

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 17.02.2017

1. RSA No.4828 of 2016 (O&M)

Tek Singh

... Appellant

Vs.

Kuldip Singh

... Respondents

2. RSA No.4850 of 2016 (O&M)

Sukhdev Singh

... Appellant

Vs.

Jagdev Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Kulbhushan Raheja, Advocate
for the appellant(s).

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals bearing RSA No.4828 of 2016 (Tek Singh Vs. Kuldip Singh) and RSA No.4850 of 2016 (Sukhdev Singh Vs. Jagdev Singh), arising out of similar set of facts, are being decided vide this common judgment, with the consent of learned counsel for the appellant, in both these cases. However, for the facility of reference, facts are being culled out from RSA No.4828 of 2016 (Tek Singh Vs. Kuldip Singh).

Feeling aggrieved 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 12.02.2007, was decreed by the learned trial Court and first appeal was also dismissed by the learned first appellate Court, unsuccessful defendants have approached this Court by way of

these two similar regular second appeals, for setting aside the impugned judgments and decrees.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that on 12.02.2007, the defendant being the owner of the land measuring 46 kanasls 3 marlas agreed to sell the same to the plaintiff @Rs.5,30,000/-per acre and executed agreement to sell in favour of the plaintiff. At the time of execution of the agreement, he paid Rs.2,50,000/- in cash to the defendant. Rs.3,00,000/- were already received by the defendant as earnest money on 02.01.2007 qua the same transaction. The plaintiff gave Rs.5,50,000/-in total to the defendant till 12.2.2007. The defendant agreed to execute the regular sale deed in favour of the plaintiff on or before 15.10.2007 on receipt of balance sale consideration. On 21.8.2007, defendant also received Rs.1,00,000/-from the plaintiff and in this regard entry was made on the back of the agreement to sell. He was always ready and willing and still ready and willing to perform his part of the agreement to sell. The plaintiff offered the balance sale consideration in order to get the sale deed executed in his favour. He attended the office of the Joint Sub Registrar, Guruharsahai on 15.10.2007 and at that time he was in possession of balance sale consideration and remained present there but the defendant did not turn up. He got his presence marked by filing application before the Joint Sub Registrar, Guruharsahai. Thereafter, he sent telegram to the defendant on 18.10.2007 intimating his failure to perform his part of the contract. The defendant failed to execute the sale deed in his favour.

It is pertinent to note here that date of agreement to sell was same in both the cases i.e. 12.02.2007. Once agreement to sell was between Kuldip Singh-plaintiff and Tek Singh-defendant/appellant herein, qua land measuring

46 kanal 03 marla, whereas another agreement to sell was between plaintiff-Jagdev Singh and Sukhdev Singh-defendant/appellant herein, qua land measuring 49 kanal 08 marla. Defendants, in both these cases, agreed to sell their land to the plaintiffs at the same rate i.e. Rs.5,30,000/- per acre. In fact, plaintiffs Kuldeep Singh and Jagdev Singh were father and son, whereas both the defendants were real brothers.

Having been duly served, defendants, in both the civil suits of identical nature, put appearance and filed their contesting written statements, raising more than one preliminary objections. Plaintiffs filed their replications controverting the averments taken by the defendants in their written statements. On completion of pleadings of the parties, learned trial Court in Civil Suit No.465 framed the following issues: -

1. Whether defendant executed an agreement to sell dated 12.2.2007 regarding the suit land in favour of the plaintiff for Rs.30,57,438/-after adjusting Rs.6,50,000/-already paid by plaintiff as earnest money?OPP
2. Whether plaintiff remained ready and willing to perform his part of contract?OPP
3. Whether plaintiff is entitled for specific performance of the agreement?OPP.
4. If above issue is not proved, whether plaintiff is entitled to recover Rs.13,00,000/-as alternative?OPP
5. Whether this suit is not maintainable in its present form? OPP
6. Relief.

Similarly, learned trial Court in Civil Suit No.455 framed the

following issues: -

1. Whether the plaintiff is entitled for a decree of possession by way of specific performance? OPP
2. Whether the defendant entered into the agreement to sell dated 12.2.2007 in favour of the plaintiff? OPP
3. Whether an earnest money of Rs.2,50,000/-was paid by the plaintiff to the defendant at the time of agreement to sell? OPP
4. If issue No.1 is not proved, then plaintiff is entitled for alternative relief for recovery of earnest money with compensation and damages as well as interest, if so, at what rate?OPP
5. Whether this suit is not maintainable?OPD
6. Whether alleged agreement to sell dated 12.2.2007 is manipulated, false and fabricated document, if so, its effect? OPD
7. Relief.

With a view to prove their respective pleaded cases, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs, in both these identical civil suits of same nature, have duly proved their case. Agreement to sell was proved by leading cogent evidence. Similarly, plaintiffs, in both these cases, duly proved their readiness and willing to perform their part of the contract on all the relevant points of time. On the other hand, defendants in both these cases, took self-contradictory stand. In fact, defendants had been

found changing their stand from time to time to their suitability. The same learned trial Court, vide two separate but identical judgments and decrees of even date i.e. 07.11.2014, decreed both the civil suits.

