

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

RSA No.4657 of 2015(O&M)

Date of decision : 23.03.2018

Pawan Kumar

....Appellant

versus

Nathu Ram(deceased) through LRs

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sudhir Paruthi, Advocate for the appellant.

Mr.APS Mann, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree dated 16.3.015 rendered by the Lower Appellate Court whereby the appeal of the respondent-defendant in part had been allowed by setting aside the judgment and decree dated 09.07.2014 by which the trial Court had granted the discretionary relief of specific performance of agreement to sell dated 25.6.2005.

Appellant had entered into an agreement to sell with late Nathu Ram, predecessor-in-interest of the defendants(who are the legal heirs) on 25.6.2005 for a total sale consideration of Rs. 1 lac by payment of Rs.20,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 25.6.2006. The suit was preceded by a legal notice dated 19.7.2006 but was filed on 29.03.2008. It is the categorical case of the plaintiff that the respondent-defendant did not come

forward as Nathu Ram-vendor had died and his LRs did not honour his wish necessitating the plaintiff to send legal notice nor he got the sale deed executed and registered in his favour.

The aforementioned suit was contested by the respondent-defendant by denying the agreement to sell. It was stated by him that it was a loan transaction. The plaintiff being a money lender had given an amount of Rs. 20,000/- to him as a loan. There was a practice among the parties of executing agreement to sell for the purpose of obtaining loan.

Both the parties examined their witnesses in support of their case. Appellant-plaintiff examined as many as 11 witnesses whereas the respondents examined three witnesses. On the basis of the aforementioned evidence, the trial court decreed the suit but the Lower Appellate Court partly accepted the appeal by confining the relief of returning double the amount of earnest money along with interest at the rate of 6% p.a. from the date of execution of agreement to sell i.e. w.e.f. 25.6.2005.

Learned counsel appearing for the appellant submitted that the only thing which weighed in the mind of the Lower Appellate Court in reversing the discretionary relief of specific performance was Ex. P-5 i.e. Jamabandi for the year 2002-03 whereby Nathu Ram during his life time had mortgaged the land measuring 2 kanals 18 marlas with the bank for a sum of Rs. 46,000/- only, whereas, agreement to sell for such a huge chunk of land for Rs. 1 lac was accepted to be a loan transaction, but the fact of the matter is that in the same breath held that the agreement to sell had been proved. The only thing which remain to be seen is whether the plaintiff was ready and willing to perform his part of the agreement and whether the defence of the defendant was based upon the direct or cogent evidence

which they miserably failed to prove regarding the agreement to sell as a security. Once agreement to sell has been proved the grant of discretionary relief was inevitable, in that view of the matter the trial court rightly decreed the suit. Another reason for non-suiting the plaintiff was that the property in dispute was mortgaged and the suit was not properly filed as bank was not impleaded. The law on the point of granting specific performance even if the property is mortgaged is no longer *res integra* as this discretionary relief cannot be granted with a rider to clear dues from the total consideration received by the vendor. As plaintiff was willing to pay the loan of the bank, thus urged this Court in allowing appeal as the finding is not sustainable in the eyes of law.

Mr.APS Mann, learned counsel appearing for the respondent submitted that parties to the lis were known to each other as the defendant had been taking the loan from the plaintiff in view of the categorical pleading in the plaint that earlier to the said transaction similar agreement to sell was entered into. The parties had never intended to sell and purchase the land in dispute. The finding of the Lower Appellate Court being the last court of fact do not call for interference as no body could imagine that the value of the land, even in the year 2005 for one acre of land could be one lac rupees.

I have heard learned counsel for the parties and appraised the paper book . There is no force and merit in the submissions of learned counsel for the appellant, for Nathu Ram, during the pendency of the appeal had died. His LRs had also disputed the contents of the agreement but I cannot remain unmindful of the fact that the pleaded case of the plaintiff prior to the aforementioned transaction, no similar agreements were

executed 4-5 years back and on repayment of the same were not pressed. It cannot be believed that the parties had actually entered into purchase and sale of the land for a paltry sum of Rs. 1 lac. Though the defendant had denied the execution of the agreement to sell, therefore, they can not take the plea as this Court cannot be oblivious of the fact that the readiness and willingness of the plaintiff was conspicuously wanting after the service of legal notice on 19.07.2006, for the suit was filed on 29.03.2008. No explanation has come forward as to how and in what circumstances the plaintiff did not avail the remedy. The law on the point of continuous readiness and willingness is also no longer res integra in view of the finding given by the Hon'ble Court in **Sita Ram v. Radhey Shyham, 2007(4) RCR(Civil) 533** and **B.Vijaya Bharathi v.P.Savitri and others 2017(4) CCC 291 SC**.

The cumulative reading of the aforementioned finding of law leave no manner of doubt that the finding of the Lower Appellate Court does not suffer from any illegality or perversity and does not call for interference by this Court. No substantial question of law arises.

Appeal is dismissed.

It has been brought to the notice of the Court that a sum of Rs. 1,40,000/- along with interest had been deposited in the Court as per the judgment and decree of the Lower Appellate Court

**(AMIT RAWAL)
JUDGE**

23.03.2018

sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No