

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

RSA-141-1994 (O&M)
Date of Decision:-23.5.2018

Lal Singh

... Appellant

Versus

Joginder Singh (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. G.S. Bajwa, Advocate and
Mr. R.K. Vashishtha, Advocate for the appellant.

Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-plaintiff has filed this appeal challenging judgment dated 27.10.1993 wherein the learned Additional District Judge, Patiala, while partly accepting appeal filed by respondent-defendant has set aside a decree passed in favour of plaintiff for possession of suit property by way of specific performance of agreement to sell the suit property and consequently the suit filed by the plaintiff has been decreed for grant of alternate relief only qua recovery of earnest money.
2. The case set up by the appellant-plaintiff, as per his plaint, is that the respondent-defendant Joginder Singh had entered into an agreement with the appellant-plaintiff on 23.11.1984 to sell 15 kanals of land for an amount of

₹ 35,000/- and had received an amount of ₹ 20,000/- as earnest money. It was agreed that the registered sale-deed would be executed on or before 15.6.1985. It is further averred that since the respondent-defendant could not get the sale-deed executed, therefore, with the consent of the plaintiff the time for execution of the sale-deed was extended up to 15.6.1986 by way of a fresh agreement dated 6.6.1985 and another amount of ₹ 6,000/- was also paid to the defendant out of the balance sale consideration. Thus the plaintiff prayed for possession of the suit property on the basis of the agreements to sell and also made an alternate prayer for refund of the earnest money alongwith damages.

3. The respondent-defendant resisted the suit wherein the execution of the agreements for sale of land was denied and a stand was taken that in fact the plaintiff is running a business of commission agent under the name and style of 'M/s Lal Singh Bhagat Singh' and the respondent-defendant had been selling his agricultural produce at the said shop and had also been taking amounts in advance through the business concern of the plaintiff, which used to be adjusted at the time of sale and purchase of the agricultural produce and that all the transactions had been entered in the ledger books of the concern and the plaintiff in view to doubly secure the payments made to the defendant in advance, might have got his signatures on some documents, which must have been converted into the agreements in question. The plaintiff filed replication denying the stand taken by the defendant.
4. The parties were put to proof on the following issues:-
 - i. Whether the defendant executed agreement to sell dated 23.11.1984 and 6.6.1985 in favour of the plaintiff? OPD

- ii. Whether the plaintiff remained ready and willing to perform his part of contract? OPP.
 - iii. Whether the plaintiff is entitled to the decree of specific performance as prayed for? OPP.
 - iv. Whether in the alternative, plaintiff is entitled to recover Rs.35000/-? OPP.
 - v. Whether the amount advanced to the defendant were only to secure the same? OPD.
 - vi. Whether the agreement are the result of fraud and misrepresentative of fact? OPD.
 - vii. Relief.
5. The plaintiff in order to substantiate his case examined PW-1 Karnail Singh, PW-2 Bharpur Singh, PW-3 Som Nath, Deed Writer and PW-4 Ranjit Singh, Mukhtiar of plaintiff. On the other hand, the defendant in order to rebut the case of plaintiff himself stepped into witness box as DW-1.
6. The learned lower Court upon appraisal of the evidence on record returned its findings to the effect that the defendant had executed the agreements in question and also held that the plaintiff had remained ready and willing to perform his part of the contract. Consequently, the learned lower Court decreed the suit in toto for possession of the suit property by way of specific performance of the agreements in question for sale of the suit land vide judgment and decree dated 21.8.1989. The respondent-defendant, aggrieved by the decree of the suit, preferred an appeal which was partly accepted by the learned Additional District Judge, Patiala vide judgment and decree dated 27.10.1993 holding therein that while the execution of the agreements stands established but the same were infact executed in order to secure the amount given by the plaintiff to the defendant. Consequently, while setting aside the

grant of relief of specific performance, the decree was modified and the plaintiff was held entitled to refund of earnest amount of ₹ 26,000/- alongwith interest vide judgment dated 27.10.1993. Aggrieved by the said judgment, the appellant-plaintiff filed the present appeal.

