

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

RSA No.2468 of 1994

Date of Decision.20.03.2018

Amrik Singh and others

.....Appellants

Vs

Kanwaljit Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Bains, Advocate
for the appellants.

Mr. Rakesh Bhatia, Advocate
for the respondent.

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AMIT RAWAL J.

The appellants-defendants are in regular second appeal against the concurrent finding fact whereby the the suit for specific performance of agreement to sell dated 12.6.1986 in respect of land measuring 6 bighas out of land measuring 24 bighas 2 biswas had been decreed by the trial and the appeal preferred against the same before the lower appellate Court was also dismissed.

It would be apt to give relevant facts necessary for adjudication of the *lis* between the parties. The respondent-plaintiff instituted the suit for specific performance of the agreement on the premise that the appellant-defendant had agreed to sell land measuring 6 bighas out of land measuring 24 bighas 2 biswas and 0 biswanis comprised in khasra No.182, 187, khata No.9/20 and khasra No.226, khata No.9/21 and khasra Nos.223, 224, 225, 226 and khata No.9/21 as per the jamabandi for the year 1980-81 situated in village Alampur Chapra, Sub Tehsil Payal, Tehsil Khanna, District Ludhiana for a total sale consideration of ₹60,000/- against the payment of

i.e. ₹50,000/- being paid as earnest money and ₹10,000/- as earnest money @18% per annum from 12.6.1986 to 14.6.1989. The target/stipulated date for execution and registration of the sale deed was 15.6.1987. A decree for permanent injunction restraining the defendants from interfering on the premise that possession of the land measuring 6 bighas being subject matter of agreement to sell was duly delivered to the respondent-plaintiff on the date of execution of the agreement to sell and thereafter, the respondent-plaintiff remained in possession till Rabi 1991. The defendants took the advantage of the khasra girdawari in their name and forcibly taken possession of the suit property. As per the terms and conditions of the agreement, defendants were to execute and get the registered sale deed in favour of the plaintiff on receiving the balance sale consideration of ₹10,000/- on 15.06.1987. The respondent-plaintiff had always been ready and willing to perform his part of the agreement even till filing of the suit. The plaintiff offered balance sale consideration of ₹10,000/- on the stipulated date but the defendants did not come forward despite the fact that the plaintiff waited before the office of Sub Registrar.

It was stated that during the pendency of the suit, an application was moved for amendment of the plaint alleging that the defendants had taken forcible possession of the property and the said amendment was allowed for seeking relief of possession.

The aforementioned suit was contested by the defendants and in the amended written statement, the defendant took the plea of maintainability, estoppel and sought dismissal of the suit for want of cause of action on the premise that the defendants had executed the sale deed with regard to ownership on 11.08.1987 in favour of Amar Singh, Darshan

Singh and Major Singh sons of Surjit Singh whereas the plaintiff was present at that time and a sum of ₹50,000/- was returned to the plaintiff vide receipt of the same date. It was a loan transaction which had taken place between the parties and agreement was entered for return of the loan amount of ₹50,000/- including the interest. The said loan amount was returned on 11.08.1987 vide separate receipt. The agreement dated 12.06.1986 was cancelled and another agreement dated 30.09.1986 was brought into existence, for, the khasra numbers of present agreement to sell had already been subject matter of agreement to sell dated 14.06.1985 with one Hans Raj and the different khasra numbers were incorporated in the agreement to sell dated 30.09.1986. The plaintiff had coined a different story regarding the alleged dispossession in Rabi 1991 which was vehemently denied. It was submitted that the plaintiff had admitted the execution of the receipt dated 11.08.1987.

