

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3007 of 2012 (O&M)

Date of decision:02.02.2018

Gurjant Singh and others

... Appellants

Vs.

Chand Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.B.S.Sobti, Advocate
for the appellants

Mr. M.L.Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
for the respondent.

AMIT RAWAL J.

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit preferred by the respondent-plaintiff, seeking specific performance of agreement to sell dated 03.04.2002 (Ex.P5), was decreed.

Before I could advert to the arguments of learned counsel for the parties, it would be in the fitness of things to give preface of the matter for adjudication of the dispute.

The suit was filed by respondent-plaintiff seeking specific performance of the agreement to sell, *ibid*, on the premise that the appellant-defendants and respondent-plaintiff had executed the agreement to sell in

question, in respect of land measuring 18 kanals 9 marlas at the rate of ₹2,20,000/- per acre against the total sale consideration of ₹ 4,50,000 in the presence of the witnesses. It was pleaded that defendant No.1 was absolute owner in possession of the land comprised in khewat/khatoni no.129/298 and 111/256; defendant No.2 was owner in possession of the land comprised in khewat/khatoni no.113/258 and defendant No.3 was owner in possession of land comprised in khewat no.6 to the extent of ½ share out of 118 kanals 0 marla.

The aforementioned agreement to sell was executed by defendant No.1 on his own behalf and being the husband of defendant No.2 and attorney of defendant No.3, in respect of the land measuring 86 kanals 12 marlas, 31 kanals 5 marlas and 2 kanals 18 marlas of defendants No.1, 2 and 3, respectively. Out of the aforementioned land, the land measuring 24 kanals 18 marlas was in the ownership of Sarpinder Singh son of Narinder Singh, defendant No.1 and the possession thereof was delivered under the agreement to sell. The stipulated date for execution and registration of the sale deed was fixed on or before 31.05.2004. Defendant No.1 performed his part of the agreement to sell dated 03.04.2002 by executing three sale deeds dated 17.06.2002 (Ex.P6), 27.05.2002 (Ex.P7) and 06.01.2003 (Ex.P8) but with regard to the suit property, i.e., khewat no.129 and 111 owned by him and his wife, defendants No.1 and 2 did not perform their part of contract despite the receipt of the balance sale consideration, thus, defendant No.3 also failed to perform his part of contract in respect of land measuring 18

kanals 9 marlas, i.e., $\frac{1}{2}$ share of the land comprised in khewat/khatoni no.6/20, khasra no.31//6(7-10) , 7(7-11), 5/1(6-15), 14(8-0), khewat/khatoni no.6/21, khasra nos.31//4(7-2) of village Nagri, that total land of khewat no.6 is 118 kanals in which defendant no.3 was recorded owner to the extent of $\frac{1}{2}$ share. On the stipulated date, the respondent-plaintiff appeared before the office of Sub Registrar, Samana alongwith balance sale consideration but the defendants did not turn up to perform their part of contract and thereafter, the legal notice dated 29.11.2004 was served upon the defendants, resultantly, the suit seeking the relief, aforementioned, was instituted on 06.01.2005.

The defendants in pursuance to the receipt of notice, appeared and contested the suit by taking various preliminary objections qua maintainability, valuation, jurisdiction and also averred that agreement to sell was a result of fraud, in fact, the suit was filed in collusion with Piara Singh son of Sadhu Singh, Gurmail Singh son of Narata Singh, Hardev Singh son of Mall Singh so called witnesses and Raj Kumar, property dealer. It was also stated that the absolute ownership of defendants No.1, 2 and 3 to the extent of $\frac{1}{2}$ share in the land comprised in khewat no.6 was not mentioned in the agreement to sell, *ibid* as the defendants had no relation or link with Sarpinder Singh so they could not agree on his behalf to sell his ownership of land measuring 24 kanals 18 marlas. In fact, he was not the owner of aforementioned piece of land as alleged. Defendant No.3 never agreed to sell the land measuring 18 kanals 9 marlas to the plaintiff at the

