

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

RSA No.6297 of 2016 (O&M)

Date of Decision: October 31, 2018

Jarnail Singh

...Appellant

Versus

Pawan Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. K.B.Raheja, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant has not been successful in defending the suit for specific performance of the agreement to sell dated 14.07.2007 in respect of land measuring 19 kanals 6 marlas agreed to be sold @ ₹90,000/- per bigha against receipt of earnest money of ₹ 7,23,000/-. The stipulated date fixed was 07.12.2007. Respondent-plaintiff stated to have appeared before the Sub Registrar with balance sale consideration, but the defendant did not turn up and, therefore, the suit aforementioned was filed.

Appellant-defendant contested the suit and came out with the plea that he got sanctioned loan of ₹ 3,00,000/- from State Bank of India, therefore, there was no cause for selling the land as the prevalent rate of the suit land was ₹ 3.00-4.00 lacs per bigha. Close relative of the plaintiff requested the defendant to execute the bogus agreement to sell for income tax purposes. It is in this background, defendant executed the agreement. Otherwise execution of the agreement with an intention to sell the land was denied.

After examination of the evidence, the trial Court decreed the

suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. K.B.Raheja, learned counsel appearing on behalf of the appellant-defendant submitted that both the Courts below committed illegality and perversity as the defendant had categorically stated in the evidence regarding the hardship. In view of the provisions of Section 20 of the Specific Relief Act (for short, the Act), the courts below ought not to have granted discretionary relief. PW-5 Shubhendar Kumar Jha, Clerk of State Bank of Patiala, Nabha proved the preparation of draft of ₹ 2,74,000/-, whereas remaining was required to be paid.

Respondent-plaintiff was not ready and willing to perform the agreement to sell as the suit was filed after about six months of the expiry of target date, i.e., 07.12.2007, therefore, the examination-in-chief was required to be discarded. The description of the land in the agreement to sell is in bighas, whereas the land alleged to be sold was in kanals. In support of his contention, reliance has been laid to the **Nanjappan Versus Ramasamy and another, 2015(2) R.C.R.(Civil) 224.**

I have heard the learned counsel for the appellant, appraised the paper book, perused the judgment cited at bar, much less provisions of Section 20 of the Specific Relief Act and of the view that there is no force and merit in the submissions of Mr. Raheja as the agreement to sell has been proved through the testimony of PW-2 Piara Singh, PW-3 Naresh Kumar Deed Writer, PW-3 (renumbered) Rama Devi Stamp Vendor, PW-4 Tejinder Singh Clerk of Suvidha Centre, Nabha, who proved the affidavit Ex.P3 purchased for the purpose of marking the presence, PW-5 Shubhendar Kumar Jha, Clerk, State Bank of Patiala for preparation of the draft, whereas

the defendant examined himself and one Jagmail Singh as DW-2 and closed the evidence. It was incumbent upon the defendant to prove the stand taken in the written statement that filing of the suit itself was an indication of alleged collusion between the plaintiff and Jaswant Rai, Nothing prevented him to launch appropriate proceedings.

As regards the hardship, no such issue was pressed or any evidence led except his self-serving statement, which would not suffice the requirement of law, therefore, the ratio decidendi culled out in **Nanjappan's case (supra)**, would be of no avail.

No prejudice has been expressed in regard to examination-in-chief which could have taken the right of plaintiff to seek discretionary relief. The signatures/thumb impression on the agreement to sell have also not been denied. All these factors have been looked into. Mere inadequacy of the balance sale consideration is no ground to decline the discretionary relief in view of the judgment rendered in **Azhar Sultana Versus B.Rajamani and others, 2009(2) RCR (Civil) 123**. Therefore, I am of the view that the findings of the Courts below do not call for any interference or there is any illegality or perversity, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

October 31, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No