The plaintiff filed the replication to the unamended written statement dated 09.01.1991 but to the amended written statement, no such replication was filed.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether defendants Amrik Singh and others entered into an agreement dated 12.6.1986 to sell the suit land in favour of the plaintiff for a sum of ₹60,000/- and received a sum of ₹50,000/- as earnest money? OPP*
- 2. Whether the plaintiff has always been ready and willing to perform his part of the agreement? OPP*
- 3. Whether the suit is not legally maintainable? OPD*

4. Whether the suit is estopped to fele the present suit by his act and conduct ? OPD

5. Whether the plaintiff has no cause of action? OPD

6. Relief.”

In support of his case, the respondent-plaintiff examined PW-1 Diwan Chand Deed Writer, PW-2 Harbans Singh, PW3 Kanwaljit Singh, brought on record agreement Ex.P1 and closed the evidence. On the other hand, defendants examined DW1 Ramesh Kumar, DW-2 Amar Singh, DW-3 Joginder Singh and DW-4 Kuldip Singh and tendered into evidence agreement dated 30.09.1986 as Ex.D1, receipt dated 11.08.1987 as Ex.D2 and closed the evidence.

On the preponderance of evidence, the trial Court decreed the suit and directed the defendants to execute the sale deed in favour of the plaintiff within a period of one month from the date of passing of the judgment and decree dated 24.08.1993 on deposit of balance sale consideration by the plaintiff within 15 days, failing which the plaintiff shall be entitled to execute the sale deed by filing execution application. The appeal filed against the aforementioned judgment and decree was also dismissed by the lower Appellate Court, hence regular second appeal.

This Court vide order dated 24.08.1995 while admitting the appeal, stayed the execution of the decree.

Mr. R.S. Bains, learned counsel appearing on behalf of the appellants-defendants submitted that the most material circumstance of the possession of the land had been belied from the fact that it was a clear case of dishonest and clever advice at the instance of the respondent-plaintiff, for, the plaintiff firstly induced the appellants-defendants to execute an

agreement for security of loan and after receiving back the loan amount filed the suit for taking undue advantage. The amount was refunded back on 11.08.1987 whereas the suit was filed on 13.06.1989. The khasra numbers mentioned in the agreement dated 12.06.1986 were already part of the agreement entered into with Hans Raj i.e. agreement dated 14.06.1985 Ex.DW4/1, viz; khasra Nos.226, 223, 224, 225 and 226 which were subject matter of agreement to sell for which the suit for specific performance was brought. It is in that background agreement to sell dated 30.09.1986 with new khasra numbers was entered into wherein following khasra numbers were introduced:-

“14//10/2(4-0), 11//11 (0-8), 12/1(3-10), 2//23 (8-0), 2//22/2 (4-0), 7//2/1(2-13), 14//8/2(2-13), 9 (8-0), 10/1(0-16)”

In the receipt Ex.D2, there was a reference of agreement to sell dated 30.09.1986 and the amount of ₹50,000/- taken in advance as loan security by executing the agreement to sell dated 12.06.1986 was returned which was signed by respondent-plaintiff on a revenue stamp. Both the parties had complete blind trust on each other, though there is no specific mention about the same but the examination of documents is self-explanatory. It was not a case of any intention on the part of parties to enter into agreement to sell or sell the land. The khasra numbers, which were part of the agreement to sell dated 30.09.1986 were also part of the sale deed in favour of Amar Singh dated 11.08.1987 and vide receipt Ex.D2 of even date, the amount was returned to the plaintiff, who acknowledged to have received back a sum of ₹50,000/-. The plaintiff when subjected to cross-examination admitted that he had taken his money back and subject matter of khasra numbers of agreement to sell dated 30.09.1986 were that of the

sale deed in favour of Amar Singh but the Courts below have abdicated and committed illegality in not appreciating the aforementioned facts.

The Courts below have not seen the intention of the parties to strictly confine to the contents of receipt Ex.D2 which did not mention about the earlier agreement to sell dated 12.06.1986. Had all the facts been read cumulatively, perhaps the Courts below would not have exercised the discretion under Section 20 of the Specific Relief Act, thus, urges this Court setting aside the judgments and decrees under challenge.

