

RSA No.179 of 1998 (O&M)

372

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

**RSA No.179 of 1998 (O&M)
Date of decision : 14.09.2018**

Surat Singh

... Appellant

Versus

Bahadur Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Sundeep Kumar, Advocate
for the appellant.

None for the respondent.

AMIT RAWAL, J.

The appellant-defendant is in the present regular second appeal against the concurrent findings of fact, whereby the suit for specific performance of agreement to sell dated 03.01.1986 in respect of land measuring 16 kanals comprised in Rect. No.19, Killa 16 (8-0), Rect. 20 Killa 20 (4-0), Rect. 12 Killa 25/2 (4-0), as entered in the jamabandi for the year 1983-84, situated in Village Japuwal, Tehsil Gurdaspur or in the alternative suit for recovery of ₹50,000/-, has been decreed by the trial Court and affirmed by the lower Appellate Court.

Succinctly, the facts which emanate from the pleadings of the parties are that the suit aforementioned was filed on the premise that the appellant-defendant had entered into an agreement to sell with respondent-

RSA No.179 of 1998 (O&M)

plaintiff in respect of the land, aforementioned, for a total sale consideration of ₹50,000/-. A sum of ₹40,250/- was paid to the defendant as earnest money. The stipulated date for registration and execution of the sale deed was 02.04.1986. It was averred that the plaintiff had always been ready and willing to perform the part of the agreement to sell, but the defendant did not come forward and therefore, the suit for possession was filed.

The defendant contested the aforementioned suit by denying the execution of the agreement to sell or receipt of any advance. In fact, there was a complete denial.

On the basis of the aforementioned pleadings, the trial Court framed the following issues:-

1. *Whether the defendant agreed to sell the suit land to the plaintiff vide agreement to sell dated 03.01.1986? OPP*
2. *If issue No.1 is proved whether the plaintiff has been and is still ready and willing to complete his part of the agreement? OPP*
3. *Relief.*

The plaintiff, in support of his case, examined Darshan Singh, Deed Writer as PW1 and Bakshish Singh, one of the attesting witness of the agreement to sell as PW2 and examined himself as PW-3 and tendered in evidence certain documents i.e. Ex.P1 to Ex.P5. On the other hand, the defendant examined himself as DW-1, Kashmir Singh as DW-2 and Sat Pal, Registration Clerk, as DW-3 and tendered in evidence certain documents.

The trial Court on the basis of the evidence brought on record decreed the suit and the appeal laid before the lower Appellate Court was also dismissed.

RSA No.179 of 1998 (O&M)

Mr. Rajesh Garg, learned Senior Counsel assisted by Mr. Sundeep Kumar, learned counsel appearing on behalf of the appellant-defendant submitted that the judgment and decree of both the Courts below are not sustainable in the eyes of law as from the documentary evidence i.e. register of the deed writer, which has been proved, that the parties had intended to enter into mortgage deed, for, the word 'Rehan' was converted into as 'Bai', therefore, there is gross illegality and perversity. Bakshish Singh, witness of the plaintiff, could not depose as to whether the agreement to sell was written by hand or by pen, much less, amount paid to the defendant. The agreement to sell, thus, had not been satisfactorily explained by the plaintiff. The overwriting and cuttings on the register of the deed writer had not been proved. The suit was filed only few days before expiry of limitation period, therefore, discretionary relief should not have been granted. It was not understood that once a major amount of alleged sale consideration was paid, what prevented the plaintiff to keep silent for all this period, for, the possession was not with the plaintiff.

Despite service, today there is no representation on behalf of the respondent, even on 10.08.2018, 27.07.2018.

The appeal is of the year 1998, therefore, I proceed to decide the same on merits.

While issuing notice of motion, vide order dated 22.01.1998, the execution of the decree was ordered to be stayed and on 11.08.1998, the appeal was admitted and the interim order dated 22.01.1998 was made absolute.

I have heard learned counsel for the appellant-defendant, appraised the paper book as well as records of the Courts below and of the

RSA No.179 of 1998 (O&M)

view that there is force and merit in the submissions of Mr. Garg, for, PW1 Darshan Singh, in cross-examination, admitted that in 7th line of the agreement to sell, the word 'Rehan' has been erased and in its place, word 'Bai' has been mentioned. Both the cuttings have not been endorsed or authenticated by any signature. For the sake of brevity, cross-examination of PW1-Darshan Singh reads thus:-

"It is correct that in seventh line of the agreement Ex.P1, the word "Rehan" has been erased and in its place word "Bai" was typed by me. Similarly, cutting in 9th line was done by me at the time of writing of the document. It is correct that the cutting were not got authenticated by obtaining the signatures of the parties at those places. The cuttings were done before the execution of the documents by the parties. It is incorrect to suggest that these were done later on. It is incorrect to suggest that I have deposed falsely."

Bakshish Singh could not even depose that as to in which language, Darshan Singh had signed the agreement (Ex.P1), much less, did not know about remaining consideration nor did he accompany the plaintiff in Tehsil compound or in the Court regarding the agreement. On the other hand, the plaintiff-Bahadur Singh, in cross-examination, admitted that no cutting was made in the agreement at his instance. All these factors, if read in cumulative, lead to an irresistible conclusion that the parties had not intended to enter into agreement to sell, in respect of land, in dispute. It is also not understandable that the stipulated date for execution of sale deed was 02.04.1986, whereas the suit was filed on 04.01.1989. During all this period, the plaintiff had not shown a single act of readiness and willingness, thus, there was no compliance of Section 16(c) of the Specific Relief Act.

RSA No.179 of 1998 (O&M)

The alleged marking of presence is also dated 02.04.1986 (Ex.P2 and Ex.P-3), but during all this period, the readiness and willingness has gone unexplained, thus, in my view, corroborated. The law on the point of continuous readiness and willingness is also no longer *res integra* in view of the finding given by the Hon'ble Court in **Sita Ram and others v. Radhey Shyham, 2007(4) RCR(Civil) 533** and **B.Vijaya Bharathi v.P.Savitri and others 2017(4) CCC 291 SC.**

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 V/s. 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 substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others V/s. 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

RSA No.179 of 1998 (O&M)

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

RSA No.179 of 1998 (O&M)

law while deciding the appeal, aforementioned.

Keeping in view the aforementioned facts and circumstances, the judgments and decrees of the Courts below are not sustainable in the eyes of law and the same are hereby set aside and the suit of the plaintiff is dismissed.

The regular second appeal is, resultantly, allowed.

14.09.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No