

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1545-2017(O&M)

Date of Decision:20.03.2017

Gurdeep Singh

.....Appellant

Versus

Gurdev Kaur and others

.....Respondents

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

Present: Mr.K.S.Boparai, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned judgment and decree dated 05.09.2016 passed by the learned Additional District Judge, whereby first appeal of the plaintiff was partly allowed, granting him alternative relief for recovery of earnest money along with interest, upholding the judgment and decree dated 29.10.2014 of the learned trial Court, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that defendant being owner of land measuring 14 acres agreed to sell the same to plaintiff vide agreement to sell dated 08.11.2004 at the rate of ₹6,00,000/- per acre i.e. for a total sale consideration of ₹84,00,000/-. Sum of ₹10,00,000/- was paid by plaintiff to defendant through cheque no.264029 dated 08.11.2004 drawn on Indian Overseas bank, Civil Lines, Ludhiana which was duly encashed by

defendant through her bank at Chandigarh. Sale deed was agreed to be executed and registered on 03.05.2005. Defendant assured that the suit property was free from all encumbrances and she was owner of the same and she would bring the title deed with her at the time of execution of sale deed. It was further agreed that in case of default on part of defendant, plaintiff shall get the sale deed executed through the court. Plaintiff had always been ready and willing to perform his part of contract and was still ready and willing to perform his part. On 03.05.2005, plaintiff approached defendant with a request to get the sale deed executed and register in his favour after receiving balance sale consideration. Defendant asked the plaintiff to fix time in the office of Sub Registrar, Samrala at 10.00 am. Plaintiff reached the office of Sub Registrar, Samrala at the time fixed and waited for defendant but defendant did not turn up. Thereafter, plaintiff approached defendant and made an oral request but she stated that she could not obtain Jamabandi. Plaintiff had always been ready and willing to perform his part of contract and was still ready and willing. Plaintiff had now come to know that mutation qua the property in dispute had been sanctioned in favour of defendant in terms of order passed by the court of Sh.Baldev Singh, Assistant Collector, Grade-I, Samrala. Plaintiff through legal notice called upon defendant to remain present in the office of Sub Registrar, Samrala on 01.03.2006 to get the sale deed executed and registered but defendant had failed to turn up.

Having been served in the suit, defendant No.1 appeared and filed her contesting written statement, raising more than one preliminary objections. Defendant Nos.2 and 3 were impleaded later on vide order dated 30.05.2012, passed in their application moved under Order 1 Rule 10

CPC. They filed their separate written statement(s). Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether defendant had executed an agreement to sell dated 08.11.2004 in favour of the plaintiff? OPP*
- 2. Whether the defendant has received Rs.10,00,000/- as earnest money? OPP*
- 3. Whether plaintiff has always been ready and willing to perform his part of contract? OPP*
- 4. Whether suit is not maintainable? OPD*
- 5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 6. Whether the agreement in question was executed as security for the repayment of loan transaction? OPD*
- 7. Whether the present suit is not maintainable against the defendant no.2 & 3? OPD*
- 8. Whether the plaintiff has no cause of action to file the present suit against defendant no.2 & 3? OPD*
- 9. Whether the agreement dated 08.11.2004 is a result of fraud and misrepresentation? OPD*
- 10. Relief.”*

In order to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has failed to prove his case for possession by way of specific performance of agreement to sell dated 08.11.2004. Accordingly, suit of the plaintiff was dismissed vide impugned judgment and decree dated 29.10.2014. Dissatisfied, plaintiff filed his first appeal which came to be partly allowed by the learned Additional District Judge, thereby granting alternative relief

and decree dated 05.09.2016. Hence, this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees will make it crystal clear that defendant No.1 never intended to sell the suit property to the plaintiff-appellant. It was a clear-cut case of loan transaction. The agreement to sell Ex.P2 was nothing than a security for loan advanced by the plaintiff-appellant in favour of defendant No.1. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court committed no error of law, while passing the impugned judgment and decree, thereby granting alternative relief to the plaintiff-appellant for recovery of earnest money along with interest.

Relationship between plaintiff-appellant and defendant-respondent No.1 is not in dispute. Plaintiff has clearly admitted in his statement made before the learned trial Court that he did not get any copy of jamabandi for the suit land. He never approached any revenue official to inquire about the land which was intended to be purchased by him, in spite of the fact that he was intending to pay an amount of Rs.84 lacs for the land measuring 14 acres. He was also not aware about the exact location of the land and also whether defendant No.1 was exclusive owner of the suit land or it was a joint holding with other co-sharers.

This does not appeal to reason that once the plaintiff was intending to spend abovesaid huge amount and he would not even verify the basic facts about the suit land sought to be purchased by him. These undisputed facts and circumstances of the case clearly speak volumes about the falsehood of the case set-up by the plaintiff-appellant, seeking a decree

for possession by way of specific performance of agreement to sell. In this view of the matter, this Court is of the considered opinion that the learned Courts below were well within their jurisdiction to record their concurrent findings of facts and the same deserve to be upheld, for this reason also.

So far as the judgments relied upon by the learned counsel for the appellant in Tamil Nadu Electricity Board and another Versus N.Raju Reddiar and another, (1996) 4 Supreme Court Cases 551; Krishan Kumar Verma Versus Narender Prabhakar, 2010(1) R.C.R. (Civil) 183 and Durlabh Singh Versus Nahar Singh and another, 1991 Civil Court Cases 693 (P&H), are concerned, there is no dispute about the observations made and law laid down therein. However, on a close perusal of the cited judgments, none of them has been found to be of any help to the appellant, being 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.

