

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT  
CHANDIGARH**

**RSA No.910 of 2017**

**Date of decision:22.8.2017**

Kartar Singh

...Appellant

**Versus**

Gurdhian Singh and others

...Respondents

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

**Present:** Mr.Sanjeev Goyal, Advocate for the appellant.

**RAMESHWAR SINGH MALIK, J. (Oral)**

Instant regular second appeal, at the hands of defendant No.1, is directed against the impugned judgment of reversal dated 29.8.2016, whereby the learned first appellate court partly allowed the appeal of plaintiff, directing the defendants to return the amount of earnest money along with interest @ 6% per annum, modifying the judgment and decree dated 15.11.2013 of the learned trial court, who dismissed the suit of the plaintiff.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that defendant No.1 was owner in possession of the suit property, measuring 6 bigha fully detailed and described in head note of plaint. He entered into an agreement to sell the said property with the plaintiff @ Rs.3.50 lacs per bigha on 29.01.2009 and received earnest money of Rs.8 lacs in the presence of marginal witnesses. Defendant agreed to execute sale deed on or before 15.02.2009.

Terms and conditions of the agreement were incorporated in the agreement,

which was reduced into black and white in the presence of witnesses. Plaintiff had always been ready and willing to perform his part of the agreement. However, defendant No.1 expressed his inability to execute the sale deed of the disputed property on 14.02.2009 on the stipulated date and requested the plaintiff to extend the date of execution of the sale deed. Pursuant to the request, date of execution of sale deed was extended to 15.06.2009, regarding which writing was executed, which was duly thumb marked by defendant No.1 in the presence of marginal witnesses. Plaintiff also put his signatures on the same. Plaintiff went to the office of Sub Registrar on 15.06.2009 alongwith balance sale consideration and remaining registration expenses etc. But defendant No.1 failed to turn up to perform his part of the agreement. However plaintiff came to know later on that defendant No.1 transferred landed property measuring 4 bigha, out of land measuring 6 bigha 17 biswa, in favour of defendants No.2 and 3 vide registered sale deed No.320 dated 04.05.2010 to cause an irreparable loss to him. Defendants No.2 and 3 are real nephews of defendant No.1. Defendant No.1 transferred the landed property measuring 4 bigha in favour of defendants No. 2 and 3 in order to cause an irreparable loss to the plaintiff. Alleged sale deed dated 04.05.2010 was a mere paper transaction, without consideration and was liable to be set aside. Plaintiff also served a legal notice on 11.08.2010 on defendant No.1 calling him to execute the registered sale deed of the disputed property. It was prayed in the end that defendant No.1 be directed to execute the sale deed of the disputed property and sale deed No.320 dated 04.05.2010 qua land measuring 4 bighas out of the disputed property be declared illegal, null and void, without consideration and against the terms and conditions of the agreement to sell

dated 29.01.2009. Consequential relief of injunction was also sought by the plaintiff restraining the defendants from alienating the disputed property. Plaintiff also sought alternative relief of Rs.21 lacs.

Having been served in the suit, defendants put appearance. Defendant No.1 filed his contesting written statement, raising more than one preliminary objections. Similarly, defendants No.2 and 3 filed their separate 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 to the relief of possession by way of specific performance, as prayed for? OPP.
2. Whether the plaintiff is entitled to the relief of declaration, as prayed for? OPP.
3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.
4. Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD.
5. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.
6. Relief

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, suit for possession by way of specific performance of agreement to sell filed by the plaintiff was dismissed by the learned trial court, vide its impugned judgment and decree dated 15.11.2013.

Feeling aggrieved, plaintiff filed his first appeal, which came

to be partly allowed. Primary relief of specific performance was denied to the plaintiff, however, alternative relief was granted to him, directing the defendants to return the amount of earnest money along with interest @6% per annum, vide impugned judgment and decree dated 29.8.2016 passed by the learned first appellate court. Hence this regular second appeal, at the hands of defendant No.1.

