellant/plaintiff, though denied by PW-1 Surmukh Singh. It is immaterial if the attesting witnesses of the agreement to sell Ex.P1 are having no enmity with the respondent/defendant. Therefore, it is observed that though appellant/plaintiff has tried to discharge his onus to prove the execution of the agreement to sell dated 13.6.2001 by way of examining scribe and both the attesting witnesses, however, this proof is no proof in the eyes of law as otherwise respondent/defendant has been able to establish that it was result of fraud. Therefore, in view of the discussion made by me above, ruling Durlabh Singh Vs. Nahar Singh and another, 1991 Civil Court Cases 693 (P&H) is not applicable to the facts of the present case as it is observed that agreement to sell Ex.P1 its result of fraud. Likewise, the rulings Anokh Devi and others Vs. Trilok Singh and others,

The Punjab Law Reporter Vol. Pal- (1964) 372 (MAN) and S.V.R. Mudaliar Vs. Mrs. Rajabu F. Buhari, 1995 (2) Civil Court Cases 419 (S.C.) are also not applicable to the facts of the present case as the agreement to sell in question Ex.P1 is result of fraud. Applying the ratio of ruling Durlabh Singh's case (supra), respondent/defendant has been able to discharge his onus to prove the fraud exercised by the appellant/plaintiff for getting the agreement to sell Ex.P1. I have full respect for the ruling *Hodil Singh (Deceased) represented by Legal Heirs Vs. Bhagwant Singh (Deceased) represented by Legal Heirs, 2010 (2) Civil Court Cases 608 (Allahabad)* that sanctity of the agreement must be respected preserved. However, in the present case in hand, agreement to sell dated 13.6.2001 is result of fraud exercised by the appellant/plaintiff upon the respondent/defendant. On the other hand, ration of ruling *Tejram Vs. Patirambhau, 1997 (Suppl.) Civil Court Cases 184 (S.C.)* is applicable to the facts of the present case as in the present case in hand, appellant/plaintiff is a commission Agent from whom the respondent/defendant had been borrowing various amounts from time to time, committed by the appellant/plaintiff. The alleged agreement to sell dated 13.6.2001 cannot be termed to be agreement to sell in its true spirit. Ration of ruling *Nahar Singh Vs. Harnak Singh and others, 1997 (1) Apex Court Journal 417 (S.C.)* is not applicable to the facts of the present case, as in the agreement Ex.P1 the, property is described 6 bighas comprised in 94 min, though, it was yield by him that the agreement to sell is not agreement to sell in its true sprit. The ration of ruling *Bal Krishna and anothr Vs. Bhagwn Dass Dead), & others, 2008 (2) Recent Civil Reports 733: (S.C.)* is also applicable, as the specific performance of the agreement to sell dated 13.6.2001 would give an unfair advantage to the appellant/plaintiff. Furthermore, ration of ruling *Khalil Ahmad Vs. Naurozy and others. 2001 (2) Civil Court Cases 43 (Allahabad)* is applicable as respondent/defendant proved to had never

*intended to sell his land, loan advanced and agreement seems to had been got executed to secure the loan advanced. Furthermore, ration of ruling Gurbax Singh Vs Labhu Ram, 1996 (1) Civil Court Cases 9 (P&H) is applicable to the facts of the present case, that the document has been given shape of an agreement to sell without any intention of getting the sale deed executed by the respondent/defendant. Furthermore, ratio of ruling **Manohar Lal alias Manohar Singh Vs. Maya, The Punjab Law Reportr Vol.CXXXVII. (2004-2)** that the respondent/defendant is a farmer. Appellant/plaintiff is a Commission Agent, whose thumb impression has been obtained on plain paper, which plea cannot be out-rightly rejected.”*

It has also gone undisputed on record that plaintiff-appellant did not make any alternative prayer in his plaint for return of earnest money. In this view of undisputed fact situation, the learned Additional District Judge was well justified in reversing the operative part of the impugned judgment passed by the learned trial court, whereby the learned trial court had gone beyond the pleaded case of the plaintiff granting him alternative relief for return of earnest money, without there being any alternative prayer made by the plaintiff. It was for the plaintiff to plead and prove but he failed to do so.

During the course of arguments, learned counsel for the appellant 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.

9.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No