

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

RSA No. 4262 of 2013(O&M)

Date of decision: 3.7.2018

Surinder Kaur and others

....Appellants

VERSUS

Jatinder Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. M.K. Singla, Advocate for the appellants.

Mr. S.S. Gill, Advocate for the respondents.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 17.09.2012 passed by the trial Court whereby alternative relief of recovery of Rs.5 lakh along with interest in a suit for specific performance was allowed and the judgment and decree dated 15.07.2013 passed by the Appellate Court allowing the appeal preferred by the respondent/plaintiff and granting the principal relief of specific performance of agreement of sale dated 14.05.2005.

The facts, in brief, relevant for disposal of present appeal are that as per averments made in the plaint, Baldev Singh – defendant No.1 now represented by his LRs Surinder Kaur and others agreed to sell land measuring 33 kanal 9 marlas situated in village Machhrai Kalan, Tehsil Amloh, detailed in para 1 of the judgment of trial Court, vide agreement

dated 14.05.2005 at the rate of Rs.7,50,000/- per acre and received Rs.5,00,000/- towards earnest money. The balance amount was agreed to be paid at the time of execution of sale deed on 15.11.2005. On 10.06.2005, defendant No.1 executed a registered sale deed No.687 qua land measuring 14 kanal 11 marlas out of 33 kanal 9 marlas and delivered possession of the same to the respondent/plaintiff. Respondent has always been ready and willing to perform his part of the agreement for the remaining land. On 16.11.2005, respondent appeared before the Sub Registrar, Amloh through his Attorney for getting the sale deed executed and registered but the defendant did not turn up and plaintiff got his presence marked by way of affidavit attested by the Executive Magistrate on 16.11.2005.

Baldev Singh – defendant No.1 filed the written statement and denied all the material averments with regard to execution of agreement of sale on 14.05.2005, receipt of earnest money of Rs.5,00,000/-, execution of sale deed No.687 dated 10.06.2005 with the averments that agreement in question was prepared by the respondent/plaintiff, Jaswant Singh and other witnesses by playing fraud upon the answering defendant. The alleged sale deed is the result of fraud, misrepresentation and without consideration.

The controversy between the parties led to framing of issues reproduced in para 4 of the judgment of the trial Court. The parties were permitted to adduce evidence in support of their respective contentions.

The trial Court accepted claim of the respondent/plaintiff with regard to defendant having entered into agreement of sale dated 14.05.2005 and execution of sale deed No.687 dated 10.06.2005 in respect of land measuring 14 kanal 11 marlas out of 33 kanals 9 marlas agreed to be sold

on 14.05.2005. However, the Court rejected his claim for specific performance on the ground that his personal non-appearance in the witness box weakens his claim for specific performance of the agreement of sale. Further held that the plaintiff has clearly proved due execution of the agreement to sell along with his readiness and willingness by examining his attorney, therefore, he is entitled to alternative relief of recovery of Rs.5,00,000/- with interest at the rate of 9% per annum from the date of agreement till the date of decree. Further held that statement of Narinder Singh, Attorney of respondent Jatinder Singh is not sufficient to satisfy the requirements of Section 16(c) of the Specific Relief Act, 1963 to grant the discretionary relief of specific performance of agreement of sale.

Counsel for the appellants would urge that the Court in appeal committed a serious error by allowing specific performance of the agreement without appreciating judgment of Hon'ble the Supreme Court **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., 2005(1) RCR (Civil) 240** and of this Court **Sukhraj Singh Vs. Harbans Kaur and another, 2013(1) RCR (Civil) 502.**

Counsel representing respondent No.1 has supported the judgment passed by the Appellate Court with the submission that Narinder Singh is closely related to the respondent/plaintiff and he was the one who appeared before the Sub Registrar on 16.11.2005 for getting the sale deed executed and registered and got marked his presence by furnishing a duly sworn affidavit attested by the Executive Magistrate. According to counsel, as the Attorney had the personal knowledge of the respondent being ready and willing to perform his part of agreement coupled with close relationship between the respondent and Attorney, non-examination

of Jatinder Singh would neither enure to benefit of appellant nor can be construed prejudicial to the cause of respondent/plaintiff seeking specific performance particularly in the circumstances that Baldev Singh has altogether denied agreement of sale rather raised a plea that agreement is the result of fraud and misrepresentation etc.

I have heard counsel for the parties and perused the paper-book with their assistance.

The respondent/plaintiff Jatinder Singh is admittedly residing in a foreign country and suit for specific performance has been filed through his Attorney Narinder Singh son of Balwant Singh who is none else but brother in law (Jija) of Jatinder Singh. The respondent has successfully proved the agreement dated 14.05.2005 in respect of land measuring 33 kanal 9 marlas at the rate of Rs.7,50,000/- per acre out of which an amount of Rs.5,00,000/- was paid towards earnest money. Out of land measuring 33 kanal 9 marlas, appellant/defendant No.1 (since deceased represented by his LRs) executed sale deed regarding 14 kanal 11 marlas and another agreement dated 10.06.2005 was executed for execution of sale deed with regard to remaining land out of total land measuring 33 kanal 9 marlas. It has also been proved on record that as 15.11.2005, the stipulated date, was a holiday, on the succeeding day i.e. 16.11.2005, the respondent/plaintiff through his Attorney Narinder Singh visited the office of Sub Registrar Amloh and got recorded his presence by way of affidavit attested from the Executive Magistrate. Narinder Singh appeared in the witness box as Attorney of the respondent/plaintiff to prove the facts within his knowledge. He has reiterated the version with regard to his appearance in the office of Sub Registrar, Amloh on

16.11.2005 along with balance sale consideration and other expenses required for execution of sale deed by the appellant Baldev Singh. He has made a categorical statement that the respondent/plaintiff always remained ready and willing to perform his part of the agreement and is still ready and willing to perform the same.

The Court in appeal, in para 11, has noticed that the plaintiff is brother in law of Attorney as sister of the plaintiff is married to Narinder Singh. Plaintiff is admitted to be living in England, therefore, statement of Narinder Singh, Power of Attorney, could not be excluded as he is a close family member of plaintiff and looking after his property who is settled in England.

Keeping in view close relationship between the plaintiff and his Attorney coupled with that the Attorney appeared on behalf of the plaintiff in the office of Sub Registrar for getting the sale deed executed and registered on 16.11.2005 along with the fact that a part of land subject matter of agreement of sale was already sold in favour of the respondent/plaintiff vide sale deed dated 10.06.2005 and the facts noticed by the Court in appeal, it is difficult to accept contention of the appellant that since the plaintiff himself did not appear in the witness box, he is not entitled to discretionary relief of specific performance by relying upon judgment of Hon'ble the Supreme Court **Janki Vaishdeo Bhojwani's case** (supra) and of this Court in **Sukhraj Singh's case** (supra). Since the Attorney in the present case was well conversant with the facts and circumstances including the factum of respondent being ready and willing to perform his part of the agreement and the fact that there is no challenge to testimony of the Attorney that the plaintiff always remained ready and

willing to perform his part of the agreement, I find it difficult to accept contention of the appellant that the Court in appeal has committed an error much less perversity by exercising its discretion in favour of the respondent/plaintiff and allowing specific performance of the agreement by way of modification of the judgment and decree passed by the trial Court allowing alternative relief of recovery.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

JULY 3, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no