Heard learned counsel for the appellant.

Placing reliance on two judgments of this Court in **Ghansham Dass Vs. Parkash Devi and another, 2016(3) Law Herald 2681** and **Lakhvir Singh and another Vs. Chanan Masih and others, 2010(7) RCR (Civil) 1310**, learned counsel for the appellant submits that once the plaintiff did not come forward with the remaining amount of sale consideration so as to enable the appellant to get the sale-deed executed, in compliance of the agreement to sell, amount of earnest money would stand forfeited, as per the terms and conditions of the agreement to sell. He further submits that the learned trial court rightly dismissed the suit of the plaintiff but the learned first appellate court misdirected itself, while passing the impugned judgment of reversal, which is liable to be set aside. He prays for allowing the instant regular second appeal.

Having heard the learned counsel for the appellant at considerable length and after going through the record of the case, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case in hand, instant appeal has been found without any merit and the same is liable to be dismissed for the following more than one reasons.

Admittedly, agreement to sell executed between the parties was

dated 29.1.2009. This material fact has been fairly admitted on behalf of the defendants. Defendants have further admitted the receipt of amount of Rs.8 lacs as earnest money. Vide Ex.P4-legal notice, defendant-appellant was called upon by the plaintiff to settle the account in respect of above-said agreement to sell. It has also gone undisputed that in the interregnum defendant No.1 has sold the suit property by way of sale-deed No.320 dated 4.5.2010 in favour of defendants No.2 and 3.

Thus, taking undue benefit of the changed circumstances, defendants No.1 was trying to become rich at the cost of the plaintiff, which is not permissible in law. None of the parties to the litigation could be allowed to take undue advantage. Having said that, this Court feels no hesitation to conclude 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.

So far as the judgments relied upon by the learned counsel for the appellant are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of the judgments 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.**

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 23 and 24 of its impugned judgment, which deserve to be noticed here, read as under:-

*“After appraising evidence adduced by the parties on the file, I am of the considered opinion that plaintiff not only fully proved the execution of the agreement to sell Ex.P1, endorsement Ex.P2, delivery of earnest money of Rs.8 Lakh to the defendant Kartar Singh at the time of execution of agreement Ex.P1, but he also proved that he has always been ready and willing to perform his part of the agreement to prove the said fact. He also proved an affidavit Ex.P3 got attested by him to prove his readiness and willingness to perform his part of the contract on 15.06.2009. Though defendant Kartar Singh testified that he came to the office of Sub Registrar on 15.06.2009 alongwith DW1 Jora Singh Lambardar, but surprisingly he feigned ignorance that plaintiff Gurdhian Singh appeared before the Office of Sub Registrar on 15.06.2009 alongwith Gurdial Singh son of Sher Singh alongwith balance sale consideration and other charges as per terms and conditions of agreement Ex.P1 and endorsement Ex.P2. When DW2 Kartar Singh failed to controvert the specific suggestion of the plaintiff Gurdhian Singh that he appeared before the Office of Sub Registrar on 15.06.2009 alongwith one Gurdhian Singh Vs. Kartar Singh Gurdial Singh and was having requisite amount of balance sale consideration with him to get the sale deed executed from the defendant, the version of the defendant Kartar Singh that plaintiff was not having the balance sale consideration with him on the stipulated date can not be accepted. Moreover, DW2 Kartar Singh conceded that*

*stipulated date of 15.02.2009 was extended to 15.06.2009 with the consent of both the parties, contrary to the version narrated by him in the written statement and in his affidavit.*

