IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4474 of 2013 (O&M)
Date of Decision:26.09.2018

Jagjit Singh and others ......Appellants
Vs
Satbir Singh and others .....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Mandeep S. Sachdev, Advocate
for the appellants.

Mr. Aditya Dassaur, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.

CM No.12058-C of 2013

Prayer made in this application is for bringing on record the legal representatives of deceased/appellant Sampuran Singh, who died on 03.06.2012.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Sampuran Singh as shown in para no.6 of the application are ordered to be brought on record, subject to all just exceptions.

RSA No.4474 of 2013 (O&M)

[1]. Defendant through his legal representatives is in Regular Second Appeal in a suit for specific performance which was decreed by the Courts below.

[2]. Brief facts of the case are that a suit for specific performance was filed by the plaintiffs on the basis of agreement to sell dated 02.06.1992 in respect of 53 *Kanals* 18 *Marlas* of land which was agreed to be sold by the defendant @ 11 lakhs per acre. An earnest money to the tune of Rs.10 lakhs was paid, whereas the second installment of Rs.10 lakhs was to be paid by 03.09.1992. Rest of the amount was to be paid on the date of execution of sale deed which was fixed as 01.06.1993. On 03.09.1992, date of second installment was extended by a week i.e. 09.09.1992. On 09.09.1992, an additional amount of Rs.10 lakhs was paid which was duly received by the defendant. On 03.12.1992, two demand drafts towards 3rd installment in a sum of Rs.5 lakhs each drawn in favour of the defendant were tendered, but the defendant did not accept the same and told that he would accept the same on 18.12.1992. On 18.12.1992, plaintiffs went to the office of Sub-Registar with an amount of Rs.10 lakhs towards 3rd installment, but the defendant did not come to perform his part of obligation. On 01.06.1993, plaintiffs again went to the office of Sub-Registrar, Jalandhar and got their presence marked, but the defendant did not come present in the office of Sub-Registrar to execute the sale deed in terms of agreement to sell dated 02.06.1992. In the aforesaid background, a suit for specific

performance was filed by the plaintiffs.

[3]. The suit was contested by the defendant. He submitted that the second installment of Rs.10 lakhs was to be paid by 03.09.1992. Plaintiffs had no consideration money ready with them, therefore, they requested for one week extension and the same was granted by the defendant. An amount of Rs.10 lakhs was paid on 09.09.1992 as second installment. Defendant was ready and willing to accept the 3rd installment on or before the target date. The 3rd installment of Rs.10 lakhs was to be paid on 03.12.1992, but the plaintiff had no money ready with them, so they requested for extension of time till 18.12.1992. Defendant further submitted that he never agreed to accept the amount on 18.12.1992. Since the prevailing circumstances in Punjab were not conducive and the market price of the land had come down, therefore, plaintiffs wanted to back out of the agreement and thereafter plaintiffs were never ready and willing to perform their part of contract and the earnest money to the tune of Rs.20 lakhs paid by the plaintiffs was forfeited in terms of agreement.

[4]. After completion of pleadings, both the parties went to trial on the following issues:-

> *"1) Whether the plaintiffs no.1, 3 and 4 have no locus standi to file the present suit? OPD*
>
> *2) Whether the plaint is liable to be rejected? OPD*

3) Whether the plaintiffs are entitled to specific performance of the agreement to sell dated 2.6.1992? OPP.

4) Whether the plaintiffs are entitled to the alternative relief of recovery of Rs.40,00,000/-? OPP

5. Relief."

[5]. Plaintiffs in their evidence examined Santokh Singh as PW-1, Jaspal Singh as PW-2, Rajesh Nagpal as PW-3, Sat Pal Clerk, Punjab National Bank as PW-4, Kailash Chander, Sr. Manager, Punjab National Bank as PW-5 and Kulwant Singh plaintiff No.2 himself stepped into witness box as PW-6. In the documentary evidence, the plaintiffs produced on record agreement to sell dated 02.06.1992 as Ex.P-1, writing *qua* extension of time dated 03.09.1992 as Ex.P-2, endorsement on the overleaf with regard to agreement in question Ex.P-3, writing dated 07.07.1993 Ex.D-1, endorsement dated 03.12.1993 Ex.P-4, certificate dated 12.12.1998 issued by the Punjab National Bank as Ex.P-5 and Ex.P-6, demand drafts dated 03.12.1992 Ex.P-7 and Ex.P-8, request for cancellation of payment order Ex.P-7 and Ex.P-8 as Ex.P-9 and Ex.P-10. Statement of account of Dilip Kumar Ex.P-11, statement of account of Kulwant Singh as Ex.P-12 and letter dated 18.12.1992 moved before the Sub-Registrar, Jalandhar as Ex.P-13.