7. The learned counsel for the appellant, while assailing the impugned judgment, has submitted that the learned lower Appellate Court fell in error in holding that the agreements in question had been executed simply to secure a loan, whereas there is no convincing evidence to this effect on record. The learned counsel has pressed into service a judgment reported as 2010(1) RCR (Civil) 183 Krishan Kumar Verma Versus Narender Prabhakar to contend that once an agreement for sale of land is established, the said agreement is required to be enforced specifically and that damages or alternate relief of recovery cannot be said to be adequate compensation.
8. On the other hand, the learned counsel representing the respondent has submitted that the learned lower Appellate Court had reached at a conclusion regarding agreements having been executed for the purpose of securing the loan, after going through the entire evidence including admissions made by witnesses of the plaintiff and that there is no misreading in evidence so as to warrant any interference in the impugned judgment. The learned counsel for the respondent to support his contentions has cited 1995 (3) PLR 546 Gurbax Singh Versus Labhu Ram and 1997 (9) SCC 634 Tejram Versus Patirambhau.
9. I have considered the rival submissions addressed before this Court and have also perused the record of the case.

10. As regards the factum of execution of the agreement dated 23.11.1984, the plaintiff apart from himself stepping into witness box has examined the attesting witness PW-1 Karnail Singh, who has categorically stated that he knows the parties and that the defendant had agreed to sell 15 kanals of land to the plaintiff for a consideration of ₹ 35,000/- and that an amount of ₹ 20,000/- had been paid as earnest money. He has specifically deposed that the agreement in question had been scribed by Som Nath and had been read over to the parties and Joginder Singh had signed upon the same as a token of its correctness.
11. A perusal of the agreement dated 23.11.1984 shows that it had been agreed amongst the parties that the sale-deed would be executed on or before 15.6.1985. However, before the expiry of said period, the parties mutually agreed for extension of time and another agreement dated 6.6.1985 (Ex.P-2) was executed after another amount of ₹ 6,000/- was paid by the plaintiff to the defendant and the time for execution of the sale-deed was extended up to 15.6.1986. The plaintiff has examined PW-2 Bharpur Singh, the attesting witness of the said agreement, who has categorically stated regarding the execution of the said agreement by the defendant after accepting another amount of ₹ 6,000/- out of the balance sale consideration. Though the defendant had denied execution of the said agreements but he has been unable to rebut the evidence led by the plaintiff regarding execution of the said agreements.
12. The real controversy that survives is as to whether the said agreements in question were indeed executed with an intention of sale of land or as to whether the same were executed just to secure the amounts advanced to the

defendant by the plaintiff, who was running business of a commission agent. Normally, once the plaintiff is able to establish execution of the agreement by the defendant, the Courts would generally accept the recitals of agreement unless there are strong circumstances to suggest something to the contrary. Since the defendant has taken a specific stand in his written statement that there had been various monetary transactions between the plaintiff and defendant pertaining to the sale of agricultural produce by the defendant through the business concern of the plaintiff, who was running business of commission agent and as regards advancement of amounts by the plaintiff to the defendant, which used to be adjusted in the agricultural produce and that the plaintiff might have procured his signatures during some of these transactions on some blank papers so as to secure the advancement of amount and which might have been converted into the agreements in question. Thus it is imperative to meticulously examine the evidence led by the parties so as to see as to whether the agreements in question were intended to be executed or were executed for different purpose.

13. First of all, it needs to be borne in mind that though a substantial amount of ₹ 20,000/- out of the total sale consideration of ₹ 35,000/- had been given at the time of execution of the agreement in question but still a long period of almost one year is stated to have been agreed by the parties for execution of the sale-deed. No step, whatsoever, was taken for delivery of any possession, though of course delivery of possession is not *sine-qua-non* for executing any such agreement. Further even after one year, the period for execution of sale-deed was again extended for another one year vide fresh agreement dated 6.6.1985 upon payment of another amount of ₹ 6,000/-. In other words, the

balance consideration that remained unpaid was only ₹ 9,000/-. It is rather strange that a vendee would choose to wait for another one year to take possession by getting the sale-deed executed rather than paying the small fraction of the sale consideration.

14. Now coming to the evidence led by the parties, the cross-examination of witnesses examined by the plaintiff spills the beans. PW-1 Karnail Singh, attesting witness of the agreement dated 23.11.1984 during his cross-examination admitted that it is correct that several persons take advances from the commission agents and get them adjusted in agricultural produce. PW-2 Bharpur Singh, attesting witness of the second agreement dated 6.6.1985 (Ex.-P-2), when asked a question regarding non-registration of the sale-deed, simply stated that it was their personal matter.

15. PW-4 Ranjit Singh, in his examination-in-chief stated as follows:-

“ A few days back, the defendant had come and had stated that he is in need of some money and that he will extend the period.”(translated gist).

16. In case the plaintiff had executed the agreement with an actual intention of selling his land, then he would have taken the entire balance sale consideration and executed the sale-deed rather than extending the time period of execution of the sale deed.

