

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

RSA No. 1850 of 2012

Date of Decision:-16.01.2018

Nagar Singh

...Appellant

Versus

Karam Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Bikramjit Arora, Advocate
for the appellant.

Mr. Premjit Kalia, Advocate
for the respondents.

AMIT RAWAL J.

The appellant-plaintiff is in appeal against the judgment and decree rendered by the lower Appellate Court whereby in a suit seeking specific performance of an agreement to sell dated 27.3.2003 discretionary relief under Section 20 of the Specific Relief was decreed calling upon the plaintiff to deposit the balance sale consideration within a period of two months and thereafter to execute the registered sale deed, in appeal has been set aside.

It would be relevant to give facts emanating from pleadings before adverting to the arguments of Mr. Bikramjit Arora, Advocate learned counsel for the appellant.

The aforementioned suit was filed by the plaintiff seeking specific performance of agreement to sell dated 27.3.2003 in respect of the suit property measuring 8 Kanals bearing Khasra No.37//8(8-0) of Khata No.14, Khatauni No.55, as per jamabandi for the year 2003-04 which was agreed to be sold for a total price of Rs.2,20,000/- per acre against the receipt of earnest money of Rs.1,41,000/-. The stipulated date for execution of the sale deed was fixed as 15.12.2003. As per averments in the plaint that the above mentioned date was extended from 15.12.2003 to 14.12.2006 and the respondent-defendant had received another sum of Rs.22,000/- but Kabal Singh, vendor died on 14.12.2006. The suit was preceded by legal notice dated 09.1.2007 and it was filed on 25.1.2007 on the averments that the plaintiff had always been ready and willing to perform the part of agreement.

In the written statement, the defendant i.e. the LR of Kabal Singh denied the execution of the agreement and stated that the agreement was forged and fictitious and without any consideration. The endorsement was also not believed and was stated that the suit was barred by limitation. Receipt of earnest money i.e. Rs.1,63,000/- was emphatically denied.

On the preponderance the learned trial Court decreed the suit but the lower Appellate Court being the last Court of facts and law noticing the testimonies of witnesses of agreement to sell held that the plaintiff miserably failed to prove the agreement to sell.

Mr. Bikramjit Arora, Advocate learned counsel appearing on behalf of the appellant in support of memorandum of appeal has made the

following submissions :-

1. The findings of the lower Court that the extension dated 15.12.2003 had not been legally proved on record for want of examination of witness Kashmir Singh is totally perverse and illegal. For the provision of Section 72 of the Indian Evidence Act does not suffice the requirement of examination of the witness. In support of his contention he has relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **S. Brahmanand and others vs. K.R. Muthugopal (D) and others 2005 (4) RCR (Civil) 508**. Relevant paras 18 and 35 of the judgment read as under :-

“18. Though, at first blush, it may appear that the use of the expression "date" used in this Article of the Limitation Act, 1963 is suggestive of a specific date in the calendar, we cannot forget the judicial interpretation of this expression over a long period of time. Different High Courts took different views of the matter, which has been a subject matter of controversy. Some interpreted the expression strictly and literally, while others have taken an extended view.

35. Thus, this was a situation where the original agreement of 10.3.1989 had a "fixed date" for performance, but by the subsequent letter of 18.6.1992 the Defendants made a request for postponing the performance to a future

date without fixing any further date for performance. This was accepted by the Plaintiffs by their act of forbearance and not insisting on performance forthwith. There is nothing strange in time for performance being extended, even though originally the agreement had a fixed date. Section 63 of the Indian Contract Act, 1872 provides that every promisee may extend time for the performance of the contract. Such an agreement to extend time need not necessarily be reduced to writing, but may be proved by oral evidence or in some cases, even by evidence of conduct including forbearance on the part of the other party [See in this connection the observations of this Court in *Keshavlal Lallubhai Patel and ors. v. Lalbhai Trikumlal Mills Ltd.*, AIR 1958 SC 512, para 8 See also in this connection *Smt. Saraswathamma v. H. Sharad Shrikhande and Ors.*, AIR 2005 Karnataka 292 and *K. Venkoji Rao v. M. Abdul Khuddur Kureshi*, AIR 1991 Karnataka 119 following the judgment in *Keshavlal Lallubhai Patel* (supra)]. Thus, in this case there was a variation in the date of performance by express representation by the Defendants, agreed to by the act of forbearance on the part of the Plaintiffs. What was originally covered by the first part of Article 54, now fell within the purview of the second part of the Article. *Pazhaniappa*

Chettiyar v. South Indian Planting and Industrial Co. Ltd. and Anr., AIR 1953 Trav-C. 161, was a similar instance where the contract when initially made had a date fixed for the performance of the contract but the Court was of the view that "in the events that happened in this case, the agreement in question though started with fixation of a period for the completion of the transaction became one without such period on account of the peculiar facts and circumstances already explained and the contract, therefore, became one in which no time fixed for its performance", and held that was originally covered by the first part of Article 113 of the Limitation Act, 1908 would fall under the second part of the said Article because of the supervening circumstances of the case."

