

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

RSA No.213 of 1992 (O&M)

Bakhtaur Singh

....Appellant

Versus

Nazir Singh and Ors.

....Respondents

Date of Order: 17.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Salil Bali, Advocate for the petitioner.

None for the respondents.

AMIT RAWAL, J (ORAL)

Appellant-defendant is aggrieved of the concurrent findings of facts recorded by both the courts below whereby the suit of the plaintiff seeking specific performance of agreement to sell has been decreed vide judgment and decree dated 05.2.1987 passed by Sub Judge, Ist Class, Barnala and the appeal filed against the same has been dismissed by lower Appellate Court vide judgment and decree dated 26.10.1991.

Facts in brief are that the respondents-plaintiffs instituted the suit on 16.7.1984 claiming specific performance of agreement to sell dated 20.2.1984 vide which the defendant had contracted to sell 13 kanals of land as described in the head note of the plaint for sale consideration of Rs.81250/- out of which he received a sum of Rs.10,000/- as earnest money. Said agreement was attested by Nirmal Singh of Chhiniwal Khurd and Amar Singh Panch. Suit land was mortgaged for Rs.49,500/- with Jit Singh, Malkiat Singh sons of Mela Singh and the mortgage amount was to be kept by the plaintiffs. As per averments in the plaint, the defendant was

requested to receive the balance sale consideration of Rs.21750/- before the Sub Registrar but the defendant did not execute the sale deed. Accordingly, a legal notice dated 22.6.1984 was served upon the defendant. It was averred that the plaintiffs were ready and willing to perform their part of agreement and therefore cause of action arose in favour of the plaintiffs to file the suit.

The suit was contested by the appellant-defendant, who took numerous objections. It was averred that the property was coparcenary and the defendant was not permitted to alienate the suit land without consent of his sons. No agreement to sell was entered and it was in fact a loan transaction of Rs.8000/-, which was converted into agreement to sell. Appearance of the plaintiffs before the Sub Registrar was unilateral act.

From the pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the defendant executed the agreement dated 20.2.84 in favour of the plaintiff?OPP*
- 2. If issue no.1 is proved, if so, its effect?OPD*
- 3. Whether the suit land is joint hindu Family and coparcenary property?OPD*
- 4. If issue no.3 is proved, whether the defendant could enter into an agreement to alienate the same?OPD*
- 5. Whether the suit is competent in the present from since Sher Singh, Gurcharan Singh, Major Singh sons of Bakhtaur Singh defendant have filed a suit for injunction against the defendant?OPD*
- 6. Relief.”*

In support of their case, plaintiffs-respondents examined Nand Lal as PW1, Amar Singh as PW2, Nirmal Singh, another attesting witness of agreement as PW3, Lal Chand, Naib Tehsildar Bhadadur as PW4, Roshan

Lal as PW5 besides appearing themselves as PW6 and PW7 respectively. They also brought on record certain documentary evidence.

On the other hand, the defendant-appellant himself appeared as DW1 and closed his evidence.

After going through the evidence and other material available on record, the trial Court decreed the suit and the appeal met with the same fate by the lower Appellate Court.

Learned counsel for the appellant submitted that the findings recorded by both the courts below are patently illegal and the same are liable to be set aside, for, both the courts below have committed irregularity in granting the discretionary relief especially when the respondents-plaintiffs had failed to prove on record their readiness and willingness to perform the contract. The agreement to sell had not been proved as it was loan transaction. The discretionary relief can only be granted when the plaintiffs were ready and willing and therefore both the impugned judgment and decrees are liable to be set aside.

There is no representation on behalf of the respondents-plaintiffs. Appeal pertains to the year 1992 and accordingly I proceed to decide the same.

After hearing learned counsel for the appellant and perusing the paper book, I find no force and merit in the present appeal. Both the attesting witnesses deposed in the same lines and proved the agreement to sell much less the balance sale consideration. It is settled law that the party who denies execution of the agreement, cannot take the plea of readiness and willingness. Aforesaid view is derived from the judgment of this Court in **Lal Chand Vs. Tara Chand, 2013 (5) RCR (Civil) 104** and **Jora Singh**

Vs. Lakhwinder Kumar & Ors, 2011 (1) RCR (Civil) 130.

Be that as it may, if at all it was a loan transaction, the defendant was not prevented to reply to the legal notice but he remained silent. The suit was filed on 16.7.1984. It has come on record that the appellant-defendant was called upon to appear before the Sub Registrar on 03.7.1984. In my view, both the courts below have rightly granted the discretionary relief on the premise that the respondents-plaintiffs had been able to prove their readiness and willingness in terms of provisions of Section 16-C of Specific Relief Act, 1963. Moreover, the facts qua mortgage had not been controverted by the defendant.

No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by both the courts below.

Present appeal is dismissed. Stay granted by this Court stands vacated.

May 17, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No