

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

**RSA No.2129 of 2004 (O&M)
Date of Decision.04.09.2018**

Gurdeep Singh and another

.....Appellants

Vs

Santa Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Inderjit Sharma, Advocate
for the appellants.

None for the respondents.

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AMIT RAWAL J. (ORAL)

The appellants-defendants No.1 and 2, being legal representatives of Gian Singh, have not been successful in defending the suit before the trial Court, resulting into decretal of the suit whereby plaintiffs were called upon to deposit a sum of ₹ 1 lac for execution of the sale deed in pursuance to agreement to sell dated 09.08.1990. The lower Appellate Court, while upholding the finding on readiness and willingness, modified the discretionary relief without paying any more consideration amount and directed the appellants-defendants to execute the sale deed within a period of three months.

The respondents-plaintiffs, three in number, Santa Singh, Jarnail Singh and Kulwant Singh instituted the suit for specific performance of agreement to sell dated 09.08.1990 in respect of land measuring 69 kanals 7 marlas i.e. 2/3rd share out of 104 kanals as described in the plaint (hereinafter called the “suit land”). It was averred that prior to the aforementioned agreement to sell, Gian

Singh, vendor had entered into an agreement to sell dated 14.03.1981 in favour of other persons including two plaintiffs i.e. Santa Singh and Kulwant Singh for total sale consideration of ₹ 1 lakh and received a sum of ₹ 10,000/- as advance. However, another agreement to sell was executed on 25.01.1985 and an amount of ₹ 50,000/- was allegedly paid by way of draft, therefore, balance of ₹ 40,000/- was to be paid. However, before the execution of the sale deed, Gian Singh fell ill and therefore, the date of execution of sale deed was extended up to 30.09.1991. The sale deed was executed on 18.12.1991 but not registered as in the meantime, Gian Singh had died in the month of September, 1991, in essence, act done by attorney in the absence of principal was not legal. It was submitted that an amount of ₹ 1 lakh had already been paid by them to Gurdeep Singh and the balance sale consideration was only ₹ 50,000/- as the entire sale consideration was ₹1,50,000/-.

The aforementioned suit was contested by defendants and denied the execution of agreement to sell by Gian Singh but admitted that possession of the land was delivered to plaintiffs on lease. Receipt of ₹ 50,000/- by way of draft was also denied.

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

- “1. Whether Gian Singh deceased executed agreement of sale dated 9.8.1990 in favour of plaintiffs? OPP*
- 2. Whether the plaintiff remained ready and willing and are still ready and willing to perform their part of the contract? OPP*

3. *If issue No.1 is proved, whether said agreement is forged, fabricated document without consideration?*

OPP

4. *Whether the plaintiffs are entitled to decree for specific performance of contract of sale dated 9.8.1990?*

OPP

5. *Whether the plaintiffs are entitled to recovery of Rs.50,000/- from defendants by way of alternative relief? OPP.*

6. Relief.”

Both the parties examined witnesses. Taking into consideration the oral and documentary evidence, the trial Court decreed the suit, calling upon plaintiffs to deposit a sum of ₹ 1 lac and the defendants were to execute the sale deed within a period of three months from the date of decree, failing which the plaintiffs were given liberty to execute the sale deed. The appeal was preferred by few of the legal representatives of Gian Singh. The lower Appellate Court, while upholding the judgment and decree *vis-a-vis* readiness and willingness modified the discretionary relief by holding that a sum of ₹ 50,000/- which was paid to Gurneep Singh by the vendees as per the sale deed dated 18.12.1991 was liable to be adjusted and directed the appellants-defendants to execute the sale deed within a period of three months. In these circumstances, present appeal has been filed.

This Court vide order dated 29.05.2004, while admitting the appeal for consideration of substantial question of law, passed the

following order:-

“The following substantial question of law arises for consideration of this Court in this appeal:-

Whether the lower Appellate Court could set aside part of the decree passed by the trial court directing execution of the sale deed on payment of balance amount of sale consideration without there being any cross appeal or cross objection regarding that part of the decree?

