

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

RSA.No.1019 of 2017

Gurmit Singh

...Appellant

Versus

Padma Aggarwal

....Respondent

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. G.S. Virk, Advocate for appellant.

Mr. Tribhawan Singla, Advocate and
Mr. Rajesh Sethi, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Defendant-appellant is in second appeal against the concurrent findings of facts recorded by both the courts below whereby the suit of the plaintiff/respondent vide judgment and decree dated 29.7.2013 passed by learned Civil Judge (Sr. Division), Sangrur has been decreed and the appeal preferred vide judgment and decree dated 21.11.2016 passed by learned Addl. District Judge, Sangrur met with the same fate .

The plaintiff-respondent filed the suit for possession by way of specific performance of agreement to sell dated 27.10.2006 executed by the defendant-appellant in respect of house measuring 275 sq yards situated at Kishan Bagh Colony, Outside Nabha Gate, Sangrur consisting of Khasra No.547/1/1/min (0-9.1/6) along with electricity connection, water connection, sewerage connection and all the fixtures and fittings. It was

averred that the aforesaid agreement to sell was entered into for total sale consideration of Rs.50,90,000/- out of which Rs.12 lacs was received as earnest money at the time of execution of agreement to sell and the balance amount was to be paid upto 31.3.2007. On 17.3.2007, the plaintiff through his counsel sent a registered notice to the defendant to meet her for the approval of draft sale deed and for purchase of stamp papers and to come present in the office of Sub Registrar, Sangrur for execution and registration of sale deed on 30.3.2007 and 02.04.2007 as 31.3.2007 and 01.04.2007 were holidays. The defendant refused to receive the notice. Plaintiff appeared before the office of Registrar on the aforesaid date along with the balance sale consideration of Rs.38,90,000/- in the shape of pay order of Indian Bank dated 21.3.2007 and got his presence marked.

The suit was contested by the defendant-appellant wherein the agreement to sell was alleged to be forged and fabricated and prepared in connivance with typist stamp vendor and witnesses. It was stated that the defendant had taken loan of Rs.12 lacs from the plaintiff on interest, in lieu whereof the defendant appended his signatures on blank and unwritten papers so as to give security to the plaintiff for advancement of loan. Even the photo copy of the sale deed was also handed over to the plaintiff. It was only loan transaction as the appellant-defendant wanted to send his son abroad for higher education. The agreement to sell in question was denied in entirety.

From the pleadings of parties, the trial Court framed the following issues:

“1. Whether the defendant entered into agreement to sell his house measuring 275 Square Yards situated in Kishan Bagh Colony, Outside Nabha

Gate, Sangrur for a sum of Rs.50,90,000/- as on 27.10.2006?OPP

2. Whether the defendant received earnest money of Rs.12 lacs in cash from the plaintiff on 27.10.2006 and agreed to execute the sale deed on 31.3.2007 on receiving balance sale consideration?OPP

3. If issues No.1 and 2 are proved, whether the plaintiff is entitled to the possession of the suit property by way of specific performance of the agreement dated 27.10.2006?OPP

4. Whether the plaintiff is entitled to alternative relief of recovery of Rs.24,00,000/- i.e Rs.12,00,000/- as earnest money and Rs.12,00,000/- as liquidated damages alongwith 1.5% P.M interest, in case the Court comes to the conclusion that the plaintiff is not entitled to the decree of specific performance?OPP

5. Whether the agreement to sell dated 27.10.2006 is manufactured, fabricated and prepared in connivance with the typist, stamp vendor and witnesses on blank papers lying with the plaintiff with signatures of the defendant?OPD

6. Relief.”

Plaintiff in order to prove her case examined Kuldeep Kumar-Stamp vendor as PW1, PW2-Harinder Kumar Singla, Advocate who tendered into evidence his affidavit Ex.PW2/A stating that he scribed an agreement to sell at the instance of defendant, PW3-Dharminder Singh, Draftsman, PW4-Navdeep Gupta, Handwriting and Fingerprints Expert who tendered into evidence his affidavit Ex.PW4/A, PW5-Charan Pal Singh, PW7-Satwinder Sharma, Registration Clerk from the office of Sub Registrar, Sangrur, PW8-Sunil Kumar from Indian Bank, Sangrur, PW8-

Ajay Kumar, JTO Mobile, BSNL, Sangrur, PW9-S.K Bansal, Sr. Assistant from Punjab National Bank, Branch Sangrur and PW10 Head Constable Ajaib Singh besides herself as PW6. She also tendered documents Ex.P.1 to Ex.P26 in evidence.

On the other hand, the defendants examined DW1-Nirmal Singh, DW2-Varun Gagneja, Forensic Expert, DW4-Parveen Kumar Garg, Advocate, Notary Public besides himself as DW3. He also brought on record certain documents Ex.D.1 to Ex.D29.

On the basis of preponderance of evidence placed on record, the trial court decreed the suit by exercising discretionary relief in favour of the respondent-plaintiff, directing the defendant to get the sale deed of the disputed house executed and registered in favour of the plaintiff in terms of agreement within three months after the payment of balance sale consideration by the plaintiff within two months from the date of passing of the decree. The appeal filed by the defendant-appellant has been dismissed by the lower Appellate Court, hence the present appeal.

Learned counsel for the appellant-defendant submitted that both the courts below have gravely erred while decreeing the suit of the plaintiff. The courts below ought not to have granted discretionary relief under Section 20 of the Specific Relief Act as it was only a residential house of the defendant. A great hardship would be caused to the appellant in case the decrees under challenge are upheld. Both the courts below have not appreciated the evidence on record and were swayed away from the fact that the suit was not filed within a period of limitation. The receipt of Rs.12 lacs was issued as a security as the appellant had taken a loan for sending his son abroad for higher education.

Per contra, learned counsel for the respondent-plaintiff submitted that the concurrent findings of facts cannot be set aside until and unless there is gross illegality. The story with regard to obtaining of loan was not only based on falsehood but was imaginary as it could not be expected from a Assistant Bank Manager to take a private loan for sending his son abroad. Such an educated person working in the Bank would not sign any blank papers and obtain private loan by giving copy of sale deed as security. The payment of earnest money in execution of the agreement to sell had been proved through the testimonies of the witnesses referred above much less signatures through the testimony of Navdeep Gupta. Therefore, both the courts below have rightly exercised the discretion, for, the suit was filed on 04.4.2007 just four days after the expiry of the stipulated date for registration and execution of the sale deed.

I have heard learned counsel for the parties and perused the paper book with their able assistance. I am of the view that there is no merit in the submissions of learned counsel for the appellants. From the plaint and simple reading of Section 20 of the Specific Relief Act, 1963, it is evident that there is no provision for declining the discretionary relief in case of hardship caused to the vendor without any fault of the plaintiff. In other words, discretionary relief can be granted in case act and conduct of the plaintiff i.e vendee, results into such a situation which causes hardship to the vendor. The facts narrated and noticed above would leave no manner of doubt rather or it would be pointless to say that any act of the respondent/plaintiff resulted into hardship. Concededly, the appellant-defendant at the time of execution of agreement to sell was working as Assistant Bank Manager in the Bank who knew working of the Bank as also

the procedure of obtaining the loan. Such a prudent and literate person would not enter into such transaction as pleaded in the written statement.

If at all there was any truthfulness in the story, he would have definitely preferred to initiate appropriate proceedings against the plaintiff. Be that as it may, even the Handwriting Expert-Navdeep Gupta proved the signatures on the agreement to sell of the vendor. Harinder Singla-PW2 stated that he had scribed the agreement to sell at the instance of the defendant regarding the house measuring 275 sq yards and had entered into agreement with the plaintiff on receipt of consideration of Rs.12 lacs as earnest money. Kuldeep Kumar-PW1 (Stamp vendor) also stated that he saw the stamp paper of Rs.500/- on which agreement of sale dated 27.10.2006 was typed. Said stamp paper was sold by him to Gurmit Singh vendee for agreement of sale. He identified the Endorsement (Ex.P.1) and proved copy of said entry in the register as Ex.P2.

PW5-Charan Pal Singh stated that he knew the parties and the agreement was got scribed by Harinder Singla, Advocate at the instance of the defendant, the contents of which were read over by him to both the parties and after admitting the same as correct, defendant received Rs.12 lacs in cash as earnest money from the plaintiff in his presence as well as presence of other witnesses Kesar Singh and Nirmal Singh. Plaintiff also signed the agreement and that one property dealer named Subhash Chand was also present there. Sale deed was to be executed upto 31.3.2007. He also identified his signatures on the agreement Ex.P3. PW7-Satwinder Sharma, Registration Clerk proved that the plaintiff had appeared in the office of Sub Registrar, Sangrur for the purpose of execution and registration of the sale deed. He stated that as per entries No.419 dated

30.3.2007 and no.422 dated 24.2007, plaintiff got marked her presence in their office. In order to prove his readiness and willingness, the plaintiff examined PW8-Sunil Kumar, who deposed that the plaintiff got prepared a pay order of Rs.38,90,000/- from their bank in favour of Gurmit Singh. Said pay order was got cancelled on 4.4.2007 by her and thereafter again said amount of Rs.38,90,000/- was again credited in the account of the plaintiff and he also proved the copy of said statement as Ex.P24. DW-2 Varun Gagneja, Forensic Expert while tendering into evidence his affidavit Ex.DW2/A deposed that he examined the agreement Ex.P3 but could not state whether this document has been typed over the paper already bearing the signatures of Gurmit Singh. Even the record of call details exchanged between the plaintiff and the defendant had been proved, on record. The suit was filed immediately four days after the expiry of the stipulated date. All these factors weighed in the mind of the courts below to form an opinion that the respondent-plaintiff had proved the ingredients of Section 16-C of the Specific Relief Act i.e readiness and willingness from the date of agreement till the filing of the suit and during the pendency of the suit.

For the reasons stated hereinabove, no other material document has been placed on record by the appellant enabling this court to differ with the findings recorded by both the courts below.

No ground for interference is made out much less no substantial question of law is involved in the present appeal.

Dismissed.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No