[6]. On the other hand, defendant examined himself as DW-1, Harbhajan Singh as DW-2, Tara Singh as DW-3, Gurnam Singh DW-4, Puran Singh Phool as DW-5 and HC Surinder Kumar as DW-6. In the documentary evidence, defendant produced notice dated 24.12.1992 as Ex.D-2, postal receipts Ex.D-3 to Ex.D-5, certified copy of DDR dated 09.06.1993 as Ex.D-6, copy of reply to the notice dated 21.12.1992 sent by plaintiff No.1 as Ex.D-7, copy of reply dated 27.05.1995 to the legal notice Ex.D-8, copy of reply dated 31.05.1995 as Ex.D-9, postal receipts dated 01.06.1993 as Ex.D-10, A.D. receipt as Ex.D-11, postal receipt of notice reply to Sh. Himmat Singh as Ex.D-12, AD receipt as Ex.D-13, certificate of posting as Ex.D-14, reply to the notice sent through Sh. D.S. Dhillon, Advocate to Sh. J.S. Rakkar as Ex.D-15 and postal receipt as Ex.D-16.

[7]. Issue No.3 was in the context of entitlement of the plaintiffs to seek specific performance of agreement to sell dated 02.06.1992 and onus of the said issue was on the plaintiff. In order to discharge the onus, the plaintiffs examined Santokh Singh as PW-1, who proved on record the agreement to sell dated 02.06.1992 Ex.P-1, writing of extension of time Ex.P-2 and writing with regard to payment of Rs.10 lakhs on 09.09.1992 as Ex.P-3. PW-2 Jaspal Singh was examined in the

context of proving endorsement dated 09.09.1992 made on the overleaf of the agreement in question Ex.P-3. Rajesh Nagpal Deed Writer was examined as PW-3, who also proved on record agreement to sell dated 02.06.1992 Ex.P-1 and endorsements dated 09.09.1992 Ex.P-3 and 03.12.1992 as Ex.P-4. Sat Pal Clerk, Punjab National Bank was examined as PW-4, who deposed on oath that on 03.12.1992, Dalip Kumar got prepared bank draft from the bank payable in favour of the defendant. On the same day, Kulwant Singh also got prepared a demand draft of Rs.5 lakhs payable in favour of the defendant. The witness further deposed on oath that on 04.03.1993, the demand draft got prepared by Dalip Kumar was got cancelled and on 10.03.1992, demand draft got prepared by Kulwant Singh was also got cancelled. Kailash Chander, Senior Manager of Punjab National Bank was also examined as PW5, who proved on record the certificates dated 12.12.1998 Ex.P-5 and Ex.P-6 and also proved on record demand drafts dated 03.12.1992 in the sum of Rs.5 lakhs each in favour of the defendant (Ex.P-7 and Ex.P-8), request for cancellation of pay order Ex.P-7 was got exhibited as Ex.P-9, and request for cancellation of pay order Ex.P-8 as Ex.P-10. Statement of accounts of Dalip Kumar and Kulwant Singh as Ex.P-11 and Ex.P-12 were got exhibited on record. Plaintiff No.2 got himself examined as PW-6 and deposed on the lines of their case and reiterated the version of the made in the plaint and proved the letter Ex.P-13 on record.

[8]. Per contra, the defendant rebutted the evidence of the plaintiffs. By appearing as DW-1, he stated on oath that the plaintiffs were not ready and willing to perform their part of obligation arising out of the agreement Ex.P-1 and, therefore, the amount to the tune of Rs.20 lakhs paid by them was forfeited. The defendant further submitted that he had always been ready and willing to perform his part of contract, but the plaintiffs had no money with them. Plaintiffs had to pay the second installment of Rs.10 lakhs to the defendant as per terms and conditions of the agreement on 03.09.1992, however the amount was not ready with them and an extension was sought and the same was granted and the second installment was paid on 09.09.1992. Defendant was ready to accept the 3rd installment on or before 03.12.1992, but the plaintiffs had no money with them and that is why the date for 3rd installment was again extended to 18.12.1992. Plaintiffs never went to the office of Sub-Registrar to mark their presence, nor they were ready to pay the entire sale consideration to the defendant for the purposes of execution of sale deed. In order to save the earnest money, the plaintiffs got issued legal notice from the office of Mr. J.S. Rakkar, Advocate which was an exercise to back out

from the agreement and to save the earnest money. A reply was given by the defendant through his counsel Sh. D.S. Dhillon through registered A.D. dated 24.12.1992 highlighting the stand of the defendant. Thereafter plaintiffs came to the defendant with an offer for refund of earnest money to the extent of 50%, however defendant did not agree to this offer. Plaintiffs initiated police proceedings against the defendant and even, they wanted to take forcible possession of the land. Demand drafts were never tendered to the defendant, nor the same were produced before the Sub-Registrar. The issuance of demand drafts from the Bank was done just to create an evidence.

