

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

**RSA No.2634 of 2016
Date of Decision: 13.03.2018**

Kewal Krishan Ahluwalia through LRs. RajinderAppellant

Vs.

Shavinder SinghRespondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Harpreet Kaur Advocate, for
Mr.K.K.Goel, Advocate for the appellants.

RITU BAHRI, J. (ORAL)

Appellant has come in appeal against the judgment of the trial Court dated 11.11.2011 and learned appellate Court dated 18.02.2016 whereby, suit filed by the plaintiff for possession of land measuring 16 kanals by specific performance of the agreement to sell dated 05.06.2003 has been decreed after payment of balance sale consideration of Rs.5,50,000/- to the defendants.

The brief facts of the case are that defendant Kewal Krishan (deceased) was owner of the land fully detailed about in the head note of the plaint. The defendant vide an agreement to sell dated 05.06.2003 agreed to sell the land detailed in the head note of the plaint to the plaintiff for a consideration calculated @ Rs.3,75,000/- per acre and received an amount of Rs.3,75,000/- per acre and received an amount of Rs.2,00,000/- earnest money from the plaintiff at the time of execution of the agreement to sell. It was stipulated that the remaining sale consideration would be paid on or

the expenses for the execution and registration of the sale deed would be borne by the plaintiff and the plaintiff could get the sale deed executed in his own name or in the name of any of his nominees. It was also stipulated that in case of failure of the defendant to perform his part of the agreement, the plaintiff could get the sale deed executed through court of law and could also recover the costs of litigation. In case of failure of the plaintiff to perform his part of the agreement, the earnest money paid was to stand forfeited. It was further submitted that plaintiff has always been ready and willing to perform his part of the agreement and has also been possession of sufficient money to pay the balance sale consideration and to bear the necessary expenses. On 30.11.2003 the date fixed for execution of the sale deed was a holiday and as such the plaintiff remained present in the office of Sub Registrar Tanda on 01.12.2003 with the balance sale consideration and enough money to bear necessary expenses, but the defendant did not turn up to execute the sale deed and as such the sale deed could not be executed. The defendant has thus failed to perform his part of the agreement. It is further submitted that the plaintiff has been contacting the defendant, but he has been dilly delaying the matter. It is submitted that the plaintiff has now come to know that the defendant has also entered into an agreement dated 22.10.2001 with on Kubir Singh regarding this very property and suit for specific performances has also been filed by said Kulbir Singh against the defendant which is pending in the Court of Sh.Raman Kumar, Civil Judge (Jr.Divn.), Hoshiarpur. It is further submitted that the plaintiff is still ready and willing to perform his part of agreement and was having sufficient money to pay balance sale consideration and necessary expenses since the

entitled to execution of the sale deed in his favour by a decree of specific performance. It was alleged that if the agreement to sell earlier executed by the defendant in favour of Kulbir was held to be valid and the land in dispute cannot be transferred in the name of plaintiff for some other reason, the plaintiff in that case was entitled to a decree for recovery of Rs.6,00,000/- which includes Rs.2,00,000/- paid as earnest money of the plaintiff for such a long period and also on account of the fact that prices of the properties have risen many folds.

On notice, of the suit was given to the defendant who appeared through his counsel and filed written statement took preliminary objections that the plaintiff has not come to the Court with clean hands and has suppressed the true and real facts from this Court and thus is not entitled for any discretionary relief under the Specific Relief Act. It is submitted that one Parminder Singh Shahi son of Avtar Singh resident of Village Sarhala Mundian, entered into agreement to sell with the defendant and got three sale deed executed in favour of his nominees on different dates and last sale deed was executed at the instance of Parminder Singh Shahi on 05.06.2003 in favour of Paramjit Singh and Gurdip Singh Shahi on 05.06.2003 in favour of Paramjit Singh and Gurdip Singh representing them as his nominee and he got the present agreement to sell executed in favour of plaintiff and the defendant never received any amount from the plaintiff as alleged, hence, the said Parminder Singh Shahi was necessary party to the present suit. It is further alleged that a false civil suit has been got filed by Parminder Singh Shahi and plaintiff from one Kulbir Singh which is pending adjudication at the Court at Hoshiarpur and in the end prayer for dismissal of the suit has

has nothing to do with the present agreement to sell which was executed by the defendant directly in favour of the plaintiff. Further the averments made in the written statement were denied and that of plaintiff were asserted to be correct. On the basis of pleadings of the parties, the trial Court had framed the issues.

To prove these issues plaintiff examined Harinder Singh who is attorney of plaintiff examined Hirinder singh who is attorney of plaintiff as PW-1 and reiterated whole of the case as per contents of plaint. PW-1 proved on record copy of power of attorney as Ex.P-1, agreement dated 05.06.2003 as Ex.P-2, affidavit marking presence before sub-Registrar as Ex.P-3. PW-2 Kaushal Kumar, deed writer has proved on record original agreement Ex.P-2, photocopy of relevant page of register where entry of Ex.P-2 was entered as Ex.P-4.

