

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

RSA No.2642 of 2017 (O&M)

Date of decision : 21.07.2017

Karamjit Singh and another

...Appellants

Versus

Nazar Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Pawan Kumar Mutneja, Advocate for the appellants.

ANIL KSHETARPAL, J.

The defendants No.1 and 3 have filed the present Regular Second Appeal against the judgment passed by the trial Court, confirmed by learned First Appellate Court while deciding a suit for specific performance of agreement to sell.

The plaintiff-respondent No.1 namely Nazar Singh had filed a suit for specific performance of agreement to sell dated 29.10.2004 with respect to the land measuring 20 kanals 2 marlas owned and possessed by defendant No.1. It was pleaded that a sum of ₹1,00,000/- was paid as earnest money to the defendants-appellants. The defendants had signed agreement to sell. As per the agreement, the target date was 01.12.2005. Plaintiff was ready and willing to get the sale deed executed as per the agreement to sell dated 29.10.2004. The defendant No.1 had given power of attorney to defendant No.3 vide registered General Power of Attorney Deed dated

11.01.2005 authorizing his wife to execute the sale deed pursuant to the agreement to sell dated 29.10.2004. However, plaintiff came to know that the defendant No.3 (wife of defendant No.1) had executed two sale deeds in favour of defendant No.2 (nephew of defendant No.1) in order to harm the rights of the plaintiff arising under a contract. When the plaintiff came to know about connivance between defendant Nos.2 and 3, he filed a suit for injunction but in the meantime sale deeds had already been executed by defendant No.3 as General Power of Attorney of defendant No.1 in favour of defendant No.2. Plaintiff had also agreed to purchase 20 kanals 1 marlas of land from Satnam Singh (brother of defendant No.1) by a separate agreement to sell and paid earnest money amounting to ₹2,00,000/-. The defendant No.2 wanted that Satnam Singh should not sell the land to the plaintiff. He had also filed a suit against Satnam Singh which is pending.

The defendant Nos.1 and 3 appeared and filed joint written statement. It was claimed that suit of the plaintiff is false and frivolous. The execution of the agreement to sell in favour of the plaintiff was denied. Even receipt of ₹1,00,000/- as earnest money has denied. It was claimed that the agreement to sell dated 29.10.2004 is forged and fabricated document.

The defendant No.2 filed a separate written statement and claimed that he is a bona fide purchaser for consideration without notice.

After appreciating the evidence available on record, the learned trial Court recorded a finding of fact that the agreement to sell dated 29.10.2004 is a genuine document and defendant No.1 had in fact entered into an agreement to sell with respect to the land measuring 20 kanals 2 marlas and received ₹1,00,000/- as earnest money. It was further found by

the learned trial Court that the plaintiff was always ready and willing to perform his part of the contract and he is still ready to honour the agreement to sell.

In these circumstances, the learned trial Court decreed the suit filed by the plaintiff and declared sale deeds executed by defendant No.3 acting as General Power of Attorney on behalf of defendant No.1 in favour of defendant No.2 as illegal, null and void and hence, set aside. Direction was also issued to defendant No.2 to join the defendant Nos.1 and 3 in execution of the sale deeds in favour of the plaintiff. The learned trial Court also granted a decree of permanent injunction restraining the defendant No.2 from alienating the suit property.

The defendant Nos.1 and 3 filed the first appeal. The appeal filed by the defendant Nos.1 and 3 was ordered to be dismissed by the learned Additional District Judge, Barnala vide judgment and decree dated 30.01.2017. The learned First Appellate Court, re-appreciated the evidence and after discussing the facts and the evidence brought on record confirmed the findings of fact arrived at by the learned trial Court.

Counsel for the appellant has made following submissions:-

- i) There is a cutting on the khasra numbers in the agreement to sell and, therefore, it is proved that the khasra numbers of the land were changed later on.
- ii) The signatures of the defendant No.1 were obtained on the blank papers and thereafter agreement to sell has been prepared.
- iii) The Stamp Vendor who sold the stamp papers for execution of the agreement to sell has not been examined.

- iv) There is no entry of agreement to sell in the register of scribe.
- v) The Appellate Court has not examined the issue of readiness and willingness of the plaintiff.
- vi) Counsel has further submitted that the plaintiff is not entitled to the discretionary relief in view of order passed in COCP No.492 of 2013.
- vii) The plaintiff is not entitled to relief as the learned Courts have wrongly exercised the discretion in favour of the appellants without referring to the provisions of Section 20 of the Specific Relief Act.

I have heard learned counsel for the appellants at length and have gone through the judgment of the Courts below as also the pleadings and evidence available on the file.

It would be significant to note here that in the written statement, the plaintiff had denied the execution of the agreement to sell. He had further denied the receiving of the earnest money. Now without pleadings, Counsel for the appellants has raised an argument that there is cutting on the khasra numbers on the agreement to sell.

I have seen photocopy of the agreement to sell Ex.P4 as supplied by the learned counsel for the appellants. There is no cutting on the khasra numbers. Only rectangle number, which was to be typed as 168 but print appear to be slightly less visible, hence specified as 168 by writing above the typed portion without disturbing the printed number. Apart therefrom, there is no cutting on the khasra numbers of the land.

