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

RSA No.1187 of 2019 (O&M)
Date of decision:22.02.2019

Harbans Singh ... Appellant

Vs.

Narinder Singh ... Respondent

RSA No.1188 of 2019 (O&M)

Harbans Singh ... Appellant

Vs.

Narinder Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naresh Prabhakar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.1187 and 1188 of 2019.

The appellant-defendant has not been successful in defending the appeal preferred by the plaintiff who was not successful before the trial Court in seeking discretionary relief under Section 20 of Specific Relief Act as the suit claiming specific performance of the agreement to sell dated 23.12.2010 which was confined to the, alternative relief, has been decreed in toto.

The plaintiff in the plaint alleged that defendant entered into agreement to sell dated 23.12.2010 in respect of land measuring 32 kanals

14 marlas, i.e. 1/5 share out of total land measuring 163 kanals 11 marlas for a total sale consideration of Rs.65,00,000/- and received a sum of Rs.47,00,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 22.01.2012 but the defendant did not turn up and plaintiff marked his presence by way of affidavit before the office of Sub-Registrar. The legal notice dated 07.04.2012 was sent by registered post calling upon the defendant to appear for execution and registration of the sale deed on 24.04.2012 but the defendant did not appear. In such circumstances, the suit was filed on 21.05.2012.

The defendant opposed the suit and denied the agreement to sell stating that there was no intention to sell the land as it was already under mortgage with the Land Mortgage Bank. The explanation was also given that defendant intended to send his two sons abroad and came into contact with Yakub alias Tabil son of Dalveer Masih, who had been working as travel agent at Jalandhar and paid a sum of Rs.23 lakhs for such purpose. The sons were sent abroad but were detained at USA Border and later on, deported to India.

Since the parties were at variance, the trial Court framed as many as eight issues including the issue of Relief. The plaintiff in support of the averments examined himself as PW1, Kulwant Singh as PW2, Yaqub as PW3, Ashok Kumar Monga, deed writer as PW4, Amrit Pal Singh, Registration Clerk as PW5 whereas defendant examined himself as DW1.

The trial Court without giving any finding except by observing the provisions of Section 20 of Specific Relief Act and reference to judgments confined the decree for alternative relief, in other words, did not give any specific reasons as to how the plaintiff was not entitled to specific relief. The two appeals were filed before the Lower Appellate Court. The appeal of the defendant against the alternative relief was dismissed and that of plaintiff was allowed, whereby the suit has been decreed in toto.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of the appellant submitted that appellant-defendant had submitted a complaint to the police wherein one Yakub suffered a statement and stated that sons of Harbans Singh/defendant, Sukhdev Singh and Ravi were sent abroad. Confronted with the aforementioned piece of evidence, Ex.DA/1, all the circumstances leads to irresistible conclusion that there was no intention to sell the land. The finding of fact and law arrived at by the trial Court by noticing the provisions of Section 20 of Specific Relief Act, is correct appreciation of law and thus, the Lower Appellate Court has committed illegality and perversity.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Prabhakar.

The statements of Yakub and Gurjit Singh recorded before the Courts below have been extracted in the grounds of appeal. They stated that Harbans Singh himself agreed to sell the land as he did not have the money.

Be that as it may, the aforementioned statements were made before the police and therefore, cannot be looked into for evidence. However, when PW3 appeared in cross-examination denied that he did not indulge into sending the people abroad as well as receipt of earnest money of Rs.47 lakhs. Kulwant Singh was also subjected to the extensive cross-examination but he proved the intention of the party with regard to the agreement to sell.

Mr. Prabhakar also argued that plaintiff in cross-examination spilled the beans, that though he was income tax payee but did not have PAN Card and Income Tax Returns. The cross-examination shown to this Court reveals that he had brought on record the Form J from 2011-2013. Since he was an agriculturist and having cash but did not want to disclose the source of money.

The aforementioned piece of evidence leads to irresistible conclusion that balance sale consideration much less receipt of earnest money was proved to the hilt. The appellant-defendant has not been able to belie the signatures on the agreement to sell which did not contain any clause of sending sons abroad or some separate contract. The trial Court did not assign any reasons of declining the discretionary relief except by referring certain case laws. In other words, statements of witnesses much less affidavit regarding marking of presence before the office of Sub Registrar were not adverted to.

The Lower Appellate Court being the last Court of fact and law re-appreciated the evidence and examined the finding in correct perspective.

As an upshot of my findings, arguments of Mr. Prabhkar, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Lower Appellate

Court. No substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 22, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No