

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

RSA No.1217 of 2010

Date of Decision.07.03.2018

Bohar Singh and others

.....Appellants

Vs

Jarnail Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Khurana, Advocate
for the appellants.

Mr. Pavan Malik, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The appellant-defendant is in regular second appeal against the concurrent finding of fact whereby the suit claiming specific performance of the agreement to sell dated 05.03.2003 in respect of the suit property agreed to be sold @₹1,50,000/- per acre against the payment of earnest money of ₹5,00,000/- has been decreed by the trial Court and also upheld by the lower Appellate Court.

The respondent-plaintiff instituted the suit claiming specific agreement to sell *ibid* on the premise that Jagir Singh (since deceased) represented through LRs i.e. the appellants-defendants had entered into agreement to sell in respect of the suit property for a consideration @₹1,50,000/- per acre and had received a sum of ₹5 lacs as earnest money. The stipulated date for execution and registration of the sale deed was 3.3.2004. However, Jagir Singh during the subsistence of the agreement to sell died on 25.06.2003. Thereafter, the plaintiff on 14/15.01.2004 contacted the legal representatives of Jagir Singh, who feigned ignorance on execution of the agreement to sell. It is in this background, the suit was

filed on 16.01.2004.

The aforementioned suit was contested by the defendants i.e. legal representatives of Jagir Singh denying the execution of the agreement to sell. It was stated that Jagir Singh never executed any agreement to sell.

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

“1. Whether the plaintiff is entitled to possession by way of specific performance of agreement to sell dated 5.3.2003?

OPP

2. Whether the plaintiff is ready and willing to perform his contract? OPP

3. If issue No.1 is not proved, the plaintiff is entitled to alternative relief? OPP

4. Whether the plaintiff has concealed material facts from the court? OPD.

5. Whether plaintiff is stopped by his own act and conduct? OPD

6. Whether plaintiff has got no cause of action or locus standi to file the present suit? OPD

7. Relief.”

In support of his case, the respondent-plaintiff examined himself and two attesting witnesses whereas the defendant No.1 Bohar Singh examined himself as DW1. Marginal witness Piara Singh, PW2, and the plaintiff-Jarnail Singh proved the execution of the agreement to sell. However, the defendant after examining Bohar Singh did not examine any other witness and the evidence was closed by order.

On the basis of aforementioned pleadings/evidence, the trial Court decreed the suit. Before the lower Appellate Court, the appellants-defendants raised a plea that since the target date for execution and registration of the sale deed was 3.3.2004, the suit could not have been filed on 16.01.2004, thus, the same was premature. Negating the aforementioned argument, the lower Appellate Court dismissed the appeal, hence the present appeal.

Mr. P.S. Khurana, learned counsel appearing on behalf of the appellants-defendants submitted that since the suit could not have been filed on 16.01.2004 as there was no overt act attributed to the legal representatives of Jagir Singh, compelling the plaintiff to commit the alleged breach and file the suit on 16.01.2004. The agreement to sell was specifically denied and the respondent-plaintiff has failed to prove the same. He relied upon the judgment of Hon'ble Supreme Court in **Ganga Dhar Vs. Shankar Lal and others AIR 1958 SC 770** wherein the suit filed before the period of limitation had been held to be premature and also **Gangotri Sahkari Avas Samiti Ltd. Vs. Pushpa Sahkari Avas Samiti Ltd. and others 2002(2) Civ. CC 510** wherein the execution petition was held to be premature as it was filed before the period granted for implementation of the judgment and decree.

He submitted that the judgment relied upon by the lower Appellate Court in **Vithalbai Pvt. Ltd. Vs. Union of India AIR 2005 SC 1891** was pertaining to interpretation of provisions of Section 111 of the Transfer of Property Act i.e. whether before the expiry of the lease deed, suit could have been said to be premature or not. Therefore, the aforementioned judgment would not apply in suit for specific performance.

The plaintiff failed to bring the case within the ambit of Section 16 (c) of the Specific Relief Act to prove readiness and willingness, thus, urges this Court for setting aside the judgments and decrees under challenge.