rate of ₹2,20,000/- per acre because the market value of the land in village Nagri in the year 2002 was more than ₹5,00,000/- per acre as the location of the land was near village abadi, whereas, the other land of defendants No.2 and 3 was also adjacent to the land of defendant No.1 and value of that in the year 2002 was more than ₹5,00,000/- per acre. Defendant No.1 had no right to execute the sale deed from third person with whom he had no relationship. The witnesses of the alleged agreement to sell were the relatives of plaintiff. Two electric connections were installed in the land in question and out of which, one was in the name of defendant No.1 which is of 7.5. BHP and another connection in the name of Puran Singh having the same capacity which was later on extended to 12.5 BHP.

The execution of the agreement to sell as propounded in the plaint was emphatically denied but it was stated that the plaintiff could not take the benefit of the aforementioned sale deeds. In fact, the aforementioned property was sold when they met to one Raj Kumar, property dealer sitting outside the Court Complex, Samana who got the stamp papers from defendants No.1 and 3 bearing their signatures on the pretext that this stamp paper would remain with him and therefore, the signatures on the blank stamp papers in good faith, purchased from Madan Lal Vendor on 03.04.2002 in the Court Complex Samana, were appended. Raj Kumar got the deal matured with the sons and wife of the plaintiff for consideration of ₹4,50,000/- per acre by obtaining the commission of 2% as dealer from the defendants. After the execution of the sale deeds, the

defendants demanded return of the blank stamp papers signed by them but it was stated by Raj Kumar that the same was torn but now the plaintiff in connivance with Raj Kumar, fabricated the agreement to sell in question. The agreement to sell was typed in connivance with the witnesses for perusal of the same revealed that the name typed was as Gurjant Singh, party no.1 but there was no signature of Gurjant Singh and the name of Gurpreet Singh was printed as party no.2 but did not bear signature. The plaintiff was not having any source to pay such a huge amount on 3.4.2002, as earnest money, to the defendants. The agreement to sell did not mention the execution of the sale deeds, ibid which were executed on the basis of an independent deal and therefore, there was no question of adjusting the earnest money of ₹4,50,000/- in the sale deeds executed by the defendants as no agreement to sell was in existence.

The aforementioned contentions were replied by submitting replication. Since the parties were at variance, the trial Court framed as many as 10 issues including the issue of relief.

The plaintiff in support of his case examined the following witnesses:-

PW1 - himself

PW2 - Baljinder Sharma

PW3 - Hardev Singh

PW4 - Piara Singh and after tendering the power of

attorney Ex.P24 closed the evidence in affirmative.

Whereas, the defendants examined the following witnesses:-

DW1 - Rakesh Kumar

DW2 - Gurjant Singh

DW3 - Dr. Inderjit Singh and after tendering the certified copies of the order dated 30.1.2006 (Mark-DA), order dated 16.11.2006 (Ex.D12), judgment and decree dated 7.9.2006 (Ex.D13) and Ex.D14, closed their evidence.

The trial Court on the basis of the oral and documentary evidence did not grant the discretionary relief as per Section 20 of Specific Relief Act but ordered for alternative relief of recovery of ₹4,50,000/- alongwith costs and interest at the rate of 10% per annum w.e.f. 3.4.2002.

The respondent-plaintiff assailed the aforementioned judgment and decree by filing the appeal bearing No.47-T of 06.01.2010. The cross-objections were also filed by the appellant-defendants impugning the findings of the trial Court with regard to alternative relief, i.e., refund of earnest money.

The Lower Appellate Court being the last Court of fact and law after examining the evidence allowed the appeal and decreed the suit by granting the discretionary relief under Section 20 of the Specific Relief Act and dismissed the cross-objections but only one decree was passed. It is in this background of the matter, the aforementioned Regular Second Appeal has been filed.

Before Mr. Sobti, could commence the arguments, Mr. Sarin

had raised the preliminary objection with regard to maintainability of the appeal and submitted that two appeals were required to be filed in view of the dismissal of the cross objections and allowing of the appeal. In this regard, he has relied upon paras 7 and 13 the judgment of this Court rendered in **Sukhdev Singh Vs. Baldev Singh and others 2014(4) PLR 651** which read as under:-

“7. After appreciating the evidence, the Court of first instance dismissed the suit, however, allowed the counter-claim holding that the counter-claimants are entitled to possession of land measuring 1 marla 2 ½ sarsai marked by letters EFGH, shown in the site plan, and the plaintiff has been directed to hand over the possession of the said land. Feeling aggrieved, the plaintiff preferred an appeal which has been dismissed by the lower Appellate Court. Hence, this regular second appeal.

*13. Moreover, the plaintiff has not preferred separate appeal challenging the acceptance of counter-claim of defendant no.1 meaning thereby that he has accepted the impugned judgment. Since counterclaim is just like an independent suit, two appeals ought to have been filed. In absence of same, principle of res judicata will apply. Reference can be made to the decision rendered in **Harbans Singh and Ors. vs. Sant Hari Singh and Ors. AIR 2009 SC 1819** by the Hon'ble Supreme Court.”*

He contended that once the appellant-defendants had not preferred a separate appeal challenging the dismissal of the cross objections, it tantamounts to acceptance of the impugned judgment vis-a-vis challenge laid to the findings of the trial Court granting the alternative relief and therefore, the principle of res judicata would apply.

In reply, Mr. Sobti submitted that both the cross objections and appeal have been decided by virtue of one decree, in essence, there are no two decrees. Had the two decrees been passed, then two appeals would lie.

I have heard learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is force and merit in the submissions of Mr. Sobti, for, the Lower Appellate Court decided the appeal filed on behalf of the respondent-plaintiff and cross objections on behalf of appellant-defendants, by one common judgment and decree and therefore, no separate appeal was required to be filed as decree was one.

There is no dispute with regard to the ratio decidendi culled out in the aforementioned judgment relied upon by Mr. Sarin.

It is settled law that if there is one decree, one appeal would lie. Even otherwise, provisions of Order 41 Rule 33 CPC are no longer res integra. A party who has not even filed the cross objections, can always challenge the findings under the aforementioned provisions.

Resultantly, the objections of Mr. Sarin, are hereby rejected.

Mr. B.B.S.Sobti, learned counsel appearing on behalf of the

appellant-defendants submitted that both the Courts below abdicated in not appreciating the fact that there was no provision in the agreement to sell dated 3.4.2002 (Ex.P5) regarding the execution of the sale deed in part, the plaintiff could not claim any connection with the sale deeds Exs.P6 to P8.

The Lower Appellate Court has wrongly observed that plaintiff had proved the execution of the agreement to sell, much less readiness and willingness as per the provisions of Section 16(c) of Specific Relief Act, 1963 (in short '1963 Act') whereas, the same was conspicuously absent.

No evidence had been produced on record *vis-a-vis* payment of money under Ex.P5. The plaintiff failed to lead any evidence in rebuttal to the evidence of handwriting expert examined by the defendants, thus, failed to discharge the onus in the first instance.

The cross-objections were filed on behalf of the appellant-defendants with regard to findings rendered by the trial Court ordering refund of earnest money but the same have been dismissed without plausibility.

It is settled law that discretion under Section 20 of 1963 Act has to be granted in a rarest of rare case where the other party, i.e., the vendee had proved all the ingredients entitling him/her such relief.

The application submitted by the respondent-plaintiff to the office of Registrar for marking the presence on 31.05.2004 did not reflect the execution of the sale deeds, Exs.P6 to P8. In fact, the plaintiff failed to prove the execution of the agreement to sell.

