

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

Date of decision: 13.01.2017

1. RSA No.4070 of 2016 (O&M)

Chamkaur Singh and another

... Appellants

Vs.

Raghbir Singh and another

... Respondents

2. RSA No.5454 of 2016 (O&M)

Amandeep Kaur

... Appellant

Vs.

Raghbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

**Present: Mr. Harsh Bunger, Advocate
for the appellant(s).**

**Mr. J.S. Bhandohal, Advocate
for respondent No.1.**

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical Regular Second Appeals bearing RSA No.4070 of 2016 (Chamkaur Singh and another Vs. Raghbir Singh and another) and RSA No.5454 of 2016 (Amandeep Kaur Vs. Raghbir Singh and others), at the hands of two sets of defendants, are directed against the same impugned judgments and decrees, whereby suit for possession by way of specific performance filed

by the plaintiff were decreed by both the learned Courts below, recording their concurrent findings of fact.

Facts of the case, as noticed by learned trial Court in para 2 of its impugned judgment, are that on 14.12.2006, Jeet Singh, father of the defendants entered into an agreement to sell the suit property as fully detailed in the head note of the plaint @ Rs. 90,000/- per bigha with the plaintiff and they received Rs.1,50,000/- in cash in the presence of witnesses. Jeet Singh further agreed to execute and register the sale deed in favour of the plaintiff on or before 15.05.2007. On 15.05.2007, Jeet Singh showed his inability to get the sale deed executed in favour of the plaintiff and requested the plaintiff to extend the date from 15.05.2007 to 15.06.2007 for the execution of the sale deed on the request of Jeet Singh and a writing regarding the extension of the date was also executed by Jeet Singh in favour of the plaintiff. On 15.06.2007, the plaintiff was ready and willing to perform his part of the agreement but Jeet Singh did not turn up and plaintiff got attested his affidavit on 15.06.2007 from Notary Public Nabha. Jeet Singh had expired on 18.02.2010 leaving behind the defendants as his only legal heirs, as such the defendants were liable to execute and register the sale deed in favour of the plaintiff as per terms and conditions of the agreement and the writing. The plaintiff had always been ready and willing and was still ready and willing to perform his part of the agreement. The plaintiff is entitled for possession of the suit property by way of specific performance of agreement to sell in question. It was further pleaded that in case Court came to the conclusion that specific performance was not feasible then plaintiff was entitled for any other additional or alternative relief to which the Court deemed fit. It was further pleaded that in contravention of the terms and conditions of the agreement in question, the defendants were threatening to

alienate, sell, transfer, mortgage and dispose of the suit property to some unknown persons except the plaintiff for which he had no right to do so. The plaintiff requested the defendants to admit his claim and desist from abovesaid illegal activities but to no avail.

Having been served in the suit filed by the plaintiff, defendants appeared and filed their separate written statements, raising more than one preliminary objections. Plaintiff filed his replication denying the averments taken by the defendants in their written statements. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether defendant executed an agreement to sell dated 14.12.2016 in favour of the plaintiff and he is entitled to decree for possession through specific performance? OPP
2. Whether the plaintiff remained ready and willing and is still ready and willing to perform his part of the contract ?OPP.
3. Whether the plaintiff is entitled for injunction as prayed for? OPP
4. Whether the suit is false, frivolous and vexatious and defendants are entitled to special costs?OPD
5. Whether the plaintiff has concealed the material facts from the court and has not come to the court with clean hands, if so, its effect?OPD.
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
8. Relief

In support of his pleaded case, plaintiff brought on record his documentary as well as oral evidence. However, defendants failed to lead any evidence even after availing numerous opportunities and finally their evidence was closed by Court order. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has duly proved his case. Accordingly, suit for possession by way of specific performance of agreement to sell dated 14.12.2006 was decreed with costs by learned trial Court, directing the defendants to get the sale deed executed and registered in favour of the plaintiff, vide impugned judgment and decree dated 21.04.2014.

Feeling aggrieved, defendants filed two appeals. One appeal was filed by defendants Chamkaur Singh and another, whereas a separate appeal was filed by defendant Amandeep Kaur. Both these appeals came to be dismissed by learned First Appellate Court, vide its common impugned judgment and decree dated 11.07.2016. Hence these two identical regular second appeals at the hands of the defendants.