2. The readiness and willingness had been proved to the hilt as the suit was filed immediately after the refusal by the defendant for execution of the sale deed from the extended date i.e. 14.12.2006. He further submitted that the trial Court had rightly granted the discretion under Section 20 and in support of the aforementioned submissions relied reliance upon the judgment of this Court in **Raj Pal Singh vs. Baldev Singh and others** **2005(3) RCR (Civil) 100.**

The finding of the lower Appellate Court to the fact that PW2

Gurnam Singh, the attesting witness did not prove the execution of the agreement to sell is neither here nor there. The plaintiff was subjected to extensive cross-examination but there was no cross-examination with regard to the specific averment in the examination-in-chief qua the agreement to sell and therefore the defendants have lost the right to belie the extension of time and thus urges this Court for setting aside the judgment and decree under challenge as the present appeal involves determination of substantial question of law.

Per contra Mr. Premjit Kalia, Advocate learned counsel for the respondent-plaintiff submitted that there is no illegality and perversity in the judgment rendered by the lower Appellate Court as the trial Court did not refer to the cross-examination of PW2 Gurnam Singh, the attesting witness to the agreement to sell. The appellant-plaintiff failed to examine the witness Kashmir Singh as they are afraid that the truth would not surface. Tarlochan Singh PW3 feigned ignorance with regard to the causing any entry in the scribe register. The suit in fact was barred by the law of limitation in the absence of proof of any extension and the earnest money impells this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel for the appellant and the reason is not one but many.

1. There is no dispute to the ratio decidendi culled out in the judgment rendered by this Court in **Raj Pal Singh's** case (supra)

whereby the plaintiff as per the fact enumerated therein proved to the hilt the continuous, readiness and willingness. The readiness and willingness as per the provision of Section 16(c) of the Specific Relief Act leaves no manner of doubt that the plaintiff seeking aforementioned discretionary relief under Section 20 has to prove the readiness from the date of agreement till the date of filing of the suit during the pendency and till passing of the decree. But in the instant case the witness of the agreement to sell Gurnam Singh did not support the case of the plaintiff qua its execution. For the sake of brevity, the cross-examination of witness Gurnam Singh read as under :-

“I am illiterate. I am owner of only one acre land. I know Nagar Singh. He is residing at Village Dedar Sahib and I am residing outside the village. I have good relation with Nagar Singh. I am also use to assist Nagar Singh in his work cultivating agriculture land some time. I came Tarn Taran to attend my case on that date and on that date, I thumb marked on alleged agreement to sell in Court complex at the chamber of Advocate Shri J.L. Sood. They about the alleged agreement to sell, which was written earlier. The alleged agreement was written in my presence in the chamber of Advocate in Court complex. I do not know who purchased the stamp papers. I was asked to witness the alleged agreement to sell by the father of the defendants Kabal Singh. We stayed at Court complex in the chamber of my own Advocate at about 5 PM. We reached in the Court complex at about 10 AM. We stayed in Court complex

till 5 PM and not left the Court complex even a single time. I do not know which is Tehsil complex and which is Court Complex. I do not know where the Tehsil exists. I do not know what was the value of stamp papers. The alleged agreement was not written in my presence. It is correct that no any body written the alleged agreement to sell nor any body signed/thumb marked on alleged agreement to sell in my presence. It is correct that nothing has been done in my presence except thumb marked on the alleged agreement to sell. When I thumb marked the alleged agreement to sell then paddy crop was harvesting. It is correct that today I have come with Nagar Singh on motorcycle of Nagar Singh. The affidavit which was tendered in Court in case file not read out and explain to me by Nagar Singh or his counsel. I do not know what is written in my affidavit Ex.PW2/A. I am not a summoned witness. It is wrong to suggest that I am giving evidence at the instance of Nagar Singh. It is wrong to suggest that I have deposed falsely.”

Tarlochan Singh also candidly admitted that the agreement to sell scribed by him was not recorded in the scribe register, whereas, other documents, which he had been scribing, were entered in the scribe register. Nor the register was produced during the proceedings of the above mentioned suit. The alleged extension dated 15.12.2003 bearing the signatures of Kashmir Singh, had not been examined. Non-examination of the witness by relying upon the provision of Section 72 of the Evidence Act would not help Mr. Arora, Advocate much less the plaintiff for grant of discretionary relief as the original execution of the agreement to sell has not

been proved.

The legal notice was of 09.1.2007 whereby the defendants were given 10 days time to execute the sale deed but the suit was filed on 25.1.2007, therefore, the appellant-plaintiff cannot take the benefit of non-filing of the reply. Non-examination of the witnesses qua the endorsement would not be fatal to the case of the defendants on account that plaintiff miserably failed to execute the agreement to sell. No same person would extend the agreement to sell for a period of another three years after having a receipt of Rs.1,63,000/- without taking the possession of the property agreed to be sold. The lower Appellate Court being the last Court of facts and law examined the statement of the witnesses noticed above and found that the plaintiff miserably failed to prove the execution of the agreement, therefore, the trial Court abrogated in granting the discretionary relief. All the aforementioned evidence and the provision of law would not entail into forming a different finding than the finding of the lower Appellate Court. No substantial question of law as arose by Mr. Arora, Advocate learned counsel for the appellant arises for adjudication by this Court.

Resultantly, the judgment and decree of the lower Appellate Court are upheld and the appeal stands dismissed.

January 16, 2018

Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No