17. It is the cross-examination of PW-4 Ranjit Singh, who is son of the plaintiff and also his attorney, which hammered the final nail in the coffin. PW-4 Ranjit Singh, in his cross-examination stated as follows:-

“..... I have seen Ex.D1 which has been issued by our shop. I don't now whether the defendant had sold his produce vide

Ex.D1 at our shop or not. I can tell after seeking the record whether or not defendant used to sell his wheat and paddy crop at our shop. I don't know whether any record is there or not. Now I have brought the record. I have brought khata of defendant for the year 1982-83. As per the khata on 12-4-1982, Rs.250 was due from the firm. The photostat copy is Ex.D2. Ex.D2 is a true copy of the original. The entries in this are correct. Defendant had taken a loan of Rs.8453/60 till 18-6-82 from the firm and had sold wheat crop for an amount of Rs.10,453/60 to the firm. Rs.2,000/- of defendant was due from the firm which has been shown in the khata of 1983-84 and correct copy of which is Ex.D3. It is entered in the khata for 1984-85 of Rs.2,000/- given to the defendant. The defendant had taken loan of Rs.5,000/- till 9-11-84. The defendant owed Rs.2359/17 to the firm on that date. On 9-11-84 itself defendant had sold paddy worth for Rs.5359/67 to the firm. A balance of Rs.7359/17 of the defendant was with the firm. Thereafter the defendant kept taking loan from the firm.....

.....Till 4-11-85 the defendant kept taking money from firm and Rs.2,100/- was outstanding against defendant. On 9-11-85 defendant sold the crop for 6056/65 to the firm. On 26-12-85 account of the defendant was settled. Thereafter the firm had no dealing with the defendant. I have brought the Bahi of year 1985-86 the true copy is Ex.D5.....

.....Rs.20,000/- was kept by my father at home. My father hadn't given the amount from the firm. He used to keep the accounts of the firm. The accounts of farmers are not done at home. My father has sold the crop for Rs.20,000/-. On 6.6.1985, Rs.6,000/- my father brought which was kept at home. Regarding the account of home and 20000, 6000 account my father must be knowing, I don't know. I don't know that for how long time this amount was kept at home. The agreement Ex.P2 was again written because defendant had told he needs money.....”

18. The aforesaid statement of none else but the son of the plaintiff and who is his attorney also, clearly shows that there had been regular monetary transactions between the plaintiff and the defendant and that the plaintiff being a commission agent kept regular accounts of all the transactions. The aforesaid statement shows that in November, 1984 a balance of ₹ 7,359/- was due to be paid to the firm. He has specifically stated that the defendant kept on taking loan from the firm. Towards the end of his statement, he has in fact blurted that the agreement Ex.P-2 was again written because defendant had told that he needs money. If, as already discussed earlier, the requirement of money was the only consideration and the defendant had actually intended to sell the property, then he could have very well executed the sale-deed by taking the entire sale consideration rather than entering into a fresh agreement Ex.P-2. I further find that though from the statement of PW-4 Ranjit Singh, it is evident that the firm had been maintaining the record very meticulously but it remains unexplained as to why there is no entry of the specific amounts of ₹ 20,000/- and ₹ 6,000/- paid to the defendant towards earnest money on 23.11.1984 and 6.6.1985, respectively.
19. Hon'ble the Supreme Court in Tejram's case (supra), wherein a moneylender was alleged to have parted with an amount of ₹ 48,000/- as part consideration of the agreement for purchase of land and the balance of ₹ 2,000/- remained to be paid and the said balance of ₹ 2000/- was neither paid by him nor possession of the property taken by him and he kept quiet for three years, it was held that in the facts and circumstances of the case the documents purporting to be agreement for sale cannot be treated as a sale. Similarly in the present case, the conduct of the parties and the history of monetary

transactions between them and the admissions on part of the son of the plaintiff, who is also the attorney of the plaintiff, who is a commission agent, leaves no manner of doubt that it was never the real intention of the parties to actually enter into an agreement for sale of land and that the said writing was in fact executed to secure the amount advanced by the plaintiff to the defendant. In these circumstances, even if the execution of the agreements in question does stand established, the facts and circumstances do not warrant specific performance of the same as apparently the real intention of the parties was never to execute the sale-deed. Consequently, under the said circumstances, the ends of justice would be met by grant of the alternate relief of refund of earnest money as has been held by the lower Appellate Court.

20. I do not find any infirmity in the findings of the learned lower Appellate Court to this effect and the same are hereby affirmed. Finding no merit in this appeal, the same is hereby dismissed.

23.5.2018

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No