

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

1. **RSA No. 52 of 1994 (O & M)**
Date of Decision:-09.2.2018

Rajinder Singh

...Appellant

Versus

Gurdev Singh and others

...Respondents

2. **RSA No. 53 of 1994 (O & M)**

Rajinder Singh

...Appellant

Versus

Gurdev Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Onkar Rai, Advocate
for the appellant(s).

None for the respondents.

AMIT RAWAL J.(Oral)

This order of mine shall dispose of two Regular Second

Appeals No.52 of 1994 and 53 of 1994 preferred by Rajinder Singh vendor against the judgments and decrees of the Courts below whereby the suit for specific performance of agreement to sell dated 9.2.1982 has been decreed and the suit for possession of the property filed by the appellant-plaintiff has been dismissed. Since both the suits were consolidated, the learned Trial Court referred the appellant-vendor Rajinder Singh, as plaintiff, and Gurdev Singh, Vendee, as defendant. The aforementioned clarification is required, as from the perusal of the judgments, of the Courts inference drawn is that it was the vendee, who was plaintiff.

Before advertng to the arguments of Mr. Onkar Rai, Advocate learned counsel appearing on behalf of Rajinder Singh, it would be appropriate to point out few facts which are essential for adjudication of the present matter. Rajinder Singh son of Chamel Singh appellant filed a suit bearing No.115 of 22.4.1987 against Gurdev Singh, Gurnam Singh and Fateh Singh whereby possession of the suit property (hereinafter called suit No.1) was sought and Gurdev Singh, Fateh Singh and Gurnam Singh sons of Rattan Singh instituted a suit No.T-389 of 16.11.1988 (hereinafter called suit No.2) for specific performance of the sale deed dated 09.2.1982. Both the suit were consolidated.

The case set up by the vendee in civil Suit No.2 was that Rajinder Singh entered into an agreement to sell dated 09.2.1982 in respect of an area i.e. land measuring 23 Kanal 8 marlas out of 46 Kanal 16 Marlas for a total sale consideration of Rs.1,17,000/- against the payment of earnest money of Rs.10,000/- thereafter a sum of Rs.12,000/- more were given.

There were two stipulated dates for execution and registration of the sale deed i.e. for one half share of the aforementioned land on 15.6.1982 and another half on 15.11.1982.

The facts pleaded by the vendee even in civil suit No.1 was that on 16.11.1982 there was an endorsement on the agreement to sell whereby the date was extended by 16.11.1982 to 19.11.1982 and the suit was filed on 22.4.1987. The defendant vendor Rajinder Singh contested the suit and admitted that though in pursuant to the agreement to sell the possession was handed over but denied his signatures on the extension. The trial Court dismissed the suit for possession filed by the vendor Rajinder Singh and decreed the suit filed by the vendee and the appeal filed by the vendor has also been dismissed. In this background the present appeal is before this Court.

Mr. Onkar Rai, Advocate learned counsel appearing on behalf of appellant submitted that there is no dispute and denial to the execution of the agreement to sell as well as payment of earnest money of Rs.10,000/-, and another amount of Rs.12,000/- on 15.11.1982 but the extension upto 15.6.1985 as given in the endorsement for a period of three years was emphatically denied. It bore forged signature of vendor Rajinder Singh, which was proved through the photocopy of the agreement to sell tendered into evidence by the vendor, which did not have endorsement, whereas the other copy of the agreement to sell bearing the endorsement was brought on record by the vendee. The vendee failed to prove the ready cash on the stipulated date i.e. 15.11.1982 for the half sale deed nor any explanation

was furnished for not appearing before the Registrar on 15.6.1982. But the defence taken was that since the vendor had not taken the No Objection Certificate, therefore the sale deed was not executed, thus, readiness and willingness was conspicuously wanting and, thus, the discretionary relief under Section 20 of the Specific Relief Act could not have been granted. It was not the case of the vendee that as and when they approached the Sub Registrar for the execution of the sale deed, money was tendered to the plaintiff and demanded the transfer of the property by way of an instrument for which they were required to purchase the stamp papers for the purpose of drafting and sale deeds, and urges this Court for setting aside the decree granted in suit for specific performance, by allowing the suit for possession handed over at the time of execution of the agreement to sell.

There is no representation on behalf of the vendees Gurdev Singh and others who have been not appearing for the last many dates. Accordingly, I proceed to decide the appeal of 1994.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force in the submission of Mr. Onkar Rai, Advocate. It is a conceded position that against the earnest money, Rs.10,000/- and another sum of Rs.12,000/- was paid on 15.11.1982. The facts, aforementioned, are not in dispute. The questions which has arisen before this Court “whether the parties to the lis or agreement voluntarily agreed for extension of time for a period of three years as submitted by Mr. Onkar Rai, Advocate i.e. after 15.6.1985 w.e.f.