[9]. The brother of the defendant i.e. Harbhajan Singh was examined as DW-2. The plaintiffs were known to him. The witness asserted in his statement that the plaintiffs came to him on 02.12.1992 and requested that they were not ready with the amount to fulfill their part of obligation and requested to prevail upon his brother i.e. defendant to extend the date of payment for 15 days. On his request, the defendant extended the date. On 03.12.1992, Kulwant Singh again approached him and the witness called his brother Sampuran Singh (defendant) in the Tehsil complex, Jalandhar where the agreement was extended by 15 days upto 18.12.1992. The extension of agreement was done on the agreement Ex.P-1 itself and the plaintiffs Kulwant

Singh, Dalip Kumar, defendant Sampuran Singh, Jaspal Singh and DW-2 Harbhajan Singh signed the endorsement of the agreement Ex.P-1 on 03.12.1992. Tara Singh was examined as DW-3, who deposed on oath that the defendant was arrested by police on 01.07.1993 and was kept in illegal confinement. Defendant was released on 01.07.1993 from the illegal confinement. Plaintiffs wanted to occupy the land forcibly with the police pressure without paying the consideration to the defendant. Gurnam Singh and Puran Singh were examined as DW-4 and DW-5 respectively, who supported the version of Tara Singh DW-3. HC Surinder Kumar appeared as DW-6, who proved DDR No.36 dated 09.06.1993 as Ex.D-6.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. Admittedly the defendant was owner of the suit property. Execution of agreement to sell Ex.P-1 was admitted between the parties. Receipt of amount of Rs.20 lakhs by the defendant was also admitted. An amount of Rs.10 lakhs was paid as earnest money and the second installment of Rs.10 lakhs was paid on 09.09.1992. Whereas 3rd installment to the tune of Rs.10 lakhs was to be paid on 03.12.1992. Admittedly, the date was extended by 18.12.1992 vide endorsement Ex.P-4. It was also admitted between the parties that originally the

defendant was agreed to sell 53 *Kanals* 18 *Marlas* of land, however subsequently it was agreed between the parties that 1 Kanal of land in dispute was to be left with the defendant vide endorsement dated 09.09.1992 Ex.P-3.

[12]. The question of readiness and willingness viz.-a-viz. the date 18.12.1992 is the bone of contention. Defendant has alleged that the plaintiffs were not having the amount of Rs.10 lakhs on 18.12.1992 as per agreement Ex.P-1 and endorsement Ex.P-4. On the other hand, plaintiffs have proved two demand drafts dated 03.12.1992 each in the sum of Rs.5 lakhs i.e. Ex.P-7 and Ex.P-8 which were got issued from Punjab National Bank in the name of the defendant.

[13]. Time and place for appearance pursuant to Ex.P-4 could not be elaborated, therefore, the plaintiffs alleged that they appeared before the Sub-Registrar to make payment of the amount in question to the defendant and also got their presence marked from the Sub-Registrar on the application Ex.P-3. Thereafter, plaintiffs had served the notice dated 21.12.1992 by alleging that the defendant had not received the amount of Rs.10 lakhs from them. The notice was proved from the reply dated 05.11.1993 Ex.D-7 sent by the defendant. Defendant alleged that the plaintiffs had not made the payment as per terms and conditions of agreement Ex.P-1, therefore,

agreement stood cancelled and the money already paid stood forfeited. The preparation of two demand drafts in the sum of Rs.5 lakhs each qua Ex.P-7 and Ex.P-8 were proved from the Bank record. The witnesses have appeared in the context of preparation of the demand drafts and cancellation thereof. The issuance of notice dated 21.12.1992 by the plaintiffs was admitted in view of reply sent by the defendant. The notice was served within one week from 18.12.1992 and in such eventuality, the defendant could have showed his readiness and willingness by asking the plaintiffs to send the demand drafts to him, but has not done so. The Courts below have taken the aforesaid gesture to be an instance of avoidance of the contract by the defendant. The forfeiture of the amount after cancellation of the agreement were recited in the reply by the defendant and the same was further supplemented by Ex.D-8.

