

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

**RSA No. 4577 of 2012 (O & M)
Date of Decision:-05.2.2018**

Iqbal Singh

...Appellant

Versus

Mohan Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Harish Mehla, Adocate
for the respondent.

AMIT RAWAL J.(Oral)

The appellant-defendant is in appeal against the concurrent findings of facts whereby the suit seeking specific performance of agreement to sell dated 24.4.2001 and 2.5.2003 in respect of the land measuring 15 Kanal 11 Marlas comprised in Khewat No.93 (now 95), Khatoni No.189 (now 210, 211) Rect. No.42, Killa No.3/1 (0-8), 12 (6-10), 13(6-14), 18/1(1-19), situated in the revenue limits of Village Chak

Guljewala, Tehsil Gidderbaha, District Muktsar, executed by the appellant-defendant in favour of the plaintiff has been decreed for execution and the registration of the sale deed.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellant-defendant submitted that the aforementioned suit was filed by the plaintiff seeking specific performance against the total sale consideration of Rs.3,50,000/- by paying the earnest money of Rs.3,25,000/-. Originally the target date was 2.5.2003 and the same was extended to 15.6.2004. However, regarding the same piece of land, the appellant-plaintiff had purchased the land from Bakhtaur Singh vide sale deed dated 20.4.2000. The vendee was Mohan Singh son of Bakhtaur Singh and appellant was the defendant-vendor. It was categorically stated that there was a shortfall of area with regard to the sale deed dated 20.4.2000 executed by Bakhtaur Singh in favour of the appellant-defendant and in that regard both the parties had gone to the office of Sub Registrar where Bakhtaur Singh played a fraud and mischief by getting the agreement to sell executed in favour of his son. The defendant categorically denied the receipt of the earnest money. The readiness and willingness was denied. The suit was also filed after expiry of the period of limitation. All these factors have not been looked into in correct perspective and therefore, there is illegality and perversity. Bakhtaur Singh also filed the civil suit challenging the sale deed dated 20.4.2000 and thus the substantial questions of law drawn in the memorandum of appeal are required to be determined.

Mr. Harish Mehla, Advocate learned counsel appearing on

behalf of the respondent-plaintiff submitted that the appellant-defendant had admitted his signatures on both the aforementioned agreements muchless receipt of the earnest money. This fact had been noticed by the trial Court wherein to a specific question during the cross-examination he admitted qua appendation of signatures on Ex.P1 at four places and on Ex.P2 at three places and therefore it was not a case that the defendant was an illiterate and did not know the intricacies of law, as he knew the Punjabi. The second agreement to sell was only with regard to the extension of time whereas the other grounds of the agreement to sell dated 24.4.2001 remained the same. There had been a specific pleading in paragraph 6 of the plaint that the plaintiff was always ready and willing to perform his part of agreement which was not rebutted by the defendant by any direct or cogent evidence and urged this Court for upholding the concurrent findings of facts.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force in the submissions of learned counsel for the appellant.

The appellant-defendant categorically admitted with regard to the affixation of his signatures on four places on Ex.P1 dated 24.4.2001 and three places on Ex.P2 dated 2.5.2003 whereby the time was extended. The target date was extended to 15.6.2004 in respect of the suit land, however, other terms and conditions of the agreement were intact. Nothing prevented the appellant to lodge any complaint regarding mischief at the instance of Bakhtaur Singh or vendee Mohan Singh. The substantial amount of Rs.

3,25,000/- by way of earnest money was also received by the defendant. Paras 6 and 7 of the plaint, which are extracted herein below, suffices requirements of Section 16(c) of the Specific Relief Act :-

- “6. That thereafter also the plaintiff had been approaching the defendant and had been requesting him to perform his part of the agreements of sale, but the defendant kept the matter prolonging and the above stated suit was also pending which was decided on 17.8.2006 by Additional Civil Judge (Sr. Division), Gidderbaha. The suit was dismissed, hence there is no ad-interim injunction order in respect of the suit land.
7. That after the decision of the above stated suit, the plaintiff again went to the defendant and requested him that now there is no case, therefore now the defendant should perform his part of the agreement of sale as per terms and conditions of the agreement of sale, but even thereafter the defendant had been delaying the matter on one pretext or the other and ultimately about a week back, he has refused to accede to the requests of the plaintiff. Hence, the suit.”

In this view of the facts of the matter, the Courts below exercised the discretion under Section 20 of the Specific Relief Act. Filing of the suit by Bakhtaur Singh in independent capacity is nothing to do with the agreement to sell in question. No any other argument or document has been advanced to enable this Court to form an opinion different from the earlier arrived at by the trial Court. No grounds for interference is made out muchless any substantial question of law arises in the present appeal for

adjudication.

Dismissed.

February 05, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No