

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No.522 of 1990 (O&M)

Date of Decision: October 12th, 2018

Smt. Lajwanti & another

...Appellants

Versus

Mohan Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. C.B.Goel, Advocate,
for the appellants.

Mr. A.S.Randhawa, Advocate,
for the respondents.

AMIT RAWAL, J.

Appellant-defendants are in Regular Second Appeal against the judgment and decree dated 21.12.1989, whereby the appeal preferred by the respondent-plaintiffs against the judgment and decree dated 31.10.1987 of the Additional Senior Sub Judge, Kaithal dismissing the suit, has been allowed, in essence the suit has been decreed.

Respondent-plaintiffs instituted the suit on 13.12.1983 seeking specific performance of the agreement to sell dated 30.08.1980 on the premise that defendant No.1 Smt.Lajwanti, through power of attorney Udey Ram- defendant No.3, entered into an agreement in respect of land measuring 16 kanals 10½ marlas, i.e., half share of the total land measuring 33 kanals 1 marla comprised in Rect. No.77, Killa No.16/5, Rect. No.85, Killa No.23/1, Rect.no.97, Killa No.3, 8, 9/2, 12/2, 13/1 situated at Village Kheri Gulam Ali, Tehsil Guhla for a total sale consideration of Rs.23,000/-

against receipt of Rs.2000/- as earnest money. As per the terms and conditions of the agreement to sell, the sale deed was to be executed on 15.12.1980 and the remaining sale consideration was to be paid at that relevant point of time. The respondent-plaintiffs were always ready and willing to perform their part of the contract, but the defendants did not perform and, therefore, claimed discretionary relief.

Defendant No.2 contested the suit by filing written statement, wherein execution of the agreement to sell and its terms and conditions were admitted, but stated that she along with defendant No.1 reached the office of Sub Registrar on 15.12.1980. The plaintiffs were neither ready and willing to perform their part nor they were present. They marked their presence by submitting application Ex.D1 to the Sub Registrar. Plaintiff No.2 Naranjan Singh reached the Tehsil premises at about 4.30 PM and requested for extension of time for execution and registration of the sale deed as he was not having sufficient sale consideration.

Defendant Nos.1 and 3 filed their separate written statement and had also taken the same stand as has been taken by defendant No.2.

Respondent-plaintiffs filed the replications. The trial Court, on the basis of the pleadings of the parties to the lis, framed the following issues:-

- “1) Whether the plaintiffs were ready and willing to perform their part of contract? OPP
- 2) Whether the defendants did not receive Rs.2000/- vide receipt Ex.P2? OPD
- 3) Whether the suit is not maintainable? OPD
- 4) Whether the plaintiffs are estopped from filing the suit by their act and conduct? OPD
- 5) Whether the present suit has not been framed in

accordance with proformas no.47 and 48 as prescribed by law?

OPD

6) Whether the agreement dated 30.8.1980 stands rescinded/cancelled due to the fault of the plaintiffs as alleged in the written statement? OPD

7) Relief.”

To prove the aforementioned averments, plaintiff No.2 Naranjan Singh himself appeared as PW-1 and also examined PW-2 Shri Mehar Singh Dhillon, Advocate, PW-3 Raj Kishan Sharma, Registration Clerk in the office of Sub Registrar, Guhla and PW-4 Harbhajan Singh and closed the evidence in affirmative. In support of the aforementioned pleadings also brought on record documents Exs.P1 to Ex.P5.

On the other hand, defendants examined DW-1 Hema Bai defendant No.2, DW-2 Lajwanti, DW-3 Shiv Dayal, the then Reader of the Tehsildar, Guhla, who proved copy of application as Ex.D1 and DW-4 Madan Mohan and closed the evidence by tendering into evidence copy of jamabandi as Ex.D2, which was objected to.