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 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."

It is the settled proposition of law that relief of specific performance is a discretionary relief. Even if an agreement to sell is proved on record, that does not mean that a decree of specific performance has to follow automatically, in every given situation. It is so said because the legislature, in its wisdom, itself has carved out more than one exceptions under Section 20 of the Specific Relief Act, 1963. So far as the present case is concerned, it was a clear case of loan transaction between two relatives, thus, the learned first appellate Court rightly granted alternative relief to the appellant for recovery of earnest money along with interest. He has not been found entitled for any other relief by this Court as well and the impugned judgments and decrees passed by the learned Courts below deserve to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court as well as this Court in **Golap Chand Agarwalla G.K.Agarwalla Versus Gopal Chandra Pal, 2002(1) A.R.C. 535; Azhar Sultana Versus B.Rajamani and others, 2009 (17) SCC 27; Mangat Singh Versus Rakesh Kumar Gupta and another, 2014(4) R.C.R.(Civil) 387; Richhpal Singh Versus Sandhura Singh, 2013(3) Civil Court Cases 242; Gurdial Sarup Versus Kaushalya Kapur and others, 2003(2) R.C.R.(Civil) 374 and Nirmal Singh Versus Mangal**

The learned first appellate Court before arriving at a judicious conclusion, re-examined true facts of the case as well as the evidence available on record, in the correct perspective. The cogent findings recorded by the learned Additional District Judge in para 18 and 20 of its impugned judgment, which deserve to be noticed here, read as under:-

“Defendant has suffered a statement on oath that plaintiff was her relative and she had raised loan of Rs.10,00,000/- from him and to secure the loan, agreement to sell in question was got executed. There is no cross examination of plaintiff to dispute that plaintiff was not related to defendant in any manner. Meaning thereby, the statement of defendant that she was related to plaintiff has been admitted. The cross examination of plaintiff, if perused, would show as to whether the parties intended that agreement to sell be acted upon or not. In the cross examination, plaintiff has stated that he did not obtain any jamabandi qua the suit land from the Halqa Patwari at the time of execution of agreement to sell and he has also stated that he had never met the Patwari in whose jurisdiction the suit land fell till date except to get injunction recorded in the revenue record. He could not tell if the suit land agreed to be sold was out of specific khasra number or out of joint land . He also could not tell whether defendant no.1 was exclusive owner of suit land or joint with others nor could he tell the area of the suit land that adjoins the road and further could not depose on which direction of the suit land, the road is situated. He could not tell the length and width of the suit land nor the adjoining land owners. He also could not tell the age and description of the typist who had typed the agreement to sell. So the answers given by plaintiff would show that the agreement to sell was never intended to be acted upon as an agreement to sell. Had there been any intention of plaintiff to purchase land measuring 14 acres, plaintiff ought to have inquired about

the ownership of Gurdev Kaur over the suit land and he ought to have inquired about the location of the suit land. No sane person could be expected to be purchasing 14 acres of land for a sum of Rs.84,00,000/- without verifying the location and ownership. So the cross examination of plaintiff in itself proves that the agreement to sell was never intended to be acted upon as agreement to sell rather it appears to have been executed to secure the loan of Rs.10,00,000/- borrowed by defendant Gurdev Kaur from plaintiff. The facts of law laid down by Hon'ble Punjab & Haryana High court in Jagdish Parshad Versus Ishwar Singh and others (Supra) are also distinguishable. Hon'ble Punjab & Haryana High court in the said case was pleased to hold that where applicant had delivered the possession of land, the intention of the parties was clear. It was held that no interference can be drawn that there was no intention for sale and purchase of land under the agreement to sell when actual possession of the property had been delivered on the spot. In the present case, the parties to the agreement to sell had never got recital of delivery of possession recorded in the agreement. So in the light of abovesaid discussion it is stands proved that the agreement to sell dated 08.11.2004 was though executed by defendant no.1 in favour of plaintiff but the same was executed for the security of loan.

It was the contention of ld. Counsel for defendant that the scribe and stamp vendor have not been examined. Hon'ble Punjab & Haryana High court in Nirmal Singh Vs. Mangal Singh (Supra) was pleased to hold that where ante dated agreement is not scribed by a professional scriber rather it was typed by some typist and not entered in a register, No stamp vendor was examined to prove the date of sale of stamp papers, it was held that agreement is ante dated and not genuine. Hon'ble Punjab & Haryana High Court Richhpal Singh Versus Sandhura Singh (Supra) was pleased to hold that only scribe could have deposed about

the contents of the agreement having been read over and explained to the executant and where he has not been examined, the courts were justified in drawing adverse inference against the plaintiff. Hon'ble Punjab & Haryana High court in Mangat Singh Versus Rakesh Kumar Gupta (Supra) was pleased to hold that where agreement does not bear the signatures of purchaser of stamp paper on its backside and stamp vendor not examined, agreement to sell become doubtful and surrounded by suspicious circumstances. Law referred by ld. Counsel for defendant/respondent is not applicable the facts in hand. In the present case, defendant has no where disputed the agreement to sell. Her only contention is that the agreement to sell was executed for the purpose of security of loan rather than for the execution of sale deed.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the abovesaid cogent findings recorded 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. 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 present regular second appeal stands dismissed, however, with no order as to costs.

March 20, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes