

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

RSA No.3714 of 2009

Date of Order: 06th July, 2018

Yadwinder Singh and Anr.

...Appellants

Versus

Nachattar Singh and Anr.

(Deceased through LR's)

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Advocate and
Mr. Rishav Jain, Advocate for the appellants.

Mr. Sapan Dhir, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

Defendants-appellants have challenged concurrent judgments and decrees passed by both the courts below whereby the suit filed by the plaintiff-respondents for possession by way of specific performance of agreement to sell dated 20.10.1989 in respect of suit land measuring 59 bighas 10 biswas for sale consideration of Rs.11,82,000 i.e at the rate of Rs.19,700/- per bigha, has been decreed vide judgment and decree dated 05.11.1999 passed by learned Civil Judge (Jr. Division), Malerkotla and affirmed in appeal by the lower Appellate Court vide judgment and decree dated 11.6.2009.

Plaintiff-respondents instituted the suit claiming specific performance of the agreement on the premise that the appellants-defendant

Nos.1 & 2 were owners in possession of the suit land as detailed in head note of the plaint, which had been purchased from one Surjit Singh son of Ronki. On 20.10.1989, defendant Nos.1 & 2 agreed to sell the land to the plaintiff at the rate afore-mentioned and signed the original agreement to sell whereas the plaintiffs also appended their signatures. Agreement to sell was attested by two marginal witnesses and a sum of Rs.1 lac was paid as earnest money, which was acknowledged by Kuldip Singh in his own handwriting. Stipulated date for execution of sale deed was 10.5.1990 and the possession was to be delivered at the time of execution and registration of the sale deed. It was averred that the plaintiffs had been ready and willing to perform their part of agreement to sell but defendant Nos.1 & 2 did not turn up on the stipulated date though the plaintiff remained present before the Sub Registrar Ahmedgarh. When the plaintiff was present in the office of Sub Registrar, it was disclosed by defendant Nos.1 & 2 about the pendency of Civil Suit No.312 in the court of Sub Judge, Malerkotla instituted by one Major Singh. Defendant Nos.1 & 2 in order to cause loss to the plaintiff exchanged the suit land with the land of defendant No.2 situated at village Mehmoodpur and mutation No.3590 in this regard was entered which led into filing of the present suit by the plaintiff.

Upon notice, the suit was contested by defendant Nos.1 & 2 by filing joint written statement. Execution of the agreement to sell and receipt of Rs.1 lac was admitted. It is denied that they were not ready and willing to perform their part of agreement. In the written statement separately filed by defendant No.3, the factum of defendant Nos.1 & 2 being owners of suit land, was admitted.

From the pleadings of the parties, the following issues were framed by the learned trial Court:

- “1. Whether the plaintiff has already been ready and willing and is still ready and willing to perform his part of the agreement?OPP*
- 2. Whether the plaintiff is entitled to permanent injunction, prayed for?OPP*
- 3. Whether in the alternative, the plaintiff is entitled to a sum of Rs.2,00,000/- from the defendant?OPD*
- 4. Whether the suit is not maintainable in the present form?OPD*
- 5. Whether defendant no.3 is the owner in possession of suit property by virtue of the exchange deed dt 15.8.1990, if so its effect?OPD*
- 6. Whether the amount of Rs. One lac received by defendant no.1 and 2 as advance money on the basis of agreement dt 20.10.1989 stands forfeited?OPD*
- 7. Relief.”*

In support of their case, plaintiff-respondent examined PW1 Ramesh Kumar, Registration Clerk, PW2 Dila Ram, PW3-Mohinder Singh Reader of Joint Sub Registrar, Ahmedgarh besides examining himself as PW4. He also got proved on record application dated 10.5.1990 (Ex.P1), endorsement Ex.P.1/A, entry of register of deed writer (Ex.P2), agreement in question Ex.PW3/A, postal receipt Ex.P-5, legal notice Ex.P.1, reply to the legal notice Ex.P.5 and copy of jamabandi of the year 1985-86 Ex.P.7.

On the other hand, defendant-appellant examined DW1 Darbara Singh, DW2 Rakesh Gupta Deed Writer besides himself appearing as DW3. They also proved on record order dated 8.8.1990 Ex.D.3, Judgment dated 20.8.1991 Ex.D.4, judgment dated 30.3.1993 Ex.D.5, decree sheet Ex.D.6, application dated 10.5.1990 Ex.D.1 and endorsement Ex.D.1/A.

On the basis of preponderance of evidence, the trial court decreed the suit of the plaintiff-respondent and the Appellate Court affirmed the findings in appeal.