On the basis of the evidence brought on record, the trial Court, while noticing that the respondent-plaintiffs were not ready and willing to perform their part of the agreement as no explanation had come forth in not filing the suit after the expiry of stipulated date, i.e., 15.12.1980 as the suit was filed on 13.12.1983, dismissed the suit. However, the plaintiffs in appeal have been successful, wherein the judgment and decree as noticed above, has been set-aside and the suit of the plaintiffs has been decreed.

Mr. C.B.Goel, learned counsel representing the appellant-defendants submitted that readiness and willingness on behalf of the respondent-plaintiffs was conspicuously absent as no explanation has come forth as to what steps have been taken for performance of the agreement to

sell till filing of the suit on 13.12.1983. In support of the aforementioned contention, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **B.Vijaya Bharathi Versus P.Savitri & Ors., 2017 AIR (SC) 3934**. In the absence of any steps taken by the plaintiffs, the contract was deemed to have been rescinded and there is no challenge to the rescission, thus, in view of the ratio decidendi culled out in the judgment **I.S.Sikandar (D) by L.Rs Versus K.Subramani and others, 2013 (15) SCC 27**, suit was not maintainable. Even the pleadings to that effect were also wanting.

It was next contended that the findings of the Lower Appellate Court are based upon surmises and conjectures as the defendants did not know the name of the scribe. Naranjan Singh- plaintiff No.2 wrote a letter Ex.DW4/A dated 29.11.1980 to the defendants that he did not have any sufficient funds. The aforementioned letter was written by Madan Mohan DW-4 at the instance of Naranjan Singh and has been proved through his testimony. In such circumstances, there was no occasion for granting discretionary relief. The provisions of Section 16(c) of the Specific Relief Act (for short, the Act) were conspicuously wanting. Even the earnest money did not commensurate to the total amount of sale consideration. Copy of the judgment dated 05.01.1982 rendered in Civil Suit No.471 of 1981 titled as Pyare Lal Versus Naranjan Singh pertained to a decree of recovery of Rs.2400/-, which showed plaintiff was in debt and, therefore, inference drawn that he did not have any money.

It was further submitted that there has been misreading and misconstrual of the evidence, therefore, the findings of the Lower Appellate Court are wholly fallacious and ill-founded. The suit cannot be permitted to

be decreed for a paltry amount of Rs.23,000/- as now it is settled law that old agreement to sell cannot be performed until and unless the plaintiffs are willing to return the amount with interest which this Court deems fit and, thus, urged this Court for setting-aside the judgment and decree under challenge.

On the other hand, Mr. A.S.Randhawa, learned counsel appearing on behalf of the respondent-plaintiffs submitted that the Lower Appellate Court, being the last Court of fact and law after examining the evidence, found that the respondent-plaintiffs were ready and willing to perform their part of the contract as the possession of the suit property was with them. It was only when, despite, repeated requests defendants failed to perform the agreement for execution and registration of the sale deed, necessity arose to file the suit. There is a categorical averment in the plaint regarding the appearance before the Sub Registrar. If at all, the defendants rescinded the contract, there was no occasion for them to go to the office of Sub Registrar. Letter Ex.DW4/A has not been proved in accordance with law as the envelope stated to have been sent by post to the plaintiffs apparently has been written by the plaintiffs to the defendants, which surfaced in the cross-examination. Defendants' witness admitted that Naranjan Singh was present before the office of Sub Registrar on the stipulated date, but the story of insufficient money has been coined. There is a categorical pleading with regard to the continuous readiness and willingness. Sufficient money in hand is no ground for declining the discretionary relief as defendants would have a right to seek the rescission of the contract as per the provisions of Section 28 of the Act in case the balance amount as per direction of the court below was not deposited within

the specified time.

