

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

RSA-4503-2013

Date of decision: 26.2.2018

Bijender Singh and others

.....Appellants

Versus

Mahinder

.....Respondent

CORAM : HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate, for the appellants.

Mr. Vivek Singla, Advocate, for the respondent.

AMIT RAWAL, J. (ORAL)

The Appellants-defendants are in regular second appeal against the judgment and decree rendered by Lower Appellate Court whereby the appeal filed against the judgement and decree dated 6.8.2012 of the trial Court, dismissing the suit of the plaintiff-respondent has been allowed while decreeing the suit for possession by way of specific performance of an oral agreement to sell dated 15.11.2007.

Respondent/plaintiffs instituted the suit seeking specific performance of oral agreement to sell dated 15.11.2007 in respect of land measuring 01 kanal 19 marlas, for total sale consideration of Rs. 3 lacs against the receipt of Rs. 16,000/- as earnest money. The oral stipulated date for execution and registration of the sale deed was kept in the month of July 2008. The respondent/plaintiff instituted the suit on 08.01.2008 itself. Owing to the apprehension that defendants were dealing with the

property in the aforementioned injunction suit, the vendor/defendant No. 1 appeared and suffered a statement on 4.3.2008 that he would not alienate the suit property. On the basis of the aforementioned statement the suit was withdrawn, for, during the interregnum the plaintiff acquired the knowledge that the vendor had exchanged the land with Bijender Singh-defendant No. 2, appellant herein, vide exchanged deed dated 29.02.2008 who further sold the same to his wife defendant No. 3 vide sale deed dated 18.03.2008.

The aforementioned suit was contested by the defendants by denying the execution of the oral agreement, much less, receipt of the earnest money. It was stated that the defendants never entered into an agreement to sell, however, since he was an absolute owner of the property, the factum of sale deed was not denied, but to be valid and genuine document. The trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled for the specific performance of the oral agreement of dated 15.11.2007 (if so to what effect)? OPP*
- 2. Whether the plaintiff is still ready and willing to perform his part of contract? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has neither locus standi nor any cause of action to file the present suit? OPD.*

The respondent/plaintiff examined seven witnesses and produced on record the following documents in support of his case:-

- | | |
|---------------|--|
| <i>Ex. P1</i> | <i>Copy of jamabandi for the year 2003-2004.</i> |
| <i>Ex. P2</i> | <i>Copy of Fard Badar.</i> |
| <i>Ex.P3</i> | <i>Copy of mutation No. 3978.</i> |

<i>Ex.P4</i>	<i>Copy of no objection certificate.</i>
<i>Ex.P5</i>	<i>Copy of affidavit.</i>
<i>Ex.P6</i>	<i>Copy of affidavit.</i>
<i>Ex.P7</i>	<i>Copy of sale deed dated 29.2.2008.</i>
<i>Ex.P7</i>	<i>Copy of application for issuing no objection certificate.</i>
<i>Ex.P8</i>	<i>Copy of sale deed dated 18.3.2008.</i>
<i>Ex.P9</i>	<i>Copy of affidavit.</i>
<i>Ex.P10</i>	<i>Copy of affidavit.</i>
<i>Ex.P11</i>	<i>Copy of no objection certificate.</i>
<i>Ex.P12</i>	<i>Copy of no objection certificate.</i>

On the other hand, defendants had examined DW1 and DW2 and produced on record certain documents i.e. Copy of sale deed as Ex. D1, sale deed as Ex. D2 and mutation no. 4001 Ex. D-3.

In rebuttal, the plaintiff produced the copy of the order dated 21.04.2011 as Ex.P-13, copy of summons as Ex. P-14 and copy of report as Ex. P-15.

The trial Court on the basis of preponderance of evidence dismissed the suit by holding the agreement to be genuine and actually executed but the Lower Appellate Court reversed the findings of the trial Court while decreeing the suit. Hence the present appeal.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellants/defendants submitted that the respondent/plaintiff failed to incorporate the specific requirement of law i.e. the provisions of section 16 (c) of the Specific Relief Act, 1963. The suit is bereft of the aforementioned pleadings which are essential and necessary requirement of law. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court held in '**Man Kaur (dead) by LR's Vs. Hartar**

Singh Sangha, 2011 (1), RCR (Civil) 189'. He further submitted that the plaintiff miserably failed to prove the readiness and willingness, much less, the alleged presence before the Sub-Registrar on the stipulated date in July 2008. Even the suit was also barred by Order 2 Rule 2 CPC and objection qua maintainability was taken that once the breach had already been alleged giving an apprehension in the mind of the plaintiff, the suit could have been filed before the expiry of the stipulated date. In other words, there is no bar to claim the relief for specific performance in such circumstances. In support of his contention, he has relied upon the ratio decidendi culled out by this Court rendered in **'Lal Chand Vs. Tek Chand, 2013(5) RCR Civil 104'**, thus urges this Court for reversing the findings under challenge.

Learned counsel appearing on behalf of the respondent/plaintiff submitted that the conduct of the parties is to be seen for the purpose of granting the discretionary relief under Section 20 of the Specific Relief Act, 1963 Ex. P4 dated 17.12.2007, Ex. P5 dated 26.11.2007 and Ex.P7 dated 29.02.2009 showed the conduct of the plaintiff in honoring the oral agreement and therefore, cannot be permitted to deny the oral agreement before the Courts below, much less, the alleged non-compliance of provisions of Section 16 (c) of the Act.

The lower appellate court being the last Court of the fact and law, after appreciation of the evidence, rightly reversed the findings of the trial Court as the factum of execution of the said oral agreement had been proved to the hilt. In support of his contention he has relied upon judgment of this Court titled as **'Jasmer Singh Vs. Chanan Singh and**

others, RSA No. 1782 of 2012, decided on 28.11.2014', thus urges this Court for upholding the judgment and decree under challenged.

