

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

**RSA No.403 of 2010 (O&M)
Date of decision:01.02.2018**

Sunil Kumar and another ... Appellants

Vs.

Rikhi Ram and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vijay S. Kajla, Advocate
for the appellants.

Mr. Sanjiv Gupta, Advocate
for respondent No.1.

Mr. Kunal Mulwani, Advocate
for respondents No.2 and 3.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for specific performance of the agreement to sell dated 09.05.1992 for a total sale consideration of ₹6 lacs against payment of earnest money of ₹1,50,000/- and other amount of ₹4.00 lacs paid vide pronotes and receipts, Ex.P2 to Ex.P5, had been decreed.

Learned counsel for the appellant-defendants submitted that suit aforesaid was not maintainable on the grounds that the defendants had taken the loan by appending the signatures on the affidavit which had been converted into an agreement to sell. Earlier suit for permanent injunction was filed in which interim injunction was granted on 26.05.1995 on the basis of the statement suffered by the defendants on 30.03.1995 (Ex.P11)

there. In view of the provisions of Order 2 Rule 2 CPC), present suit was not maintainable. It is un-believable that a person who parted with the entire consideration except a sum of ₹50,000/- would keep a stipulated date for a period of three years, therefore, it cannot be said to be an agreement to sell of the land, but was a loan transaction.

No doubt, the appellant-defendants in the written statement stated that the suit land had been sold to one Man Singh through attorney holder, who was none-else but one of the co-defendants. The respondent-plaintiffs failed to prove the execution of the agreement, much less payment of alleged consideration. All these factors have not been taken into consideration by both the Courts below and therefore, there is illegality and perversity.

Learned counsel for the applicants, i.e., respondents No.2 and 3 submitted that an application bearing No.14318-C of 2012 has been moved for transposing applicant/respondents No.2 and 3 as appellants in the present appeal on the premise that against the judgment and decree rendered by the trial Court, only co-defendants had filed the appeal and remaining were arrayed as proforma defendants. In fact, they were already arrayed as defendants no.2 and 4, therefore, no harm and prejudice would be caused, in case the application is allowed.

He also adopted the arguments of Mr. Kajla and cited the judgment of this Court rendered in **Suresh Singla Vs. Smt. Phool Pati and another 2013(1) RCR (Civil) 503** with regard to the fact that in such circumstances, discretionary relief under Section 20 of the Specific Relief Act, 1963 (in short “1963 Act”) cannot be granted.

Per contra, learned counsel for respondent no.1 submitted that execution of the agreement to sell has been proved through the testimony of PW1- Ashok Kumar, PW2- Sushil Kumar, scribe Mohinder Singh Chauhan, Advocate and Rikhi Ram, plaintiff. The aforementioned witnesses were extensively cross-examined but nothing, contrary, surfaced to enable the Court to form an opinion that it was a loan transaction and not agreement to sell. The readiness and willingness had been proved to the hilt. The reason for fixing the target date by three years was that the defendants wanted to vacate the premises in question by retaining the same for some period. It is in this background of the matter, the target date was fixed but the defendants turned hostile by selling the property. In these circumstances, the application was moved to disclose the particulars of person to whom they had sold the property in dispute or the copy of the sale deed but despite that same did not come forward and therefore, the Court below granted the decree during the subsistence of the agreement.

In support of his contention, relied upon the judgment of this Court rendered in **Sadhu Singh Vs. Kuldip Sharma and others 2005(1) RCR (Civil) 265**, whereby, the stipulated date for execution and registration of the sale deed fixed after a gap of four years, was not held to be wanting reasons for readiness and willingness as the plaintiffs had been diligent in seeking execution of the agreement to sell.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

There is no dispute to the ratio decidendi culled out in the aforesaid judgments cited by both the counsel but for the purpose of

granting the relief as enshrined under Section 20, the ingredients of Section 16(c) of 1963 Act, *vis-a-vis* readiness and willingness on the part of the plaintiffs have to be seen.

I am of the view that there is no force and merit in the submissions of Mr. Mulwani, for, witnesses noticed above have been coherent and consistent in the statements. Nothing contrary surfaced in the cross-examination to enable the Courts below, much less this Court to form an opinion that it was a loan transaction and not agreement to sell. The suspicion arose in the mind of the plaintiffs when the defendants intended to dispose of the property, therefore, the injunction was on the basis of the statement suffered by the defendants on 30.03.1995 (Ex.P11). The suit was filed after the stipulated date. The particulars of the subsequent vendee had not been disclosed which shows that the defendants withheld the information from the Court. No effort had been made to send a legal notice. The defendants have not been able to belie the averments of the plaintiffs that they did not intend to sell the property and proved to be a loan transaction.

All these factors weighed in the mind of the Courts below. Non-production of the original pronotes and receipts vide which a sum of ₹4 lacs was advanced to the defendants would not be fatal to the decision of the case. Even the assertion of the plaintiffs with regard to fixing the stipulated date after a gap of three years on the premise that they wanted to vacate the premises, has not been denied.

In view of the aforementioned observations, I do not find any illegality and perversity in the findings under challenge, much less no

substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 01, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No