

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1088 of 2015 (O&M)

Date of Decision: April 30, 2018

Sudhir Kumar Jain

...Appellant

Versus

Mohinder Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Hitesh Sood, Advocate,
for the appellant.

Mr.Sandeep Bansal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Addl.District Judge, Hoshiarpur, whereby the suit seeking specific performance of the agreement to sell dated 1.9.1997 decreed by the trial Court vide judgment and decree dated 7.10.2011, has been dismissed.

Appellant-plaintiff instituted the aforementioned suit on 30.9.2005 seeking specific performance of the agreement to sell, *ibid*, in respect of land measuring 10 marlas out of land measuring 38 kanals 2 marlas bearing Khasra No.1413, Khewat/Khatauni No.170/671, situated in the revenue estate of Premgarh, Hoshiarpur, Hadbast No.247 as per jamabandi for the year 2001-2002 on the premise that the defendant had agreed to sell the same for a total sale consideration of ₹50,000/- against receipt of ₹30,000/- as earnest money. The possession was also to be delivered after receiving the balance sale consideration. Defendant refused to execute the sale deed and violated the terms and conditions of the

agreement.

It was averred that on 27.1.1998, the time for execution of the sale deed was extended upto 31.12.1998 and again on 30.12.1998 upto 3.12.2000 and further on 3.12.2000 upto 30.9.2002, whereby defendant received another sum of ₹10,000/- in addition to ₹30,000/-. Since the respondent-defendant did not come forward for execution of the sale deed and the appellant-plaintiff remained present on 29.9.2005 before the Sub Registrar in the company of Upinder Sud, gave cause of action to file the suit on 30.9.2005.

The aforementioned suit was contested by the respondent-defendant denying the agreement to sell by stating it to be forged and fabricated document, much less the extension being forged. It was stated that it was a loan transaction and the defendant had not intended to sell the land as alleged by the plaintiff. In other words, the agreement was executed only as a security of debts.

Since the parties were at variance, the trial Court framed as many as six issues including relief, which read as under:-

- “1) Whether the defendant entered into an agreement to sell dated 1.9.1997 for land measuring 10 marlas for total consideration of Rs.50,000/- and received an amount of Rs.30,000/- as earnest money which was further extended till 27.1.1998, 31.12.1998, 30.12.1998, 3.12.2000, 30.09.2002? OPP*
- 2) Whether the plaintiff is still ready and willing to perform his part of contract? OPP*
- 3) Whether the plaintiff is entitled for relief of specific performance of agreement to sell dated 1.9.1997? OPP*
- 4) Whether the suit is within limitation? OPP*
- 5) Whether the plaintiff has not come to the court with*

clean hands? OPD

6) *Relief.”*

Appellant-plaintiff examined six witnesses, namely, PW-1 Upinder Sud, PW-2 Sansar Singh, PW-3 Gurjit Ram Sarpanch, PW-4 Sudhir Kumar Jain plaintiff himself, PW-5 Tripta Devi, Junior Assistant office of Sub Registrar, Hoshiarpur and PW-6 Sushil Kumar, Deed Writer.

On the other hand, respondent-defendant examined three witnesses, i.e., DW-1 Darshan Lal, DW-2 Sunil Dutt Walia and himself as DW-3.

The trial Court, on the basis of the aforementioned evidence, decreed the suit by granting discretionary relief under Section 20 of the Specific Relief Act calling upon the defendant to execute the sale deed after receipt of balance sale consideration of ₹10,000/-. In appeal laid before the Lower Appellate Court by the defendant, the judgment and decree of the trial Court has been set-aside on the premise that the appellant-plaintiff failed to prove the last extension from 3.12.2000 to 30.9.2002 as the signatures of Mohinder Ram did not tally with the admitted signatures.

Mr.Hitesh Sood, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the Lower Appellate Court is not only fallacious but perverse, for, no Handwriting Expert has been examined by the respondent-defendant to belie the signatures. In essence, the agreement to sell had been admitted, but it was stated to be a security of debt, thus, there was no occasion for the Lower Appellate Court to assume the role of expert as per Section 45 of the Indian Evidence Act.

He further submitted that the readiness and willingness had specifically been pleaded in Para 4 of the plaint, which has been proved to

the hilt through the testimony of attesting witness Upinder Sud and the receipt of the earnest money and the additional amount of ₹10,000/-. The trial Court examined the evidence threadbare and granted the discretionary relief, therefore, the judgment and decree of the Lower Appellate Court is liable to be set-aside.

Per contra, Mr.Sandeep Bansal, learned counsel representing respondent-defendant submitted that the Court has wide power to assume the role of an expert in the absence of the evidence, for, there was a categorical denial of the execution of the agreement to sell as it was stated to be outcome of forgery and fraud. With the naked eye, the signatures on the last extension do not tally with the admitted signatures on the previous extension and the original agreement, though it was executed as a security of debts. Even otherwise, the readiness and willingness is conspicuously wanting as no explanation has come forth. There has to be continuous readiness and willingness and in support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **B.Vijaya Bharathi Vs. P.Savitri and Ors., 2017 (4) CCC 291 (SC)** and, thus, urged this Court for dismissal of the appeal.

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

The discretionary relief cannot be granted as a matter of right. It has to be seen from the facts and circumstances of each case. The aforementioned proposition of law has been recently laid down by the Hon'ble Supreme Court in **Shivaji Yallappa Patil Versus Sri Ranajeet**

Appasaheb Patil & Others, 2018 SC Online SC 383, wherein in Para 11, it has been held that the Court should properly exercise discretion to decree specific performance, in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. There is no such assertion in the plaint except bare reading of averments in Para 5 of the plaint, which read thus:-

“5. That the cause of action arose to the plaintiff on 1.9.97, 27.1.98, 30.12.98, 3.12.2000, 30.9.2002 and the plaintiff remained present in the office of sub registrar Hoshiarpur on 30.9.2002 but the defendant did not turn up to execute the sale deed and on the different dates when the defendant did not execute the sale deed despite of requests by plaintiff and a day before yesterday when the plaintiff remained present in the office of Sub-Registrar Hoshiarpur in the company of Upinder Sud s/o Gori Shankar Sud, r/o Garhi Gate near old Kanak Mandi Hoshiarpur, but the defendant did not turn up to execute the sale deed. Hence this suit.”

No prior notice has been sent to the respondent-defendant to appear before the Sub Registrar on 29.9.2005 and his appearance was an unilateral act, which would enable him to over come the rigors of Section 16 (c) of the Specific Relief Act. Be that as it may, with the naked eyes, the signatures of Mohinder Ram, i.e., on the last extension dated 30.12.1998 extending the period for execution and registration of the sale deed upto 30.9.2002 do not tally with the admitted signatures on the original agreement to sell or second extension. This Court can always assume the role of expert as per Section 45 of the Indian Evidence Act, which reads as under:-

“45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science or art, or as

to identity of handwriting ³⁵ [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, ³⁶ [or in questions as to identity of handwriting] ³⁵ [or finger impressions] are relevant facts. Such persons are called experts.”

The aforementioned findings can always be looked into by this Court, even if other party had not been able to examine the expert as it is common practice that the expert goes to the lines of the party who engages him. The Lower Appellate Court correctly applied the principles by noticing the entire evidence in rendering the findings against the appellant-plaintiff by setting-aside the judgment and decree as the trial Court failed to advert to the aforementioned facts.

The argument of Mr.Bansal has force as in **B.Vijaya Bharathi's case (supra)**, it has been held that the readiness and willingness has to be continuous, whereas the plaintiff has not been able to prove as to which act had been performed from the expiry of last extension, i.e., from 30.9.2002 till filing of the suit.

For the reasons stated above, I do not find any illegality or perversity in the impugned findings. No ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

April 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No