

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

RSA No.2251 of 2015 (O&M)
Date of decision: 20th February, 2018

Shiksha Devi

... Appellant

Versus

Gian Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Dinesh Arora, Advocate for the appellant.

Mr. S.S. Dinarpur, Advocate for the respondent.

FATEH DEEP SINGH, J.

In this second regular appeal, the factual scenario is that the plaintiff Gian Chand who happens to be the cousin brother of husband of appellant Shiksha Devi, entered with the latter an agreement to sell dated 13.01.2006 by way of an agreement of sale of land measuring 2 bighas 7 biswas being 1/8th share of total land measuring 8 bighas and 1 biswa duly depicted in the plaint. As is there and is writ large on the records and so is adduced in the arguments, the defendant happens to be the owner of the property in question and had agreed to sell the same to the plaintiff for a total sum of Rs.5.00 lacs and out of which she received Rs.2.00 lacs and balance amount of Rs.3.00 lacs was to be paid within one year ending on 12.01.2007. As is there and is admitted, out of this amount of Rs.3.00 lacs on 09.01.2007 Rs.50,000/- were received by the defendant

thus leaving a balance of Rs.2.50 lacs and on the same very date period of execution of the sale deed was extended by one year till 11.01.2008. Subsequently, on 07.01.2008 another amount of Rs.50,000/- was paid and the period was extended upto 28.04.2008. Then on 26.04.2008 another Rs.10,000/- were given and the period was extended to 30.10.2008 and on 27.10.2008 a sum of Rs.90,000/- stood paid and therefore a total balance of Rs.1.00 lac remained and the period was extended upto 10.01.2009. The present suit has been filed on 06.04.2009.

The claim of the defendant is that it was not an agreement of sale but only a loan transaction. The trial Court framed following issues:

1. Whether the plaintiff is entitled for possession of the suit land by way of specific performance of the agreement to sell dated 13.01.2006? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
5. Whether the plaintiff has not come to the Court with clean hands and concealed the true and material facts from the Court? If so, to what effect? OPD
6. Relief.

The Court of learned Civil Judge (Senior Division), Bilaspur, Yamuna Nagar decreed the suit of the plaintiff with costs through judgment and decree dated 31.05.2014 and which finding was upheld in appeal by the Court of learned Additional District Judge, Yamuna Nagar at Jagadhri through judgment and decree dated 27.11.2014.

Appreciating the submissions of the two sides, the only moot point that has been brought about in the submissions of the two sides is as to whether it was in fact an agreement to sell or a loan transaction, as none of the essentialities regarding payment and extension of period at any point of time is put to question by any of the sides.

Pondering over the relative stands of the two sides, it is the admitted case that the alleged agreement to sell was executed on 13.01.2006 and the period of execution of the sale deed was one year and which was to end on 12.01.2007 and out of the total amount of Rs.5.00 lacs, Rs.2.00 lacs were paid and thus, leaving a balance of Rs.3.00 lacs. On 09.01.2007 Rs.50,000/- were given and the period of execution of the sale deed was extended by another one year ending on 11.01.2008 thus, leaving a balance of Rs.2.50 lacs. Thereafter, on 07.01.2008 another amount of Rs.50,000/- was paid and the period was extended upto 28.04.2008. Similarly, Rs.10,000/- were given on 26.04.2008 and the period was extended to 30.10.2008 and then on 27.10.2008 Rs.90,000/-

were paid and the period was extended upto 10.01.2009 and at that point of time there was a balance of Rs.1.00 lac.

From this all, it emancipates that the agreement which was executed on 13.01.2006 and the sale deed was to be executed by 12.01.2007 stood extended upto 10.01.2009 on more than four occasions for almost three years and leaving a balance of Rs.1.00 lac out of the total amount of Rs.5.00 lacs, only shows that the plaintiff was neither in a hurry to get effected the agreement to sell Ex.P1 nor had any intention to do so and rather it sufficiently bears out from the corroborative circumstances that his only and only object and motive was money, apparently which he must have let out to the defendant and which is the stand of the defendant in her written statement that it was a money transaction and not agreement for the sale of property of the defendant. All these circumstances of receiving money and extending period further lends corroboration to the fact that there was something else than what meets the eye and the very intent of the parties to the same. Had it been so, why the plaintiff kept on waiting for almost three years making small payments in the intervals, are matters which certainly has a cascading effect in the mind of Court that all was not well with the case of the plaintiff. No doubt, the courts below while adjudicating on the issues have considered the agreements, Ex.P1, Ex.P3, Ex.P5, Ex.P7, Ex.P8 and the receipts Ex.P2, Ex.P4, Ex.P6 and Ex.P9, and suggestions have been

put to the plaintiff that on this loan amount 12% interest was agreed upon by the parties.

No doubt, the defendant in her testimony as DW1 in cross-examination accepts her signatures on the agreements Ex.P1, Ex.P3, Ex.P5, Ex.P7 and Ex.P8 but that does not mean and can be construed that stand of the plaintiff is bona fide and truthful. Even DW2 Deepak Kumar @ Bansi has corroborated on material points this testimony of the defendant that it was a loan transaction.

Though with much fanfare learned counsel for the plaintiff/respondent Mr.S.S. Dinarpur has sought to place reliance on **‘Tamil Nadu Electricity Board v. N. Raju Reddiar’ 1996(3) RCR (Civil) 454; ‘Gurbachan Singh & another v. Gurmit Singh’ 2003(4) RCR (Civil) 223; ‘Mulakh Raj v. Kishan Kaur & others’ 2014(2) Law Herald 1530; ‘Jeet Singh v. Bahadur Singh’ 2009(4) RCR (Civil) 196; ‘Mir Singh & others v. M/s Puri Constructions (P) Ltd.’ 2004(4) RCR (Civil) 267; ‘Surjit Singh v. Nanak Singh’ 2009(5) RCR (Civil) 191; ‘Diwan Chand v. Kuldeep Kumar Mehta’ 2008(2) RCR (Civil) 284; ‘Randhir Singh v. Birbal Singh’ 2011(1) CivCC 504; and ‘Kurshid Akbar v. Smt. Kalia Rani’ 2012(4) PLR 325** to hammer home the point that once a contract is reduced into writing, Section 91 of the Evidence Act bars any of the parties to it to prove terms of the contract and that nothing extraneous can be read into it when the parties have a written

document between them. However, at the same time a party can tell lie but the circumstances not. The circumstances in which these transactions have been brought about over a period of three years, certainly put at knots the case of the plaintiff and which aspect could not be taken cognizance of by the courts below, which purely on the premise that an agreement to sell was executed, have decided the same on the basis of documents before them rather than giving real meaning and intent taking into consideration the circumstances surrounding these transactions. A close scrutiny and look at the documents Ex.P1 to Ex.P9 shows the manner of their execution however, it appears that signatures on blank papers have been obtained and the repeated signatures double making sure that amount has been received and repeatedly obtaining signatures of Shiksha Devi on the same is another distressing feature that all was not well with these documents and there is over-stressing of the things which is apparent from these documents. Rather lends credence to this plea raised by learned counsel for the defendant appellant Mr. Dinesh Arora. The courts to dispense justice, are supposed to do social justice as well and to have determination to do real justice rather than paper justice. From these circumstances, it clearly implies and substantially proves the stand of the defendant by preponderance of probabilities that her stand right from the filing of the written statement and the evidence rather

displaces case of the plaintiff that it was an agreement to sell between the parties.

Moreover, where justice demands that the grant of the relief of specific performance is just reasonable or proper, the Court has to grant the relief but at the same time it would, if necessity is, so weighing the pros and cons assigning reasons in support thereof, grant any other relief than the one prayed for by way of specific performance of the contract. The plaintiff, as discussed above, did not file the suit with promptitiveness and kept waiting for almost three years, though filing the same within limitation, but his stand of getting so many extensions of period of executing sale deed is rather suggestive of his lack of readiness and willingness. Reliance placed on '**Smt.Jamila Khatoon & others v. Ram Niwas Gupta**' 1998 AIR (Allahabad) 138, which has placed reliance on AIR 1996 SC 2150. Though in view of Section 22(1)(a)(b) of the Specific Relief Act, even alternate prayer has not been made, disentitles the plaintiff to any relief but taking a lenient view in view of only an "alternative" prayer made in the prayer clause necessitates the same but not damages/compensation, as equity demands so.

In the light of these discussions, the findings of the two courts below on various issues and the factual disparity of the cited ratios, this Court is of the opinion that there has been denial of ultimate and true justice and the findings of the courts below are not only illegal and

perverse and needs to be set aside by way of partly acceptance of the present appeal thereby setting aside the impugned judgments. However, the suit of the plaintiff is decreed for a sum of Rs.5.00 lacs the initial amount paid along with interest at the rate of 6% per annum on the amount from the date of agreement i.e. 13.01.2006 till realization. The appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

February 20, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No