The documents Exs.D12 to D14 referred above have not been adverted to resulting into illegality and perversity. The agreement to sell Ex.P5 was not scribed by a regular deed writer but it was scribed from Patiala at the distance of 40-50 k.ms from the residence of the parties to the suit. Raj Kumar, property dealer in connivance with the respondent-plaintiffs had played fraud upon them owing to the availability of blank signed paper. The readiness and willingness on behalf of the plaintiff did not suffice the requirement of Section 16(c) of 1963 Act as the funds were lacking. No explanation has come forward as to why the sale deed of remaining piece of land was not executed as done for other piece of land, vide sale deeds, Exs.P6 to P8. The execution of the sale deed was separate transaction but not connected with the agreement to sell and thus, urged this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Mr. M.L.Sarin, learned Senior counsel assisted by Mr. Ritesh Aggarwal, Advocate appearing on behalf of the respondent-plaintiff submitted that the reasons assigned by the trial Court in not granting the discretionary relief despite holding that the execution of agreement to sell to have been proved, was illegal and perverse which has been corrected by the Lower Appellate Court. In fact, the rate of land agreed to be sold, vide agreement to sell, Ex.P5 was ₹2,20,000/- per acre and all sale deeds, *ibid*, have also been executed at the same rate. The respondent-plaintiff appeared before the Registrar for marking the presence, and clearly

mentioned, the factum of agreement to sell.

The previous litigation had nothing to do with the present case as the defendants failed to connect the same with the present litigation. The suit was preceded by a legal notice dated 29.11.2004, Ex.P16 and postal receipts Ex.P17 and Ex.P18. Even the earlier notice dated 25.05.2004, Ex.P9 was also sent and the suit was filed on 06.01.2005, i.e., after 07 months of the expiry of the stipulated date, i.e., 31.05.2004. If at all, any fraud had been played, nothing prevented the appellant-defendants to lodge an FIR or make any complaint against Raj Kumar, property dealer. The agreement to sell had been proved through the testimony of the attesting witnesses as per the provisions of Section 68 of the Indian Evidence Act, 1872 particularly when the appellant-defendants had not denied the signatures. The manner and mode for which the signatures were used on blank papers have also not been proved, thus, the defence taken was an eye wash and attempt to thwart the claim of the respondent-plaintiff for seeking the discretionary relief.

One of the aforementioned legal notices despite having been received was not replied to. The execution of the sale deeds, *ibid*, were not independent transaction but it was fall out of the case of the agreement to sell in question. The cross-objections were without any merit as defendants failed to prove the plea of fraud by leading direct and cogent evidence. The defendants did not turn up for performing their part of the contract.

The filing of the cross-objections was nothing but to tire out the

plaintiff by taking up all possible pleas. The amount of ₹4,50,000/- given as earnest money was never adjusted in those sale deeds and non-reference of the agreement to sell in those sale deeds would not dis-entitle the plaintiff to claim the relief of specific performance and thus, urged this Court for affirming the findings under challenge.

There is very limited scope for interference in the findings recorded by the Lower Appellate Court while entertaining the second appeal and in this regard, reliance has been placed upon the judgments rendered by the Hon'ble Supreme Court in **Deity Pattabhiramaswamy vs. S. Hanymayya and others AIR 1959 SC 57** and **Phool Pata and another Vs. Vishwanath Singh and others 2005(6) Supreme Court Cases 40** to the fact that where there is increase or decrease in price of land, could the discretionary relief of specific performance be denied. Once the agreement to sell had been duly proved, the discretionary relief is a natural corollary and in this regard, the reliance was laid to judgment rendered by this Court in **Abdul Sattar and others vs. Pitamber Singh 2008(3) PLR 720**.

I have heard the learned counsel for the parties, appraised the judgments and decrees and records of the Courts below and record and of the view that there is no force and merit in the submissions of Mr. Sobti. The reason is not only one but many:-

1. The appellant-defendants in any manner did not deny the signatures on the agreement to sell. The suit was preceded by legal notices Ex.P9 and Ex.P16. One of the envelope containing the legal notices,

Ex.P12, Ex.P21 and acknowledgment Ex.P13 reflected that it was received by the defendants but no reply was given.