To rebut the issue, Sandip Ahluwalia son of deceased defendant Kewal Krishan, appeared in the witness box as DW1 who deposed as per the averments of written statement. DW-1 also relied upon the certificate copy of plaint of civil suit filed by Kulbir Singh and certified copy of written statement filed by defendant as Ex.DW-2. The other documents relief upon by the defendant are copies of two sale deed dated 22.07.2002 and one sale deed dated 05.06.2003 as Mark-A to Mark-C, copy of agreement to sell in favour of Kulbir Singh as Mark D, copy of another agreement of Mark-E.

Learned trial court has decreed the suit on the ground that execution of the agreement dated 05.06.2003 stands duly established by the evidence of attorney of plaintiff Harinder Singh. His testimony was also duly corroborated by the evidence of deed writer PW-2 Kaushal Kumar.

to sell dated 05.06.2003 in written statement. The plead of the defendant was that in fact the said agreement was got prepared by one Parminder singh in favour of plaintiff but no consideration amount was received by the defendant and the present suit had been filed just to harass the defendant. However this plea was merit less in view of the fact that not even a single question was put to PW-2 deed writer who specifically deposed that an amount of Rs.2 Lacs was received by Kewal Krishan as earnest money who signed the agreement to sell dated 05.06.2003 after the said was read over and explained to the parties. It was well settled law that when a witness was not put a question regarding the particular fact, the court is to assume that the statement of the witness on that particular fact has been accepted by the opponent. Thus the defendant was supposed to put this witness the question regarding non passing of the consideration amount which was not put at any time meaning thereby that the defendant did not dispute the fact that an amount of Rs.2 Lacs was paid by the plaintiff to the defendant at the time of execution of the agreement to sell. No question to PW-1 Harinder Singh also in this regard despite of the fact that the factum regarding payment of consideration was specifically deposed by the attorney holder in his affidavit. Moreover the defendant witness DW-1 Sandip Ahluwalia had admitted the signatures and photograph of his father on agreement to sell Ex.P-2. He has also admitted the fact that his father was an educated person who retired from Law Department from the post of Legal Advisor. In view of the fact the plea of the counsel for the defendant that the plaintiff was to examine the attesting witness also since the fraud had been pleaded by the defendant, becomes irrelevant and inconsequential. Moreover, it was for the defendant to prove the fact regarding fraud played on him which he

miserably failed to prove because of the fact that if the signatures of a person were admitted, then the onus shifts on the person who admitted the signatures on a document to prove that it was obtained on blank papers or it were taken under undue influence or by fraud. In the facts and circumstances of the present case, the Court cannot be oblivious of the facts that no plea disputing the readiness and willingness was ever taken by the defendant in his written statement, the defendant witness DW1 feigned total ignorance as to whether his father ever came to Hoshiarpur on the date fixed in the agreement, no cross examination was ever conducted on this fact of PW-1 i.e. attorney who specifically deposed in his affidavit Ex.PW1/A that he was well conversant with the facts of the present case and the plaintiff was always ready and willing to perform his part of contract. This witness also proved on record the affidavit Ex.P3 of the plaintiff whereby he got marked his presence before the Sub Registrar on 01.12.2003 as 30.11.2003 was holiday.

Learned appellate Court has also affirmed the judgment of the trial Court by referring to the judgment of the Supreme Court in the case of Rattan Dev Vs. pasam Devi reported vide 2002 (2) Apex Court judgments, 354 and also of the case of Prem Sagar Vs. Darbari Lal reported vide 2000 (2) Civil Court cases, 606 wherein, it is held that whenever there is other oral and documentary evidence available on record to prove the version of the plaintiff, so in these circumstances non appearance of the plaintiff does not effect merit of the case. Both the Courts had rightly taken note of the fact that scribe was never cross examined on this point as to the fact that scribe was never cross-examined on this point as to the fact that amount of Rs.2

scribe which was Ex.PW2/A on the file clearly goes to show when he deposed that photograph of the parties were affixed and amount of Rs.2 lacs was received by the defendant as earnest money in his presence. So this ingredient is also proved on record that earnest money was also paid. The execution of the document has been admitted payment of earnest money stood proved and the affidavit sworn before the sub registrar has also proved the factum of readiness and willingness. So, in these circumstances no adverse inference can be drawn in this case and learned trial court has rightly held so. General law as settled by the Apex Courts is that when plaintiff proves the existence of agreement to sell in his favour coupled with the evidence that he had been ready and willing to perform his part, grant of specific relief to him is normal rule and for declining such relief there has to be some special circumstances. In Jora Singh vs. Lakhwinder Kumar 2011 (2) Civil Courts Cases 113, it was held that sending of notice by plaintiff to defendant requesting him to execute sale deed and there after filing civil suit is sufficient to prove his readiness and willingness.

So in view of the above, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

13.03.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No