It was next argued that the appellant-defendants, vide order dated 25.04.1990, have already withdrawn the amount and the possession is with the plaintiffs. Though withdrawal of the amount was without prejudice to their right of redepositing the same in case the result of the litigation rendered in their favour, but the fact of the matter is that the defendants, in particular, agreed to part with the property. There has to be a specific notice with regard to rescission of the contract, which is required, as per the ratio decidendi culled out in **I.S.Sikandar's case (supra)**, therefore, the same would not come to the help and aid of the defendants. Their presence before the Sub Registrar was also doubtful as it was not matching with the application Ex.P4 of the respondent-plaintiffs. Plaintiff had been consistent in cross-examination where it was stated that he was willing to execute the agreement to sell till the date of deposition and, therefore, readiness and willingness cannot be said to be wanting. It is in these circumstances, the Lower Appellate Court set-aside the judgment and decree of the trial Court and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and also of the view that there is no force and merit in the submissions of Mr. C.B.Goel.

This Court, vide order dated 25.4.1990, permitted the appellant-defendants to withdraw the amount. The same reads thus:-

“This is an application filed by the defendant-appellants for withdrawal of Rs.21,000/-, which has been deposited by the plaintiffs in pursuance of the judgment and decree of the Appellate Court. Mr.Randhawa has filed the reply and submitted therein that the applicants be allowed to withdraw the amount lying in deposit after excluding the costs of the

decree which has been passed in favour of his client. The counsel for the applicants on the other hand has argued that since the plaintiffs have failed to comply with the decree by withdrawing the amount of costs without seeking permission from this court, the suit can be dismissed on this ground alone. This being a question of law, the same would be determined, while deciding the case on merits at the time of hearing the appeal, As at present, whatever amount is lying deposited, the same is allowed to be withdrawn in favour of the applicant-defendants without prejudice to his right of redepositing the same in case the result of the litigation goes in his favour, either on merits or on points so made out before me. This order disposes of Civil Misc.No.745-C of 1990 in the above mentioned terms.”

However, the withdrawal was without prejudice to their rights.

Be that as it may, the plaintiff had been consistent and coherent in the examination-in-chief with regard to the readiness and willingness and the cross-examination could not cause any dent qua that. It is settled law that as per the provisions of Order 6 Rule 2 CPC, pleadings have to be brief and concise and can be explained in evidence. This is what has been done in the instant case.

The defendants have also failed to prove that they were present in the office of Sub Registrar, but coined the story of having insufficient funds. That stand would not be a reason, for, in case plaintiffs failed to deposit the balance sale consideration in time slot granted by the Lower Appellate court, they would have a right to seek rescission of the contract as per the provisions of Section 27(c) of the Act. If both the parties were agreeable, what was the hitch for them to perform their part of the agreement for the purpose of registration of the sale deed on receipt of the balance sale consideration. The decree of paltry amount against Naranjan

Singh would not come to the rescue of the defendants to lend support to the argument of insufficient funds in view of the foregoing reasons. During the entire period, the defendants had not decided to rescind the contract by just dropping a notice. By implication, the contract cannot be rescinded, thus, the ratio decidendi culled out in **I.S.Sikandar's** case would not be applicable in the instant case vis-a-vis maintainability of the suit as well.

The Lower Appellate Court, in my view, has examined the entire evidence both oral and documentary in reversing the findings of the trial Court as to a specific question, it surfaced the envelope was opened but it was produced from the pocket of the counsel, who stated that it was posted by him, but no postal receipt has seen the light of the day.

Naranjan Singh denied the signatures on the letter Ex.DW4/A. It is settled law that mere exhibition of the document would not dispense with proof. The defendants ought to have taken steps for obtaining specimen signatures of Naranjan Singh for comparison. In the absence of the same, the letter could not be looked into and rightly so has been discarded.

For the reasons stated above, I am of the view that the findings of fact and law arrived at by the Lower Appellate Court without any evidence cannot be said to be fallacious or ill-founded. No substantial question of law arises for determination by this Court. Resultantly, by upholding the findings, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 12th , 2018
ramesh

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No