I have heard learned counsel for the parties and apprised the paper book of the view that there is force and merit in the submissions of Mr. C.B. Geol, Advocate. It would be apt to reproduce the paras No. 4 to 8 of the plaint as well as the provisions of Section 16 (c) of the Act, which are extracted below:-

Para Nos. 4 to 8

'4. That the defendant is a more and strong headed person and has developed greed in his mind due to the hike in the prices in the locality and he threatened that he shall get executed and registered the sale deed of the suit land in favour of some person other than the plaintiff, for which he has got no right, title or interest. Thus the plaintiff was constrained to file a suit for permanent injunction bearing no. 10/2008 on dated 8.1.2008 before the hon'ble court. In that case the defendant tried to evade the service of summons on him for the date 17.01.2018, when the summons were duly served through his daughter-in-law. But later on, the case was fixed for 04.03.2008 and the summons for the same were duly served on the defendant on dated 28.02.2008. Hence the pendency of the suit was well within the knowledge of the defendant on dated 28.02.2008. But the defendant with ulterior designs and motive entered into a sham transaction with the defendant No. 2 and executed an exchange deed in favour of the defendant No. 2. This deed was without any transaction and the same has been mentioned in the exchange deed bearing no. 3410, dated 29.02.2008 and the stamps for the same have been purchased on 28.02.2008. A copy of the same is attached with the plaint for the kind perusal of the hon'ble court along with the copies of the

served summons.

5. *That on dated 4.3.2008 the defendant appeared before the hon'ble court that the defendant shall not sell the property in dispute, without the prior permission of the hon'ble court and the defendant shall also inform about the particulars of the vendee to the hon'ble court. But at that time the defendant did not intentionally inform the hon'ble court that he has already exchanged the land in dispute with the house of the defendant no. 2. Even this fact, has been kept concealed by the defendant till date because he has intentionally not filed any written statement before the hon'ble court. Hence, the act and conduct of the defendant is bound by the principle of lispence.*

6. *That the another act which was committed by the defendant no. 1 to give effect to his evil designs was that the defendant no. 1 again executed a fraudulent sale deed in favour of the defendant no. 3, who is the wife of the defendant no. 2 and by this act the house of the defendant no. 2 which was fraudulently transferred in name of the plaintiff was again given back to the defendant no. 3. Thus by this planning the land of the defendant no. 1, which was agreed to be sold to the plaintiff has been transferred to the defendant no. 2 and the house of the defendant no. 2 has been returned back to the defendant no. 2 through his wife i.e. defendant no. 3. It is very significant that both the exchange deed and the sale deed dated 18.03.2008 have been signed/thumb marked by the defendant no. 2. Thus the illegal motive of the defendants is duly proved. The copies of the exchange deed dated 29.02.2008 and the sale deed dated 18.03.2008 are attached with the plaint for the kind perusal of the hon'ble court. Hence, these sale deed and the exchange deeds are illegal, null and void ab initio and not binding upon the rights of the plaintiff.*

7. *That the defendant no. 2 and 3 are very strong and hot headed persons and they have threatened to alienate the suit land as detail given in para no. 1 of the plaint to some other person and if the defendants no. 2 and 3 succeed in their evil designs then an irreparable loss and injury would be caused to the plaintiff which cannot be compensated in any manner.*

8. *That the plaintiff requested the defendants several times to declare the exchange deed dated 18.03.2008 and the consequent sale deed dated 29.02.2008 as null and void but the defendants are adamant and have finally refused to accede to the request of the plaintiff on dated 15.04.2008. Hence, the present suit has been filed before the hon'ble court.'*

Section 16 (c) of the Specific Relief Act

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.'

On conjoint reading of the aforementioned provisions, it is evident that there has been no compliance of Section 16 (c) of the Act. I am in agreement with the ratio decidendi culled out in the judgment rendered in **Lal Chand's case** (supra) but the fact of the matter is that in

that case the plaintiff had complied with the statutory requirement of law and the defendant was prevented to take up that plea but I am of the view that plaintiff has not discharged the onus by complying with the statutory requirement of law. This view of mine is supported by the judgment rendered in **Man Kaur's case** (*supra*).

In **Jasmer Singh's case** (*supra*), after framing the substantial question of law, the Court granted the specific relief by taking into consideration the conduct of the plaintiff, but the fact of the matter is that there was pleading in the plaint qua readiness and willingness. In the absence of the compliance of Section 16 (c) of the Act the suit must fail and rightly so, the trial Court dismissed the same.

Mr. Singla, during the course of the hearing has also referred the judgment titled as **'Mst. Sugani Vs. Rameshwar Das and anr., 2006 (4) R.C.R. (Civil) 319'** to contend that the basic principle behind Section 16 (c) read with Explanation (ii) is that any person seeking relief of the specific performance of contract must manifest his unblemished conduct which the respondent-plaintiff had been able to prove, I am of the view that the aforementioned documents could not have or would not help the plaintiff for want of statutory requirement of compliance of provisions of the Act. All these facts in my view have totally been ignored by the Lower Appellate Court, thus there is an abdication and perversity.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi (dead) through LRs and others V/s.**

Chandrika and others AIR 2016 SC 1213”, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the*

Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons the judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of trial Court is restored.

The appeal is accordingly allowed.

(AMIT RAWAL)
JUDGE

26.02.2018
jyoti-3

- | | | |
|----|------------------------------|-----------------|
| 1. | Whether reportable? | Yes / No |
| 2. | Whether reasoned / speaking? | Yes / No |