2. The entire stand taken in the written statement was an after thought. The execution of the sale deeds have also not been controverted.

3. The question to be determined by this Court is whether the sale deeds were independent transaction or were fall out of the agreement to sell. The answer to the aforementioned question is plain and simple that rate of the land in the agreement to sell was ₹2,20,000/- per acre and the subject matter of land of the sale deeds, aforementioned was also at the same rate.

4. Mere non-reference to the documents Exs.D12 to D14 would not be fatal to the case as the appellants failed to prove on record the connectivity of the aforementioned judgment and decree because in the suit for injunction, one of the party was plaintiff.

5. No sane person would sit ideal and remain silent if the fraud had actually been played and perpetuated. If at all Raj Kumar, property dealer had misused the blank signed papers, nothing prevented the appellant-defendants to lodge an appropriate criminal proceedings in accordance with law. Perhaps they were afraid that the cat would be out of the bag or may not be hauled up under Section 182 Cr.P.C.

6. Non-mentioning of the agreement to sell in the sale deeds, cannot be said to be fatal for granting the discretionary relief as it has been proved on record that in the part performance of the agreement to sell, appellant-defendants already executed the sale deeds Ex.P7 and Ex.P8. No

evidence has been led contrary to the one led by the plaintiff that the amount of ₹4,50,000/- given as earnest money, vide agreement to sell had been adjusted in any of the aforementioned sale deeds. All these factors have been adverted to and weighed in the mind of the Lower Appellate Court in granting the discretionary relief.

7 As far as readiness and willingness is concerned, the respondent-plaintiff proved the same from the date of the agreement to sell, i.e., 03.04.2002 till the target date, i.e., 31.05.2004 by proving the affidavit, Ex.P14 by submitting an application Ex.P15 before the Registrar and remained present in the office of Registrar but the appellant-defendants did not appear. The application and the affidavit are of dated 31.05.2004 and the suit was filed within 7 months from the expiry of the target date. The readiness and willingness on the part of the plaintiff has to be seen from the date of the execution of the agreement to sell, during its existence till filing of the suit. The aforementioned observations of mine are drawn from the judgment rendered by the Hon'ble Supreme Court in **Sita Ram vs. Radhey Shyam 2007(4) RCR (Civil) 533.**

8. The description of the suit property given in the sale deeds leaves no manner of doubt that the agreement to sell was in respect of entire land for which part performance has been performed but of remaining piece of land, the appellant-defendants did not come forward to perform their part of contract, necessitating the plaintiff to avail remedy in accordance with law.

9. Hardev Singh PW3 and Piara Singh PW4 proved the execution of the agreement to sell for the suit property after acceptance of earnest money of ₹4,50,000/-. Despite extensive cross examination, nothing contrary surfaced.

10. There is no requirement in the law that agreement to sell is to be executed by deed writer. Once the agreement to sell has been proved, the report of handwriting expert has rightly been discarded and adverse inference cannot be drawn against the plaintiff for not examining the handwriting expert. It is a common practice that the handwriting expert gave a report/toe to the whim of the party who engages him. No evidence has been led that sale deed was an independent evidence.

11. There is no dispute to the ratio decidendi culled out in the judgments relied upon by Mr. Sarin and the facts noticed above. I am of the view that the respondent-plaintiff conclusively proved the execution of the agreement to sell and also the readiness and willingness as per the provisions of Section 16(c) of 1963 Act.

The findings of the Lower Appellate Court granting discretionary relief are based upon the evidence discussed above being the last Court of fact and law. As an upshot of my findings, the findings of the Lower Appellate Court does not warrant any interference, much less formulation of substantial question of law as appeal is bereft of substantial questions of law.

Resultantly, while upholding the findings rendered by the

Lower Appellate Court, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 02, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No