Admitted.

In the meantime, the plaintiff-respondents shall be entitled to to execute the decree on payment of Rs.1 lac as found by the trial Court.”

Mr. Inderjit Sharma, learned counsel appearing on behalf of the appellants submitted that finding of fact and law arrived at by the trial Court is perfectly legal and valid, as the respondents-plaintiffs had been enjoying possession of the property and failed to prove the payment of ₹50,000/- to Gian Singh in lieu of second agreement to sell dated 25.01.1985, for, no witness or evidence in this regard has been examined or led. The lower Appellate Court abdicated in reversing the aforementioned finding by holding that sum of ₹50,000/- was admittedly received by Gurneep Singh but Gurneep Singh has not been examined. The plaintiffs have not complied with the order dated 29.05.2004 in not executing the decree on payment of ₹1 lac, therefore, there is illegality and perversity.

Over a period of time, prices of the property have

escalated, therefore, this Court should consider the same, in case the argument of readiness and willingness is accepted. In other words, respondents-plaintiffs failed to prove readiness and willingness qua agreement to sell dated 09.08.1990.

There is no representation on behalf of the respondents, as noticed in the order dated 18.10.2005 wherein respondent Nos.5, 7, 8 and 9 have not been served. An application bearing No.11407-C of 2007 for stay of the execution of the judgment and decree was submitted but the same was rejected vide order dated 18.12.2007 by noticing that the application for execution was pending and reply thereto had been filed, therefore, the arguments could be addressed before the Executing Court. The order dated 18.12.2007 reads as under:-

“This is an application for staying the execution of the impugned judgment and decree.

Learned counsel contends that the decree-holder had to deposit Rs.One lac, towards balance sale consideration, as directed by this Court, vide order dated 29.05.2004. However, they did not deposit the same within three months. In support of his arguments, learned counsel refers to a judgment in Bhupinder Kumar Vs. Angrej Singh 2007(3) Indian Civil Cases 560.

Taking into consideration that the application for execution is pending and reply thereto has already been filed by the appellants before the executing Court, it is

directed that all these arguments be taken before the executing Court.

No ground for stay is made out.

Civil Miscellaneous application is dismissed.”

On 23.05.2016, a statement was made by Mr. Inderjit Sharma for dispensing with service of respondent Nos.5, 8 and 9, accordingly their service was dispensed with. Other contesting respondents are not represented through counsel.

Since the appeal is of the year 2004, I proceeded to dispose of the appeal on merit.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma. Concededly, sale deed dated 18-12-1991 was registered at the behest of Gurneep Singh being attorney holder of Gian Singh, who unfortunately died in September, 1991, therefore, the sale deed could not have been held to be valid. There is recital in the aforementioned document that the plaintiffs had paid another sum of ₹50,000/- to Gurneep Singh. It is that amount, which has been ordered to be adjusted by the lower Appellate Court and the respondents-plaintiffs were directed to execute the decree by depositing the balance sale consideration.

Execution application dated 13.10.2004 has been appended with C.M. No.11407-C of 2007 for stay of execution application as Annexure A-1 averring that decree holders are willing to execute the decree and the judgment debtors be called to execute the sale deed in their favour. This Court has not been apprised

whether the plaintiffs-decree holders had deposited the amount in the Court for execution of the sale deed through the assistance of the Court, for, they are already in possession. It is the dispute amongst siblings i.e. appellants and Gurneep Singh to adjust the amount of ₹50,000/- allegedly being received by Gurneep Singh while executing the sale deed dated 18.12.1991 but plaintiffs cannot be asked to pay double amount, therefore, the aforementioned amount was liable to be adjusted while execution and registration of the sale deed.

As an upshot of my finding, arguments of Mr. Sharma have not been able to bring the case within the realm of illegality and perversity. The question of law as noticed above is answered against the appellants and in favour of the respondents-plaintiffs. Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 04, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No