Per contra, Mr. Rakesh Bhatia, learned counsel appearing on behalf of the respondent-plaintiff submitted that the agreement to sell dated 12.06.1986 has been proved through the attesting witnesses. It was not a loan transaction but in fact the parties had intended to sell and purchase the land. The agreement dated 30.09.1986 was independent transaction and the receipt also pertained to the same and not to the agreement to sell in question. The concurrent finding of fact cannot be interfered unless and until there is apparent illegality and perversity. It would not be fatal to the case of the respondent-plaintiff of having admitted the execution of receipt dated 11.08.987 when it was denied that the receipt was on account of substitution of actual agreement to sell dated 30.09.1986, Ex.D1. The total sale consideration mentioned in Ex.P1 was ₹60,000/- whereas the sale consideration mentioned in Ex.D1 was ₹65,000/-. The land involved in both the cases was different as both the agreements had been executed prior to the execution of the receipt Ex.D2, which was with regard to agreement dated 30.09.1986 and an independent transaction, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for parties, appraised the paper

book, records of the Courts below and of the view that there is force and merit in the submissions of Mr. Bains and the reason is not one but many, for, the agreement to sell in the present case was pertaining to the khasra Nos..182, 187, kahta No.9/20 and khasra No.226, khata No.9/21 and khasra Nos.223, 224, 225, 226 and khata No.9/21 and that agreement to sell was subject matter of agreement to sell entered with one Hans Raj wherein khasra numbers mentioned were 226, 223, 224, 225, 226. In the other agreement to sell dated 30.09.1986 following khasra numbers were substituted:-

“14//10/2(4-0), 11//11 (0-8), 12/1(3-10), 2//23 (8-0), 2//22/2 (4-0), 7//2/1(2-13), 14//8/2(2-13), 9 (8-0), 10/1(0-16)”

The receipt is also with regard to payment of ₹50,000/- and that amount was subject to the sale deed with Amar Singh dated 11.08.1987. The receipt had not been denied by the respondent-plaintiff, Kanwaljit Singh. However, in cross-examination, he admitted that when Ex.D2 was written, he had taken ₹50,000/- back. This cross-examination was read out during the course of hearing to Mr. Rakesh Bhatia but the same was not controverted or rebutted. DW-3, Joginder Singh when appeared in witness box submitted that about 7 years back, the defendants entered into agreement with Hans Raj regarding his share of land. The land agreed to be sold was 6 bighas against sale consideration of ₹50,000/- and at the time of execution of agreement to sell, ₹20,000/- was paid to the defendants by Hans Raj. It was signed by Amrik Singh and his brother and scribed by Ramesh Kumar. This witness was cross-examined and nothing contrary surfaced with regard to existence of the agreement to sell dated 14.06.1985 with Hans Raj. DW4, Kuldeep Singh when appeared admitted that Amrik

Singh and Malkit Singh were his brothers, who had entered into agreement in the year 1985 with Hans Raj, thus, in my view, through the aforementioned testimonies, the appellants-defendants had proved the execution of the agreement to sell with Hans Raj prior to the agreement in question and therefore, the same could not be subject matter of the agreement to sell in question i.e. 12.06.1986. It is in that background, the second agreement to sell dated 30.09.1986 with different khasra numbers as noticed above was executed but the same also did not culminate into the sale deed, for, the agreement was cancelled whereby Kanwaljit Singh had taken the amount of ₹50,000/- back vide separate receipt and those khasra numbers were sold to Amar Singh. Had actually there been readiness and willingness, the respondent-plaintiff would not have waited for two years and should have filed the suit in the Court rather being a speculator of the matter and proceeded only after he found certain lacunas in the receipt and the agreement dated 30.09.1986 wherein there was no reference to the earlier agreement dated 12.06.1986 and filing of the suit was not nothing but conception of greed. All these facts, if looked into by the Courts below in correct perspective, the suit would have been resulted into dismissal.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be

without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to

such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

In view of the aforementioned, there is illegality and perversity in the judgments and decrees passed by the Courts below and the same are hereby set aside. Resultantly, the appeal stands allowed. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

March 20, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes