

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

**RSA No.448 of 2016 (O&M)
Date of decision:06.12.2018**

Ram Kumar

... Appellant

Vs.

Jang Sher Singh @ Jam Sher Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Tacoria, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal at the instance of appellant-defendant no.3 in civil suit no.807 of 2003 titled as “Janeshwar vs. Jangsher Singh @ Jam Sher Singh and others” and plaintiff in civil suit no.203 of 2006 titled as “Ram Kumar vs. Jangsher Singh alias Jamsher Singh and others” is directed against the judgments and decrees of both the Courts below.

The plaintiff claimed the specific performance of the agreement to sell dated 20.05.2002 alleged to have been executed by defendants no.1 and 2 in the second suit for a total sale consideration of Rs.2,20,000/- per acre against the receipt of earnest money of Rs.1,00,000/- in respect of land measuring 14 kanals. The stipulated date for execution and registration of the sale deed was 19.12.2004.

The present suit was filed on 16.12.2006. The plaintiff in support of the aforementioned averments examined one attesting witness

Jagpal Singh and scribe and also brought on record a very important and relevant document i.e. Ex.P3 written statement of the vendors in first suit for injunction, wherein, the vendors admitted the execution of the agreement to sell, in question. However, in the instant suit, defendants/vendors denied the execution of the agreement to sell but stated to be a loan transaction.

The trial Court dismissed the suit by holding that the plaintiff was not ready and willing to perform his part of the contract. The appeal taken before the Lower Appellate Court was also dismissed.

Mr. R.S.Tacoria, learned counsel appearing on behalf of the appellant submitted that judgments and decrees of both the Courts below suffer from illegality and perversity as there was misreading of the statement of the attesting witness, who categorically stated that earnest money was paid to the defendants before the Registrar as the agreement to sell was registered and on this point negated the plea of readiness and willingness as enshrined under Section 16(c) of Specific Relief Act, 1963 (for short “1963 Act”). In such circumstances, the plaintiff is entitled to the discretionary relief under Section 20 of 1963 Act.

I am afraid the aforementioned arguments are not sustainable, for, as except the bald averment in paragraph 5 of the plaint, which is extracted herein-below:-

“That the plaintiff has always been and is still ready and willing to perform his part of contract but on the other hand, the defendants no.1 and 2 are not willing to perform their part of contract.”

no piece of evidence either by the plaintiff or through any other independent witness has been brought on record as what steps the plaintiff had been taking from expiry of the stipulated date i.e. 19.12.2004 to 16.12.2006 when the suit was filed.

The plaintiff has to aver and plead the continuous readiness and willingness from the date of the execution of the agreement to sell, during its subsistence, till the filing of suit, during pendency of suit and till passing of the decree. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **B.Vijaya Bharathi Vs. P.Savitri and others 2018(1) RCR (Civil) 4**. For the sake of brevity, paragraph 15 of the judgment reads thus:-

“15. Ram Awadh (supra) is a judgment by three Judges of this Court overruling Jugraj Singh vs. Labh Singh , (1995) 2 SCC 31, in which it was held that the plea that the plaintiff is not ready and willing to perform the contract is personal only to the seller-defendant. Subsequent purchasers cannot take this plea. This was stated to be an erroneous view of the law by the three Judge Bench, and the judgment in Jugraj Singh was set aside as follows:-

"6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a),(b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to

prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh Case is erroneous."

The plaintiff failed to prove his presence before the office of Sub-Registrar on the stipulated date. In such circumstances, despite the admission of the vendors with regard to the execution of the agreement to sell, not able to overcome the hurdle of statutory provisions of Section 16(c) of 1963 Act. This is what the import of the judgments and decrees of the Courts below.

No ground is made out for interference in the impugned judgments and decrees of the Courts below, much less no substantial question of law arises for adjudication of the present appeal.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 06, 2018
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No