Learned counsel for the appellant submitted that the findings recorded by both the courts below in decreeing the suit are patently illegal and the same is liable to be set aside, for, both the learned courts below have proceeded on wholly misconceived and perverse approach, while not appreciating the document Ex.D.1/A i.e Endorsement dated 11.5.1990 on the application whereby the Sub Registrar observed as under:

“Today one application is presented by Yadwinder Singh and Kuldip Singh, resident of Ahmedgarh. From the opposite party Nachatter Singh vendee is present in the court. Both the parties have not submitted any sale deed. The vendee has not shown any amount. This court cannot proceed with this application. This can be decided by the Civil Court. The present original application is return to the applicants.”

He further submitted that for all intends and purposes, the plaintiffs were not ready and willing to perform their part of contract and therefore, discretionary relief under Section 20 of the Specific Relief Act, 1963 should not have been granted. Legal notice dated 04.6.1990 was replied by the defendants wherein readiness and willingness on the part of the appellants was expressed but the plaintiff did not produce cash. There was no stay in the Civil suit No.312 of 1989 titled Major Singh Vs. Kuldip Singh and thus the defendants as per the terms and conditions of agreement to sell forfeited the earnest money of Rs.1 lacs. Said suit was dismissed on 30.3.1993 and the claim in the suit was with regard to 1/4th share and the disputed land was about 14 bighas whereas the present suit pertained to 60

bighas. Respondent-plaintiff failed to prove on record the continuous readiness and willingness, which was essential for seeking discretion. Endorsement extracted hereinabove revealed that the plaintiff did not have cash nor he made any attempt to purchase stamp paper. Exchange deed dated 15.8.1990 executed between defendant Nos.1 & 2 and defendant No.3 is a legal document but it cannot be construed to be affecting right of the plaintiff as earnest money already stood forfeited. He thus prayed that both the judgments are liable to be set aside. In support, learned counsel for the appellants relies on a judgment of Hon'ble Supreme Court in **Nanjappan Vs. Ramasamy & Anr 2015 (2) RCR (Civil) 224** whereby Hon'ble Supreme Court considering that the agreement was quite old, ordered for refund of earnest money along with compensation of Rs.2 lacs. Appellants are willing to compensate the respondent with compensation, which this Court may deem it appropriate.

On the other hand, learned counsel for the plaintiff-respondent submitted that both the courts below have decreed the suit of the plaintiff on the basis of correct appreciation of evidence, for, there was no occasion for executing exchange deed in August 1990 during the subsistence of the agreement as suit was filed on 03.9.1990. Plaintiff had proved readiness and willingness by marking the presence. The plea qua readiness cannot be ground for non-suiting the plaintiff. If at all the defendants were willing to execute the sale deed, there was no occasion for execution of exchange deed.

After hearing learned counsel for the parties and appraising the paper book, I find no merit in the present appeal, for, availability of ready cash cannot be said to be one of the grounds for readiness and willingness.

Said view of mine is derived by a judgment of Hon'ble Supreme Court in **Azhar Sultana Vs. B. Rajamani & Ors, 2009 (17) SCC 27**. Concededly, both the parties appeared before the Sub Registrar on the stipulated date i.e 10.5.1990. Sub Registrar relegated the parties to the Civil Court for recording their statements in respect of alleged sale deed. In my view, such observations have rightly been discarded by both the courts below.

Plaintiff served a legal notice dated 04.6.1990 which was replied by the defendants-appellants on 13.7.1990 whereas, the suit was filed on 03.09.1990. The plea taken by the defendants first time before the courts below by defending the exchange deed and forfeiture of earnest money was an after-thought. DW2-Rakesh Kumar, Deed Writer proved the agreement to sell while deposing that the entry made was last entry. During the cross examination, the appellant-Yadwinder Singh admitted receipt of the legal notice and previous litigation, which was pending one and half year prior to the execution of the agreement to sell. Both the courts below, in my view, consistently arrived at the finding that the respondent-plaintiff had been ready and willing to perform his part of contract which has been proved by the ratio of law laid down by the judgment of Hon'ble Supreme Court in **B. Vijaya Bharathi Vs. P Savitiri & Ors 2017 (4) CCC 291 SC**.

One line recorded in the cross examination with regard to dispute of Rupees one lacs cannot be construed to be a case that the plaintiff was to only receive the said sum, for, the defendant-appellants admitted the execution of the agreement, thus, in my view, submission of learned counsel for the appellants has not been able to convince this court as no material or evidence has been referred to differ with the findings recorded by both the courts below based on correct appreciation of oral as

well as documentary evidence. Even the plea qua payment of the compensation in such circumstances could not come to the rescue of the appellant, for, both the parties were putting blame on each other and the respondent-plaintiff had to knock the door of the court.

As a sequel to the aforesaid discussion, no infirmity could be found with the judgments of both the courts below warranting any interference by this court.

Dismissed.

July 6th, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No