

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

**RSA No.6338 of 2014 (O&M)
Date of decision: 18.07.2017**

Narinder Singh and another

... Appellants

Vs.

Jagir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Inderjit Sharma, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for possession on the basis of title, filed by the plaintiff, was decreed.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the house in dispute shown as ABCD in the site plan was owned by the plaintiff. He had purchased this plot measuring 06 marlas comprised in khasra No.86/2/3 from Veer Singh son of Ganda Singh in the year 1985 and thereafter, he constructed the house in the year 1990 and he used this house as haveli till 1998. The defendants were working as agriculture labourer in his land and the house of the defendants was within the lal-lakir of the village near the house of Rachhpal Singh and in the year 1998, their house fell down due to heavy rain and they approached the

plaintiff and requested him to adjust them in the suit property till they reconstruct their house. Since defendants were working as labourers in his fields, so he allowed them to live in the house in dispute till their house was reconstructed. Thereafter, plaintiff requested them many times to reconstruct their own house and to vacate the suit house but the defendants put off the matter on one pretext or the other and they used to say that they were not in a position to reconstruct their house due to their financial condition. Now defendants started working with Gurdip Singh son of Didar Singh and Gurdip Singh son of Mehanga Singh, so plaintiff again requested them to vacate the house in dispute and deliver its vacant possession but they refused.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for possession of the suit land, as prayed for? OPP
2. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced 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 plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly, suit for possession filed by the plaintiff-respondent was decreed by the learned trial Court, vide impugned judgment and decree dated 29.05.2012. Feeling aggrieved, defendants filed their first appeal, which also

came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 03.09.2014. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

It is a matter of record that the entire case of the appellants was based on their alleged agreement to sell dated 26.06.1989 Ex.D2. The pleaded case of the appellants was that they sought to purchase the suit property from the plaintiff-respondent by way of agreement to sell dated 26.06.1989 Ex.D2 for an amount of Rs.10,000/-. It was further pleaded by the defendants that the suit property was in the shape of a vacant plot measuring 06 marlas. It was also claimed that the appellants raised construction on the said plot.

However, it does not appear to reason as to why an agreement to sell was entered into between the parties, once the amount of total sale consideration had been paid by the appellants. It has gone completely unexplained as to why the appellants did not insist for execution of the sale deed, once nothing was left to be paid towards sale consideration. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is also a matter of record that the defendants, on the strength of their alleged agreement to sell dated 26.06.1989 Ex.D2, never filed any suit for possession by way of specific performance of agreement to sell and that too for no good reasons. No explanation is forthcoming on record in this regard as well. When the plaintiff completely denied the agreement to sell in his replication, it was least expected from the defendants-appellants to prove the agreement to

sell in accordance with law. However, they failed to do so. Learned counsel for the appellants sought to furnish an explanation in this regard that attesting witnesses died in the interregnum, because of which they could not be produced.

Had it been so, there was no hurdle in the way of the appellants to produce the scribe. It also does not appeal to reason as to how and why the appellants raised construction on a plot whose ownership was with the plaintiff. The appellants never sought transfer of ownership in their name adopting any method, in accordance with law. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, learned first appellate Court examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned District Judge in para 13 of the impugned judgment, which deserve to be noticed here, read as under: -

“..... It is an admitted fact that respondent-plaintiff was the original owner of the suit property. His ownership also stands proved from the sale deed Ex.P2 and jamabandi Ex.P3. Moreover, it is the case of the appellants also that appellant No.1 had purchased the suit property from the respondent vide agreement to sell Ex.D2 for a sum of Rs.10,000/-. It is the case of the appellants that after the purchase of the suit property they constructed their house thereon in or before 1998 and since then they are living with

their families in the house in dispute. On the other hand, stand of the respondent is that appellants used to work as labourers in his agriculture land and in the rainy season of 1998, their house fell down and on their request the respondent allowed them to live in the house in question till they reconstruct their house situated within the lal-lakir of the village. To succeed in this appeal, appellants have to prove the valid execution of the agreement Ex.D2 under which they are claiming their rights in the suit property. The execution of this agreement has been vehemently denied by the respondent and it is his pleaded case that this agreement is forged and fabricated document prepared with the connivance of the scribe and the witnesses. In order to prove this agreement the appellants have not examined any witness. A perusal of this agreement would show that this agreement was witnessed by Chanan Singh, Mehar Singh son of Achhar Singh, Gurdip Singh son of Mehanga Singh and Mehanga Singh Sarpanch and it appears to have been entered at Sr. No.4331 of 26.06.1989 in the register of the scribe. However, as stated above, none of these attesting witnesses has been examined. The appellants have partly examined Mehar Singh as DW-2 but he did not appear to face cross-examination. No explanation and reason has been given for not examining him. The scribe of this agreement has also not been examined. Even neither his name has been disclosed nor any effort has been made to get his register produced where this agreement was alleged entered. This agreement was

executed for a consideration of Rs.10,000/-. It is in the cross-examination of appellant that this amount was arranged by Shri Gurdip Singh witness, who has expired but Kulbir Singh son of Gurdip Singh has been examined as DW-3 and this witness has claimed himself to be present at the time of the execution of the agreement and that the appellants were working in his fields and that sale consideration was also paid in his presence. However, according to him it is appellant Narinder Singh, who has arranged the sale consideration. Thus, both these witnesses are discrepant so far as sale consideration is concerned. He has also not disclosed the name of the scribe. Another suspicious circumstance about this agreement is that this agreement was admittedly executed in Tehsil Complex but no explanation has been given as to why the sale deed was not executed instead of sale agreement when the appellants have paid the entire sale consideration. Then no effort has been made to get the disputed signature of the respondent appearing on the agreement compared with his standard signature from any document and handwriting expert. Thus, execution of agreement to sell is surrounded with various suspicious circumstances, which creates doubt about the authenticity of this agreement. Since the appellants have miserably failed to prove due execution of this agreement, so they are not entitled to get their possession protected under Section 53-A of the Transfer of Property Act.”

Defendants-appellants also did not take the plea of adverse

possession, for the reason that they were trying to prove the agreement to sell Ex.D2, which they could not prove. In such a situation, judgments of this Court relied upon by learned counsel for the appellants in **Romesh Mohan and another Vs. Raj Krishan and others, 1984 PLR 2011** and **Bhola Singh Vs. Ratia, 1989 (1) R.R.R. 207** have not 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."

Under the peculiar fact situation of the case in hand, learned Courts below have not rightly found the appellants entitled for the protection under Section 53-A of the Transfer of Property Act, 1882. No fault can be found with the concurrent findings recorded by the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments and decrees. He also could not point out 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 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 case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal 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, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

18.07.2017
vishnu

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