Per contra, Mr. Pavan Malik, learned counsel appearing on behalf of the respondent-plaintiff submitted that there was a specific pleading in paragraph 3 and reiterated in the affidavit submitted in the examination-in-chief that the plaintiff approached the legal representatives of Jagir Singh for execution and registration of the sale deed but they denied execution of any such agreement to sell by Jagir Singh. It is in this background, the suit was filed on 16.01.2004. It was an apprehension in the mind of the respondent-plaintiff that before the expiry of stipulated date, the defendants may not alienate or tinker with the property, though there is no specific pleading to that effect. The concurrent finding of fact cannot be tinkered with unless and until there is any illegality and perversity.

He further submitted that the other party cannot be permitted to take the plea of non-compliance of provisions of Section 16(c) of the Specific Relief Act qua readiness and willingness when the agreement to sell itself has been denied. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in *M/s Virgo Industries (Eng) P. Ltd. Vs. M/s Venturetech Solutions P. Ltd. 2013(1) SCC 625*, thus, urges this Court for upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Khurana. It would be apt to reproduce paragraph 3 of the plaint and corresponding para of the written statement:-

“Paragraph 3 of the plaint

3. That yesterday the plaintiffs approached the defendants and requested them to execute the sale deed as per terms of said agreement but they refused to do saying that they do not know whether their father executed the said agreement or not as such they have committed the breach of agreement in question.

Corresponding para 3 of the written statement.

3. That the contents of para No.3 of the plaint are wrong and hence denied. It is wrong that the plaintiffs allegedly approached and requested the defendants for the execution and registration of the alleged sale deed according to the alleged terms and conditions of the agreement. When the aforesaid Jagir Singh had never entered into any agreement in favour of any body else including the plaintiffs so the question of execution and registration of the sale regarding the suit land in favour of plaintiffs or anybody else does not arise. Rather the agreement as alleged is a result of fraud, fabrication, coercion and by way of misrepresentation in order to cause wrongful gain for plaintiffs themselves and to cause wrongful loss to the defendants. It is all a made up and concocted story having no truth in it.”

In the aforementioned paragraphs, there is a specific averment that the plaintiff had approached the legal representatives of Jagir Singh for execution and registration of the sale deed but when they feigned ignorance regarding the execution of the agreement to sell, the suit was filed. As per Order 6 Rule 2 CPC, the pleading shall contain a statement in concise form of material facts and not evidence, which can always be elaborated during

the course of arguments. The statements made by the witnesses are also in consonance with the averments made in the plaint. It is settled law that where before the stipulated date, any vendor attempts to tinker with the property or commits an overt act, there is always breach and the vendee cannot be permitted to wait for the stipulated date to espouse his grievance, in essence, the suit can be filed immediately on acquiring the knowledge of the alleged breach. Once the agreement to sell had been proved and the appellants-defendants failed to rebut the same, in my view, the argument of Mr. Khurana is not sustainable and hereby rejected.

There is no dispute to the ratio decidendi culled out in the judgments referred to by Mr. Khurana. The judgment in *Ganga Dhar's case* pertained to maintainability of the suit before the expiry of the redemption period as Article 61 of the Limitation Act provided to seek redemption of the property on expiry of the period of redemption, which at the relevant point of time was 85 years but the suit was filed before that. In those circumstances, the suit was held to be premature. The other case pertained to filing of the execution application, which is of independent nature and therefore, cannot be connected with the suit for specific performance whereby the party had approached to claim relief under Section 20 of the Specific Relief Act, 1963.

Coming to the judgment relied upon by the lower Appellate Court and as well as by Mr. Malik, it was a case where suit for possession of the property was filed before expiry of the lease period. The Court had held that after noticing the facts and the specific allegations attributed to the lessee, the suit of the lessor was found to be not premature. In a suit for specific performance where an overt act is attributed by the vendee, he can

always seek the relief of specific performance as well as injunction seeking restraint from alienating or changing the nature of the land. The appellants-defendants cannot be permitted to take the plea of readiness and willingness, for, the agreement to sell had been specifically denied.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No