Next argument of learned counsel for the appellants is that the blank signed papers have been used for agreement. I am afraid that such argument cannot be entertained as no such plea was taken in the pleadings.

Anyhow I have examined the photocopy of the agreement to sell very closely. The agreement to sell has been executed on stamp papers of ₹25/- having three papers of ₹10+ ₹10+ ₹5. The stamp papers have been purchased by defendant No.1 and his signatures appeared on the endorsement made by the Stamp Vendor. The signatures of the defendant No.1 appeared on first two pages at the bottom. Even last page of the agreement to sell is duly signed by defendant No.1. The agreement to sell is attested by two attesting witnesses. Therefore, it is not possible to accept the arguments of learned counsel that the agreement to sell was forged on blank papers.

Learned counsel has further submitted that since the Stamp Vendor has not been examined, therefore, there is lacuna in the evidence of the plaintiff. The plaintiff has examined one of the attesting witness apart from himself stepping into the witness-box. Even the Scribe of the agreement to sell has been examined. There is no requirement that Stamp Vendor must be examined. If the Court finds that there is sufficient evidence available on the file to prove the execution of the agreement, the Stamp Vendor is not required to be examined.

Counsel for the appellants has further submitted that since the Scribe had not entered the agreement to sell in his register, therefore, agreement to sell is doubtful. The agreement to sell is executed on a stamp paper of ₹25/-. Each page is signed by the defendant No.1-Karamjit Singh. The defendant No.1-Karamjit Singh has also signed on the back page where endorsement of purchase of the stamp paper is made by the Stamp Vendor. The Scribe namely Baldev Singh has appeared in the witness-box. He has

stated that parties had requested that entry be not made in the register. Normally, the Scribe do make a entry in the register. However, merely because entry has not been made in the register, the agreement cannot be held to be doubtful. Execution of the agreement as also the receipt of earnest money is totally denied by the appellants. Learned counsel is making his sincere endeavour to improve upon the case setup by the plaintiff. However, the submissions made by the learned counsel for the appellants cannot be accepted.

Learned counsel for the appellants has further submitted that the learned First Appellate Court has not recorded any findings on the readiness and willingness of the plaintiff. I have gone through the judgment passed by the learned First Appellate Court. The learned First Appellate Court has dealt with each and every contention raised by the learned counsel for the appellants. The learned trial Court has recorded a specific finding that the plaintiff was ready and willing to perform his part of contract. As per the agreement to sell, the date for execution of the sale deed was 01.12.2005 whereas plaintiff in the first instance filed a suit for injunction when defendant No.3 was trying to sell the property in favour of the defendant No.2. Thereafter, the plaintiff filed a suit for specific performance of the agreement on 21.05.2005 i.e. seven months before the date fixed for execution of the sale deed as per the agreement to sell. Therefore, it is not possible to hold that the plaintiff was not ready and willing. Since, the counsel for the appellants before the First Appellate Court did not raise such argument with respect to readiness and willingness of the appellants, therefore, the learned First Appellate Court has not dealt with the same. But,

that itself would not be a ground to set aside the judgment of the First Appellate Court particularly when the trial Court has recorded a finding of fact that the plaintiff was ready and willing to perform his part of the contract.

Counsel has further referred to an order passed in COCP No.492 of 2013. This is an order passed by this Court wherein after the decree passed by the trial Court, the plaintiff had filed an execution, although in first appeal, stay has been granted. The plaintiff had tendered unconditional apology and agreed to purge the contempt. In my considered opinion, such an order would not debar the plaintiff from claiming the relief particularly when the decree had already been passed by the trial Court and confirmed by the First Appellate Court.

Learned counsel has further referred to Section 20 of the Specific Relief Act to contend that the plaintiff is not entitled to discretionary relief and the Courts have not exercised the discretion in accordance with law. Section 20 of the Specific Relief Act, no doubt gives a discretion to the Court either to grant specific performance of the contract or refuse to grant specific performance of agreement to sell but that discretion has to be exercised in sound and reasonable manner, guided by judicial principles. In the present case, I do not find that the Courts have wrongly exercised their discretion.

It would be significant to note here that after entering into agreement to sell, defendant No.1 executed a General Power of Attorney dated 11.01.2005 in favour of his wife defendant No.3. This power of attorney is dated 11.01.2005. It was specifically recorded in the aforesaid

document which is Ex.P9 on the file that the plaintiff has entered into agreement to sell and since he is going abroad, therefore, he is authorizing his wife to execute the sale deed.

Counsel for the appellants has tried to explain that such attorney was for execution of the sale in favour of the defendant No.2 (nephew of defendant No.1). In my considered opinion, once the agreement to sell in favour of the plaintiff stands proved and established on the file, the Court would certainly entitled to draw inference that General Power of Attorney was executed for completion of the agreement to sell with the plaintiff as defendant No.1 had shifted abroad.

Counsel for the appellants has not been able to bring forth any substantial questions of law which is sine qua non for entertaining the Regular Second Appeal. Counsel for the appellants has further not been able to point out any error or defect which may fall within the four corners of Section 41 of the Punjab Courts Act, 1918 permitting High Court to interfere in exercise of its jurisdiction.

Finding no merit in the present appeal, same is ordered to be dismissed.

21.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No