Placing reliance on judgments of the Hon'ble Supreme Court in **K.S. Vidyanadam Vs. Vairavan, 1997 (3) SCC 1**, **Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, 2010 (10) SCC 512** and **Saradamani Kandappan Vs. S. Rajalakshmi and others, 2011 (12) SCC 18**, learned counsel for the appellants submits that plaintiff-respondent has failed to prove his case. He was not ready and willing to perform his part of the contract. Time was the essence of contract. Since the learned Courts below misdirected themselves and did not appreciate the pleadings and evidence available on record, in the correct perspective, the impugned judgments and decrees have resulted in miscarriage of justice. He prays for setting aside the impugned judgments and decrees, by

allowing both these appeals.

Some important undisputed facts are that agreement to sell was executed between the parties on 14.12.2006. The target date was fixed as 15.05.2007, which was further extended upto 15.06.2007. Jeet Singh, father of the defendants, who entered into abovesaid agreement to sell with plaintiff Raghbir Singh, died on 18.02.2010. When the defendants refused to execute the sale deed, plaintiff was left with no other option except to file the suit for possession by way of specific performance on 27.04.2010. On the basis of abovesaid facts, plaintiff duly proved his case, including agreement to sell Ex.P1, extension in target date as Ex.P2, payment of earnest money of Rs.1,50,000/- and readiness and willingness to perform his part of contract at every relevant point of time. Plaintiff appeared as PW1. He also examined Amrik Singh, marginal witness as PW2, Parkash Kumar, deed writer as PW3, Balbir Singh, deed writer as PW4, Bahal Singh, another marginal witness as PW5, Janinder Kumar, Notary Public as PW6 and also tendered in evidence Jamabandi for the year 2005-06 as Ex.P7 and Jamabandi for the year 2010-11 as Ex.P8, with a view to prove his pleaded case.

On the other hand, defendants did not lead any evidence at all, despite having been granted numerous opportunities. It has been so recorded by learned trial Court in para 5 of the impugned judgment, at page 25 of the paper book. Reasons not to lead any evidence were best known to the defendants. Under these circumstances, learned trial Court was well within its jurisdiction to decree the suit of the plaintiff and the impugned judgment and decree deserve to be upheld.

So far as the judgments relied upon by learned counsel for the appellants are concerned, there is no dispute about the 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."

The facts of the case as well as the evidence available on record were reconsidered by learned First Appellate Court in correct perspective, but having found both the first appeals of the defendants-appellants without any merit, the same were dismissed. In fact, there was a strong reason as to why the defendants-appellants did not lead any evidence. The reason was that after filing of the suit on 27.04.2010 and having been duly served in the said suit filed by the plaintiff, defendants proceeded on a dishonest and malafide intention and sold the suit land on 20.10.2010, during pendency of the suit. It is a different aspect that said sale deed would be hit by the principle of lis pendence, it having been executed during pendency of the civil suit. Thus, it becomes crystal clear that had the appellants-defendants appeared in the witness box, they would have been exposed during the cross-examination.

There was another reason as to why the defendants did not appear in the witness box and it was that they concealed the abovesaid material fact of sale deed dated 20.10.2010, executed by them qua the suit property, during pendency of the suit. This material fact speaks volumes about the conduct of the defendants-appellants, which leaves them not bonafide but dishonest litigants.

Apart from this, since the concurrent findings of facts recorded by learned

Courts below have not been found suffering from any patent illegality, the same deserve to be upheld, for this reason also.

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

1. *P.C. Varghese Vs. Devaki Amma Balambika Devi and others, 2005(8) SCC 486. (SC)*
2. *Mohan Singh and another Vs. Kulwinder Singh, 2001 (1) RCR (Civil) 399.*
3. *Gurbachan Singh and another Vs. Gurmit Singh, 2003 (4) RCR (Civil) 223.*
4. *Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (Civil) 505.*
5. *Abhay Singh and others Vs. Ramesh Kumar and others, 2009 (3) CivCC 774.*
6. *Balbir Singh Vs. Manjit Kaur and another, 2013 (1) RCR (Civil) 740.*

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned Courts below, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Further, no questions of law, much less substantial question of law, has been found involved in the present appeals enabling this Court to entertain these two identical regular second appeals. It is so said because involvement of substantial questions of law is sine qua non for entertaining the regular second appeal, as held 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 both these appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these Regular Second Appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

13.01.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No