15.11.1982” and “whether vendee did not have sufficient funds for want of entering into readiness and willingness” or “whether there was endorsement bearing the signatures of both the parties for extension of time of execution of sale deed”. Both the Courts below examined the evidence threadbare and even from the perusal of the judgment it is evident that the vendor had only placed on record photocopy of the agreement to sell which did not have any endorsement containing the noting of extension of time upto 15.6.1985 whereas the endorsement extracted in the memorandum of appeal placed on record on behalf of the vendees, it contained the signatures of Rajinder Singh on extension from 15.6.1985, the same reads as under

“Affidavit

I, Gurdev singh son of Rattan Singh, resident of Chuhan Majra, Tehsil and District Ropar, am responsible for my brothers Gurnam Singh and Fateh Singh sons of Rattan Singh.

I, solemnly affirm that we had entered into an agreement with Rajinder singh son of Chamel Singh, resident of Madhopur, Tehsil Sirhind for the sale of land measuring 23 Kanal 0 Marlas situated in Chamkaur Sahib, the date of registry of which was 16.11.1982. We both the parties are present in the Court. The registry could not be done because it was for over Rs.50,000/- and as such Clearance Certificate from the Income-tax was not obtained and the registry was not made. Rs.22,000/- has been paid to Rajinder Singh as earnest money. The half of this amount is to be arranged for First Registry. We are ready to get the registered executed for sale. We shall fix a date for execution of

the sale deed. Deponent. Gurdev Singh.

I, solemnly affirm and declare that the aforesaid statement of mine is correct and true. No part of it is false.

Attested. Sd/-Gurdev singh.
16.11.82. Deponent

Piara Singh Nambardar.
Sd/- in Urdu.
Balwant Singh,
Chamkaur Sahib.
16.11.82

the parties present on 16.11.82 are ready to get registry executed on 15-6-85. This land shall continue in possession of purchasers. I have no objection on it.

Sd/- Rajinder Singh.

ON REVERSE

6.11.82. No.1340 Gurdev Singh s/o
Gurnam Singh, Fateh Singh s/o Rattan Singh
Village Chuahar Majra For affidavit.
Sd/- Gurdev Singh Sd/-Santa Singh
Sd/- Gurdev Singh Chamkaur Sahib.”

Both the parties have examined their Hand Writing and Finger Print Experts by tendering their reports, Om Parkash Wasika Nawis appeared as DW1 and stated that it was written by Rajinder Singh, thus, in my view the vendees proved the compliance of Section 68 of the Indian Evidence Act with regard to the alleged extension. No same person would hand over the possession of the property intending to sell the property against the payment of earnest money of Rs.10,000/- and another amount of Rs.12,000/- viz a viz the total price of Rs.1,17,000/-. If it all, and there was forgery, nothing prevented the appellant Rajinder Singh to lodge

appropriate criminal proceedings before any of the forum available. Ex.P2 the unsigned the endorment did not carry the truth. There was no occasion for the vendor to appear before the Registrar on 15.8.1982 as the agreement to sell on or the endorsement had different stipulated dates for execution and registration of the sale deed. The vendor on his own i.e. on the basis of some oral arrangement appeared before the Registrar to mark his presence. Such an unilateral act on his part was not supported by any direct or corroborative evidence. The affidavit (Ex.P-4) as extracted above, had been attested by an Executive Magistrate, Chamkaur Sahib on 19.11.1982 showing the presence of plaintiff at Chamkaur Sahib. Ex.DW3/A sworn by Gurdev Singh, mentioned that on account of non-issuance of clearance certificate, it was not possible to execute the sale deed 16.12.1982. No evidence has come on record that the vendor made all sincere efforts to obtain the no objection certificate from the Income Tax Authorities which was mandatory at the relevant point of time, enabling a cause of action to the vendee to seek the specific performance. The time in my view was not essence of the agreement but on refusal, the vendee filed the suit by bringing suit under provisions of Article 54 of the Limitation Act for, limitation would not had commenced from the date of stipulated date, then the question posed above are answered in favour of vendee, for parties had intended to sell suit property, also extended period for execution and registration. Vendor had intentionally withheld original agreement to sell containing endorsement for only photocopy was produced.

These submissions of Mr. Onkar Rai are not tenable, but

devoid of any merits. Any amount deposited for the purpose of execution of the sale deed through the intervention of the Court can be withdrawn by the appellant.

Keeping in view all the facts mentioned above I am of the view that the impugned judgment does not suffer from any illegality or perversity rather no substantial question of law arises for adjudication by this Court.

Both the appeals, are, resultantly dismissed.

February 09, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No