

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

RSA No.1055 of 2017 (O&M)

Date of Decision:22.02.2017

Hanuman

.....Appellant

Versus

Banwari Lal and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Sanjiv Kumar Aggarwal, Advocate,
for the appellant.**

RAMESHWAR SINGH MALIK, J.(Oral)

Plaintiff is in regular second appeal against the judgment of reversal dated 22.11.2016, whereby the learned first appellate Court partly allowed the first appeal of defendants, reversing the judgment and decree dated 18.05.2015 passed by the learned trial Court, decreeing the suit of plaintiff for possession by way of specific performance.

Facts, necessary for disposal of the present appeal, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff alleged that defendant no.1 represented that he was absolute owner in possession of agricultural land measuring 24 kanals being 480/3100 share in the land totaling 155 kanal comprising in khewat no. 579 as per mutation no. 7043 dated 23.8.2006 and jamabandi for the year 2005-06 situated at village Siswal Tehsil Adampur Distt. Hisar. The Plaintiff agreed to purchase 8 kanals of land being 160/3100 share of total land for a total sale consideration of ₹4,80,000/- and paid a sum of ₹3,96,000/- as

earnest money to defendant No.1 before the witnesses at the time of

execution of agreement to sell dated 06.01.2010 registered at Sr. No.2686 dated 6.01.2010 in the office of Sub-Registrar, Adampur, District Hisar. The last date of registration of sale deed was fixed as 5.01.2011. The possession of the land was to be delivered at the time of registration of sale deed. The defendant No.1 had undertaken to clear the outstanding loan taken against his total land of 24 kanal by the said date and further agreed to get the sale deed registered in the name of plaintiff or his nominee after clearing the loan amount. It was alleged that if the defendant failed to execute the sale deed, the plaintiff would be entitled to receive either double of the amount of earnest money or to get the sale deed registered through court. The defendant No.1 also agreed to sell his another piece of land measuring 8 kanal to Shri Bhagwana Ram son of Sh. Gobind Ram vide registered agreement dated 6.1.2010. The plaintiff alongwith another purchaser Bhagwana Ram went to Patwari on 20.11.2010 for obtaining jamabandi to know the total amount of loan outstanding against defendant No.1. Then Patwari told them that the defendant No.1 has suffered a collusive decree of his entire 24 kanal of land in favour of his sons i.e. defendants No.2 and 3. Thereafter, plaintiff contacted defendant No.1 on 21.11.2010 and asked for the reason of getting decree of the land in favour of his sons but defendant No.1 did not give any satisfactory reply. It was alleged that the plaintiff to get the sale deed executed and registered in his favour through specific performance on the ground that defendant No.1 had no right to suffer the decree dated 30.10.2010 when he had already agreed to sell the land to the plaintiff vide agreement to sell dated 6.01.2010 and had received earnest money of ₹3,96,000/-. The decree dated 30.10.2010 was without any right and consideration. The decree was malafide and has been suffered to back

out from the agreement dated 6.1.2010 and to defraud the plaintiff of his hard earned money. It was further alleged that plaintiff had always been ready and willing to perform his part of agreement but it was defendant No.1 who instead of performing his part of agreement malafidely transferred the suit land to his sons i.e. defendants no.2 and 3. The defendant no.1 had also not cleared the loan taken from proforma defendant no.4 by mortgaging his 24 kanal of land amounting to ₹1,70,000/- on this land. The plaintiff sent a legal notice through his counsel but defendant neither cleared the loan nor executed the sale deed nor gave any reply to the notice.

Notice was issued to the defendants. They appeared and filed their contesting written statement, raising more than one preliminary objections. Defendant No.2 filed his separate written statement. Similarly, defendant No.4 filed his separate written statement. On completion of pleadings of the parties, learned trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled for a decree for possession by way of specific performance of registered agreement to sell No.2686 dated 6.1.2010 in respect of the land as detailed and described in the head note of the plaint against the defendants as alleged ? OPP*
- 2. Whether the consent decree passed in suit No.460-C titled Vishnu etc. vs Banwari by the court of Sh.Tayyab Hussain, Civil Judge, Hisar is collusive, sham, fraudulent, malafide, illegal, bogus and without consideration and its mutation have no effect upon the right of plaintiff and are liable to be set aside?OPP*
- 3. Whether the plaintiff is entitled for grant of mandatory injunction directing the defendants to execute the sale deed in favour of plaintiff after clearing the loan taken from the proforma defendant with consequential relief of permanent prohibitory injunction restraining the defendants from alienating the land?OPP*
- 4. Whether the suit of the plaintiff is false, frivolous and vexatious?OPD*
- 5. Whether the suit is not maintainable in the present form?OPD*
- 6. Whether the plaintiff has no cause of action to file present suit? OPD*
- 7. Whether the suit is bad for mis-joinder and non-*

joinder of necessary parties ?OPD

8. *Whether the plaintiff is stopped by his own act and conduct from filing the present suit ?OPD*

9. *Whether no proper court fees has been affixed on the plaint ?OPD*

10. *Relief.*

With a view to prove their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for both the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has proved his case for possession by way of specific performance of agreement to sell dated 06.01.2010. Accordingly, suit was decreed vide judgment and decree dated 18.05.2015.

Defendants felt aggrieved and filed their first appeal which came to be partly allowed by learned Additional District Judge vide impugned judgment and decree dated 22.11.2016. Suit for possession by way of specific performance of agreement to sell dated 06.01.2010 was dismissed, however, it was decreed qua recovery of earnest money. Hence, this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that there was an earlier agreement to sell dated 12.01.2009 between defendant-respondent No.1 Banwari and plaintiff-appellant Hanuman. Last date for execution of sale-deed was 11.01.2010. This agreement to sell was duly proved on record by the defendants as Ex.DW1/A. During the subsistence of abovesaid agreement to sell dated 12.01.2009, plaintiff-appellant claims that the agreement to sell dated 06.01.2010 Ex.P1 was executed between the parties. It does not appeal to reason. It is so said because once the earlier

agreement to sell Ex.DW1/A dated 12.01.2009 was subsisting, neither there

was an occasion nor any compulsive necessity for the defendant to execute another agreement to sell dated 06.01.2010 Ex.P1.

Further, plaintiff-appellant failed to give any reasonable explanation for this second alleged agreement to sell Ex.P1 dated 06.01.2010. In this view of the matter, learned first appellate Court rightly held that there was some money transaction between the parties, because of which these repeated agreements to sell were being executed. That is what was the pleaded and argued case on behalf of the defendants before the learned Courts below. Having said that, this Court is of the considered opinion that the learned first appellate Court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

With a view to do complete and substantial justice between the parties, the learned first appellate Court rightly granted the alternate relief to the plaintiff-appellant, directing the defendant-respondent Banwari to pay the loan amount i.e., the alleged earnest money of ₹ 3,96,000/- along with interest @ 6% per annum from the date of execution of the agreement Ex.P1 till the actual payment. The learned Additional District Judge was well justified while doing so, in consonance with the principles of natural justice.

Keeping in view the totality of the facts and circumstances of the case, learned first appellate Court did not allow the defendant-respondent to enrich himself at the cost of plaintiff-appellant, while striking a balance between the parties. In the peculiar facts and circumstances of the case, impugned judgment has been found a well thought and balanced one, which deserves to be upheld, for this reason also.

Before arriving at a judicious conclusion, learned first appellate

Court re-considered and re-appreciated true facts of the case as well as evidence available on record, in the right perspective. The cogent and well-convincing findings recorded by the learned first appellate Court, in para 19 to 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“Now coming to the second point, on which the arguments have been advanced by the learned counsel for the appellants defendants i.e. execution of the agreement to sell Ex.P1 during the subsistence of the agreement to sell Ex.DW1/A. The arguments of the leaned counsel for the appellants defendants are forceful because the agreement Ex.DW1/A is a registered document and with registered document, certain presumptions of correctness are attached. If the respondent plaintiff does not admit this document then he was required to rebut the evidence of the appellants defendants in this respect but there is no evidence led by the respondent plaintiff to rebut this document i.e. the agreement to sell Ex.DW1/A.

If the contents of this document are perused then it becomes ample clear that in respect of the land of the appellant defendant Banwari measuring 16 kanal, the agreement to sell was executed between the appellant defendant Banwari and the respondent plaintiff Hanuman on 12.1.2009 and the last date for execution of the sale deed was fixed as 11.1.2010. The sale consideration in this agreement to sell was Rs.5.00 lakhs and earnest money of Rs.4.50 lakhs was paid. The agreement Ex.P1 qua 8 kanal land out of the land mentioned in Ex.DW1/A of the appellant defendant Banwari was executed on 6.1.2010 for sale consideration of ₹ 4,80,000/- and earnest money of ₹ 3,96,000/- was paid. On the same day, another agreement Ex.D1 of the remaining 8 kanal land was executed for sale consideration of ₹ 4,80,000/- and sale consideration of ₹ 2,86,000/- was paid. In both these agreements, the last date for execution and registration of the sale deed was fixed as 5.1.2011. From these facts, it becomes ample clear that there-was some money transaction between the parties, otherwise, there was no need for the respondent plaintiff to enter into these agreements to sell Ex.P1 and Ex.D1 when he could have easily enforced the agreement Ex.DW1/A on that day, that too, for lesser sale consideration. Even this fact is suggestive of the fact that there was some money transaction between the parties otherwise atleast one sale deed could have been executed between the parties on the date of agreements itself because in each of these agreements ExP1 and Ex.D1, the sale consideration is of

₹ 4,80,000/- each, whereas in the shape of earnest money, the respondent plaintiff paid a sum of ₹6,82,000/- to the appellant defendant. If these agreements would have been with the intention to purchase the land of the appellant defendant Banwari then one sale deed could have been executed after making payment of total sale consideration of ₹4,80,000/- and in respect of other agreement, the earnest money of ₹2,02,000/- could have been paid.

The learned trial court has not accepted the version of the appellant defendant Banwari on the ground that the appellant defendant Banwari while stepping into the witness box has denied everything which was put to him i.e. transfer of the property in favour of his sons by way of civil court decree, signatures of attesting witnesses and scribe over the agreement to sell, his photographs and the registration of the agreement to sell etc. However, the conclusion arrived at by the learned trial court is erroneous because if the facts of the case are perused from beginning, then it becomes clear that the appellant defendant Banwari is a simple rustic villager and he even did not file the written statement in this case, rather adopted the written statement filed by his son. He even stated in the court that he does not know whether he had filed the written statement in this case or not. He showed ignorance even in respect of the execution of the agreement to sell Ex.DW1/A. Whatever might be the stand of the appellant defendant Banwari in the present case but the facts of the case speak volumes that he is a simple rustic villager and the respondent plaintiff has trapped him in the agreements to sell in the name of helping him by advancing some loan.

It is the settled proposition of law that even if an agreement to sell is duly proved between the parties, still it is not always necessary that a decree for possession by way of specific performance of said agreement to sell is to follow automatically. Each case is to be decided as per its own facts and circumstances. It is not always necessary that a decree for possession by way of specific performance of an agreement to sell has to be granted. It is so said because the jurisdiction to grant a decree of specific performance is a discretionary one. The Court is not bound to grant relief of specific performance merely because it is lawful to do.

However, it is equally true that the discretion by the Court is to

be exercised judiciously but must be based on sound reasons, guided by judicial principles. It is the mandate of law, as contained in Section 20 of the Specific Relief Act, 1963 (for short “the Act”). The legislature itself has provided more than one situations under Section 20(2) of the Act, granting discretion to the Court to decline a decree for specific performance. It is also well-established principle of law that legislative intent must be respected and given a harmonious interpretation with a view to achieve the object of the provisions of law contained in the Act.

Giving thoughtful consideration to the peculiar fact, situation obtaining on record of the case in hand, contentions raised on behalf of the appellant and also keeping in view the legislative intent behind Section 20 of the Act, this Court is of the considered view that the learned first appellate Court was well justified, while granting alternative relief to the plaintiff-appellant. In fact, the impugned judgment and decree have been passed by the learned first appellate Court, with a view to do complete and substantial justice between the parties and the impugned judgment deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate Court. He also could not refer to any question of law much less substantial question of law, 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.

The cogent findings recorded by the learned first appellate Court have been found factually correct and legally justified as well as

based on sound reasons. Thus, no fault can be found with the impugned judgment and decree passed by the learned first appellate Court and the same deserves to be upheld. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 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 present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

February 22, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No