Dissatisfied, two appeals were filed by both the defendants in these two cases. Both the appeals came to be dismissed by the same learned first appellate Court, vide separate but identical judgments dated 13.07.2016. Learned first appellate Court upheld the findings recorded by the learned trial Court in both these cases. It was found that the plaintiffs have duly proved their respective pleaded cases, who were rightly found entitled for the decree sought by way of these two similar suits for possession by way of specific performance of agreement to sell dated 12.02.2007. Hence these two identical regular second appeals at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

During the course of hearing, when confronted with the findings recorded by the learned first appellate Court in para 17 of its impugned judgment, learned counsel for the appellant had no answer and rightly so, it being a matter of record. A bare combined reading of both the impugned judgments will make it crystal clear that the learned Courts below examined, considered and appreciated in the correct perspective, all the relevant facts and circumstances of the case, before recording their cogent findings, which have been found based on sound reasons.

Appellants-defendants, in both these cases, have been found changing their stand from time to time, as per their suitability, thus, completely failed to prove their pleaded cases. It seems that the appellants-defendants had been trying to play smart but they could not succeed because their intentions were not good right from day one. On the other hand, plaintiffs, in both these

cases, brought on record cogent and convincing evidence, proving their case to the satisfaction of both the learned Courts below. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective judgments and decrees and the same deserve to be upheld.

Before recording its own independent findings, learned first appellate Court reconsidered the peculiar facts and circumstances of the case and also the evidence available on record, in the correct perspective, with a view to arrive at a just conclusion. The relevant and identical findings recorded by the learned first appellate Court in para 17 of both of its impugned judgments in these two cases, which deserve to be noticed herein, read as under:-

“The defendant notably has taken a wavering stand in the case. On one hand in the written statement he has outrightly denied the execution of the agreement to sell as well as his signatures on the document alleging that the documents are forged and fabricated and manipulated, yet at the same time he filed an application for amendment before the learned lower court wherein he alleged that he had dealings with the commission agent M/s Bhagmal Sat Pal, who used to obtain his signatures on blank stamp papers meaning thereby that the defendant admits his signatures on Ex.P1 and Ex.P2 and he apprehends that the agreement in question has been manipulated on those blank papers. The plaintiff had duly proved the execution of the agreement to sell dated 2.1.2007 and 12.2.2007 Ex.P1 and Ex.P2. Further he has also through his application Ex.P3 proved that he had been present before the Sub

Registrar for execution of the sale deed with the balance sale consideration amount on the stipulated date. The document Ex.P3 is further proved by PW4(renumbered) Ashok Kumar, Registration clerk, Sub Tehsil, Guruharsahai, who identified the signatures of the Sub Registrar. In fact he has also examined Varinder Kumar, Clerk, HDFC Bank, New Grain Market, Muktsar who brought the statement of account of Jagdev Singh and voucher dated 15.10.2007 vide which Rs.57,00,000/-were withdrawn by Kuldeep Singh from joint account of Jagdev Singh and Kuldeep Singh. Plaintiff thus has also proved on record his readiness and willingness to execute the sale deed and evidently it was the defendant who was not ready and willing to perform his part of the contract. The agreement to sell thus has been duly proved and the readiness and willingness of the plaintiff to execute the sale deed is also proved on the file. To the contrary, the defendant has failed to prove his stand and the learned lower court has thus rightly decreed the suit of the plaintiff for specific performance and I endorse the view of the learned lower court on all the issues.”

The contentions raised by learned counsel for the appellants have been found wholly misconceived and misplaced as the same were based on technicalities alone. So far as the judgments of the Hon'ble Supreme Court, this Court as well as different High Courts in **Dadarao and another Vs. Ramrao and others, 1999 (8) SCC 416, Easwari Vs. Parvathi and others 2014 (15) SCC 255, Bal Krishna and another Vs. Bhagwan Das (Dead) and others, 2008 (12) SCC 145, Nanjappan Vs. Ramasamy and another, 2015 (2) RCR (Civil) 224, Mohinder Singh Vs. Harjit Singh, 2001 (4) RCR (Civil) 175,**

Lonkaran Kishorilal Paliwal Vs. Bhaskar Rambhau Ghive and another, 1992 (3) BCR 211, Smt. Sushila Devi Vs. Additional District and Sessions Judge (Fast Track) No.2, Jaipur and another, 2007 AIR (Raj) 241, Gopal Lal Vs. Shri Nathu Ram and others, 2016 (3) CivCC 405 and Amit Dixit Vs. Smt. Sadhana Singh and others, 2015 (3) M.P.W.N. 230, 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."

Reverting to the facts of the case in hand, it is a matter of record that the defendants-appellants although raised the plea of fraud but miserably failed to prove it. Similarly, the appellants initially denied execution of agreement to sell but did not produce the relevant and convincing evidence in this regard. Once the appellants were raising the plea of fraud, a heavy onus was on them to lead cogent evidence, so as to substantiate their plea of fraud. However, they failed to do so, for the reasons best known to them.

No handwring and fingerprint expert was examined by the defendants-appellants to get their admitted thumb impression compared on the agreement to sell and that too for no good reasons. Further, as noticed hereinabove, defendants-appellants had contradicted themselves on all the

relevant aspects of the case, with a view to defeat the genuine claim of the plaintiffs in both these cases. Under these circumstances, it can be safely concluded that the learned Courts below were well justified in recording their concurrent findings of fact and law, therefore, the same impugned judgments and decrees deserve to be upheld, for this reason also.

Learned counsel for the appellant could not point out 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. Keeping in view the peculiar fact situation obtaining on record of the cases in hand, no fault can be found with the cogent and concurrent findings recorded by the learned Courts below. 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 cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that both the regular second appeals are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both the abovesaid regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.02.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No