[14]. Agreement dated 07.07.1993 Ex.D-1 was produced on record by the defendant to show that on 07.07.1993, the parties had arrived at an agreement vide which the vendee agreed to pay Rs.50 lakhs extra to the vendor and also agreed to execute the sale deed on 07.08.1993. The aforesaid pleadings and evidence brought on record were out of context of the *lis* between the parties arising out of agreement to sell dated 02.06.1992. The Courts below have rightly ignored the aforesaid

fact more particularly, in view of the fact that the defendant has failed to prove the execution of aforesaid agreement Ex.D-1 with reference to any material on record. No such plea was raised by the defendant in the written statement. Even the agreement did not bear the signatures of the plaintiffs. Plaintiff No.2 while appearing in the witness box as PW-6 was never confronted with the aforesaid agreement Ex.D-1. There was no such reference made in respect of aforesaid agreement Ex.D-1 in his statement while appearing as DW-1. The execution of agreement to sell dated 02.06.1992 was proved on record. The said agreement was a admitted document between the parties. Factum of Rs.20 lakhs received by the defendant in furtherance of agreement to sell was also an admitted fact. The Courts below have taken the aforesaid facts as an incident for proving due execution of agreement and holding readiness and willingness on the part of the plaintiffs.

[15]. Trial Court decreed the suit for specific performance of agreement to sell dated 02.06.1992 by holding that the agreement to sell was admitted. Receipts of earnest money and second installment were also admitted. Plaintiffs have proved on record issuance of two demand drafts by the Bank and ultimately cancellation of the same on account of their non-receipt by the defendant. All the aforesaid facts cumulatively

go in favour of the plaintiffs to show that they were ever ready and willing to perform their part of contract.

[16]. Before the lower Appellate Court, the defendant raised the plea that time was the essence of the contract. The lower Appellate Court held that the time was never the essence of the contract in view of facts and circumstances of the case. The suit property being an immovable property and in view of consented extension of agreement on record, the time was never the essence of the contract.

[17]. The appreciation of evidence recorded by the Courts below on Exs.D-1, D-7 and D-8 require no re-appreciation as the same cannot be done at the stage of Regular Second Appeal. The findings recorded under issue No.3 were the backbone of the entire case and other issues were dependent upon the findings under the said issue. Issue Nos.1 and 2 were dependent upon the discharge of onus by the defendant. Defendant did not lead any evidence with regard to the aforesaid issues and, therefore, issue Nos.1 and 2 were decided against the defendant and in favour of the plaintiffs. Issue No.4 was decided in view of findings recorded under issue Nos.1 and 3.

[18]. Though the appellant has tried to project issue of

readiness and willingness against the plaintiffs by terming the same as substantial question of law. Issue of readiness and willingness is dependent upon evidence on record and the same cannot be a pure question of law. The questions framed in para No.6 of the grounds of appeal are questions of fact. Nevertheless, the plea raised during course of argument in respect of time being the essence of contract was considered to be a question to be debated before the Court.

[19]. Having considered the arguments on the aforesaid issue, I am of the view that whether time was the essence of contract in the present case or not was dependent upon the background in which agreement to sell was executed. In the matters relating to sale of immovable properties, whether time is the essence of contract is an important question of law, as to decide upon the question whether the obligations undertaken by the parties under the contract are to be performed. As a general proposition of law, time is not the essence of the contract unless the parties to the contract intend to make the time as an essential condition for performance of the contract. The view expressed by the Hon'ble Apex Court in ***Sardamani Kandappan vs. S. Rajlakshmi and Ors., (2011) 12 SCC 18*** can be looked into. Again in ***Chand Rani vs. Kamal Rani, (1993) 1 SCC 519***, it was held by the Hon'ble Apex Court that in

case of sale of immovable property, there is no presumption of law as to time being essence of contract. Even when parties to the contract have expressly provided time to be essence of contract, then also such stipulation will have to be read along with other terms of contract as on proper construction of these terms may indicate towards excluding inference that the completion of work by particular date was meant to be fundamental.

[20]. In ***Citadel Fine Pharmaceuticals vs. Ramaniyam Real Estates Private Limited and others, (2011) 9 SCC 147***, the Hon'ble Apex Court held that time to be an essence of contract can be inferred from nature of properties and terms of agreement. The parties by their conduct or otherwise may also extend the time for performance of contract from time to time. The view expressed by the Hon'ble Apex Court in ***Panchanan Dhara and ors. vs. Monmatha Nath Maity (dead) Th. LRs and Anr, 2006(3) R.C.R. (Civil) 212*** can be looked into in this context. Once time is not proved to be an essence of the contract, then the view expressed by the Hon'ble Supreme Court in ***I.S. Sikandar (D) By Lrs. vs. K. Subramani and others, 2014(1) R.C.R. (Civil) 236*** does not apply, as in view of aforesaid proved facts on record, there was no necessity to challenge notice of cancellation of agreement to sell

[21]. In view of aforesaid legal position, the substantial questions of law as sought to be argued by learned counsel for the appellants in the context of time being the essence of contract in the present case stands negated. The appreciation of evidence done by both the Courts below cannot be re-appreciated on facts. No law point worth cognizance is found to be involved in the present case. This appeal is accordingly dismissed. All pending applications are also disposed of.

September 26, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No