*Apart from this, it is also pointed out that Kartar Singh did not execute any agreement to sell in favour of defendants Harpal Singh and Avtar Singh, prior to the execution of the sale deed Ex.P8 on 04.05.2010 of the property measuring 4 bigha out of the disputed property 6 bigha. DW2 Kartar Singh also falsified his version that he received whole of the sale consideration of Rs.12 Lakh from defendants Avtar Singh and Harpal Singh in the presence of Sub Registrar, while perusal of the sale deed reveals that not a single penny was delivered to him by defendants No.2 and 3 in the presence of Sub Registrar. Moreover defendants No.2 and 3 are the real nephew of Kartar Singh. They are not only residing near to his house, but also own landed property adjoining to his property. Moreover, plaintiff issued notice on the defendant Kartar Singh calling upon him to perform his part of the agreement on 11.08.2010 Ex.P4 and to settle the account with him within seven days. Thereafter, plaintiff filed the suit for specific performance of the agreement on 21.10.2010. Defendant Kartar Singh replied to the notice Ex.P4 vide reply dated 19.08.2010 Ex.D3, wherein he stated that amount of earnest money Rs.8 Lakh was forfeited by him. But keeping in view my above discussion, it is held that plaintiff has not only been ready and willing to perform his part of the agreement Ex.P1 on 15.06.2009, he was also having the requisite balance sale consideration and other charges with him to get the registered sale deed executed from defendant Kartar Singh. However, defendant Kartar Singh executed sale deed Ex.P8 of 4 bighas of landed property out of the disputed property on 04.05.2010. Though plaintiff served the notice on 11.08.2010, calling upon defendant Kartar Singh to settle the accounts with him, within the period of seven days from the receipt of notice, but said fact does not go to serve the purpose of defendant Kartar Singh in any way. Once Kartar*

*Singh had transferred landed property measuring 4 bigha out of the disputed property measuring 6 bigha in favour of Harpal Singh and Avtar Singh, vide sale deed Ex.P8 on 04.05.2010, it was the sweet will of the plaintiff to get the sale deed of remaining 2 bigha executed or to get the sale deed Ex.P8 cancelled before the execution of the sale deed of disputed property in his favour. The defendant Kartar Singh can not take plea that plaintiff was not ready and willing to perform his part of the agreement on 11.08.2010, when he issued notice Ex.P4 as he had already transferred major chunk of land of 4 bigha out of the disputed property measuring 6 bigha. Defendant Kartar Singh can not have a cake and eat it too. Therefor, he can not appropriate and approbate in the same breath when plaintiff has fully proved that he has been ready and willing to perform his part of the agreement dated 15.06.2009. He was entitled to recover the earnest money of Rs.8 Lakh paid by him to defendant Kartar Singh because he himself did not seek the execution of the sale deed vide notice Ex.P4 of the disputed property.”*

A bare combined reading of the above-said findings recorded by the learned first appellate court will make it crystal clear that not only agreement to sell Ex.P1 was duly proved on record but payment of earnest money was also duly proved. Thereafter, plaintiff proved his readiness and willingness to perform his part of the contract. He proved on record his affidavit Ex.P3 to show that he was ready and willing to perform his part of the contract on 15.6.2009. Although, appellant also testified that he came present in the office of Sub Registrar on 15.6.2009 but he tried to express his ignorance about the presence of the plaintiff. However, appellant failed to prove his specific stand taken by him in this regard.

Presence of appellant in the office of Sub-Registrar on 15.6.2009 would also go to show that the target date was extended between

the parties from 15.2.2009 to 15.6.2009. It seems that during this period, appellant turned greedy with a view to forfeit the amount of earnest money and instead of getting the sale-deed registered in favour of the plaintiff, he suffered a sale-deed in favour of defendants No.2 and 3. This conduct on the part of the appellant is also one of the relevant considerations and the same was rightly appreciated by the learned first appellate court, while passing the impugned judgment and decree, which deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the judgments of Hon'ble the 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; Nirmal Singh Versus Mangal Singh, 2002(1) R.C.R.(Civil) 745 and Gurdeep Singh Vs. Gurdev Kaur and others, (RSA No. 1545 of 2017 decided on 20.3.2017).**

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter,

no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

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

22.8.2017  
mks

(RAMESHWAR SINGH MALIK)  
JUDGE

|                           |   |        |
|---------------------------|---|--------|
| Whether Speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |