

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

**RSA No.2478 of 1988 (O&M)
Date of Decision.21.05.2019**

Sadha Singh (since deceased) through LR's and another ...Appellants

Vs

Banarsi Dass and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Singla, Advocate for
Mr. J.S. Brar, Advocate
for appellants.

Mr. Onkar Singh, Advocate for
Mr. J.S. Toor, Advocate
for respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is preferred at the instance of plaintiffs, who sought possession of land measuring 2 kanals 10 marlas by way of specific performance of agreement dated 22.05.1980 entered into by defendants No.1 and 2 against concurrent finding of fact whereby both the courts below instead of granting discretionary relief confined decree to alternative relief.

Plaintiffs alleged that defendants No.1 and 2 i.e. Banarsi Dass and Mela Ram agreed to sell land and while executing the agreement, received a sum of ₹4000/- as earnest money against the total price of ₹25,000/-. Though the agreement reflected handing over possession but the same was not handed over. However, during the subsistence of agreement, defendant No.1 & 2 intended to sell the land to defendants No.4 and 5 and therefore, they were impleaded.

Defendant No.3 was also a co-sharer in the khewat and therefore, was

impleaded in order to avoid objection of non-maintainability. It was pleaded that in the absence of any partition, plaintiffs would be entitled to 2 kanals 10 marlas of land out of Mustil No.16 Killa No.25. The land mortgaged was already redeemed and they were ready and willing to perform their part of agreement.

Defendant No.1 contested the suit and it was alleged that there was loan liability upon his father to the plaintiffs, who had no knowledge that some documents were converted into agreement to sell. In such circumstances, it was stated to be not enforceable.

Defendants No.2 and 3 denied to have entered into agreement to sell and came out with the story that plaintiffs used to sell the mobile oil in the village and from them, they used to purchase oil on credit basis and in this process, obtained thumb impression, which had been converted into agreement and therefore, it was forged and fabricated.

Since the parties were at variance, the trial Court framed as many as 13 issues.

Appellants-plaintiffs in order to prove agreement to sell, examined Moti Ram as PW1, Bant Singh as PW2, who stated that land was agreed to be sold @ ₹25,000/- per acre and paid a sum of ₹4000/- as earnest money. Bawa Singh plaintiff himself appeared as PW3.

Defendants examined twelve witnesses including Jagir Singh DW2, Takhwinder Singh, DW4, Mela Ram DW5 and Dewan K.S.Puri as DW12. Takhwinder Singh brought register of Zora Singh Wasiqa Nawis and entry No.877 dated 22.05.1980 revealed that

agreement was written on behalf of Banarsi Dass in favour of Sadha Singh and Mela Ram but there was no entry or thumb impression of Mela Ram in register. Dewan K.S. Puri after examination of agreement to sell stated that thumb impression of Mela Ram did not correspond with the manner of hand-writing mark B-B.

Trial Court after examining witness held that defendant had entered into agreement to sell. There was no element of fraud or misrepresentation. However, while going into the recital of the agreement, it found that it was regarding erstwhile Killa No.25 min bounded as East Gopal Singh, West passage to Shanshpur, North dharamsala and South pond but plaintiff during cross-examination admitted that dharamsala adjoined to phirni and other side of phirni, suit land was situated and had formed an opinion that plaintiffs did not identify land and therefore, recital in agreement were vague and did not grant discretionary relief, however, ordered for refund of ₹5500/-. The appeal taken before the lower Appellate Court was also dismissed.

Mr. R.K. Singla, learned counsel appearing on behalf of the appellants submitted that both the courts below have committed illegality and perversity. In order to clarify and illustrate the position, misc. application bearing No.3423-C of 1988 has been filed for placing on record jamabandi for the year 1980-81 and 1985-86. During pendency of appeal before lower Appellate Court, application under Order 41 Rule 27 CPC was filed for placing on record jamabandis aforementioned showing that towards southern side of khasra No.49 there is toba (pond) but the same was dismissed vide

order dated 12.08.1988. It is in these circumstances that the order has been challenged and fresh application has been filed. Khasra No.49 measuring 8 kanals 0 marla is a toba and not subject matter of the suit whereas agreement to sell is with regard to Mustil No.16 Killa No.25. Defendants did not deny plea with regard to identity of the property. Learned counsel for the appellants drew attention of this Court to written statement of defendant No.1 and that of defendant No.4. Attention of the Court was also drawn to agreement to sell wherein agreement was mentioned with regard to Mustil No.16 Killa No.25 measuring 2 kanals 10 marlas and towards West shown as rasta, East Gopal Singh, South Toba (pond) and North Dharmshala. It is the document which has to be seen and not oral testimony of witnesses, thus, urges this Court for grant of discretionary relief.

Per contra, Mr. Onkar Singh for Mr. J.S. Toor learned counsel appearing on behalf of the respondents submitted that there is no illegality and perversity in the judgments and decrees rendered by Courts below. Prices over a period of time have increased and land was sold for a paltry amount. It is too late in a day to grant discretionary relief. A buyer has to be beware or make reasonable enquiry while purchasing property and once the plaintiffs were not sure about dimension of the property, declination of specific relief was inevitable. Reference was also made to aks sajra Ex.P5.

I have heard learned counsel for parties, appraised paper book and of the view that there is force and merit in the submissions of learned counsel for the appellants.

In view of judgment rendered by Constitution Bench of

Hon'ble Supreme Court in *Pankajakshi (dead) through LRs and others Vs. Chandrika and others (2016) 6 SCC 157* reiterated in *Kirodi (since deceased) through his LR Vs. Ram Parkash and others* passed in Civil Appeal No.4988 of 2010 on 10.05.2019, in State of Punjab and Haryana, a second appeal being filed under Section 41 of Punjab Courts Act do not require formulation of a substantial question of law.

Ex.P5 aks sajra did not give description of West, East, North and South. The application for additional evidence was filed but no reply has been filed. On going through the jamabandies for the year 1980-81 and 1985-86, it is revealed that ownership of land of defendants was of Mustil No.16 Killa No.25 whereas Khasra No.49 reflects of village panchayat. In these circumstances, lower Appellate Court, in my view, has totally misread and mis-interpreted, much less, mis-directed the documentary evidence i.e. jamabandies. The aforementioned evidence is in tandem with terms and conditions of the agreement and description. This Court had also given an offer to Mr. Onkar Singh to compensate plaintiffs, who on instructions from his client gave an offer of very paltry amount of ₹1.5 lakhs. It is only on account of rejection of discretionary relief.

For the reasons aforementioned, judgments and decrees rendered by Courts below are set aside and the suit of the plaintiffs is decreed. Plaintiffs are directed to deposit balance amount within a period of two months from the date of receipt of certified copy of this order and defendants shall execute the sale deed on receipt of balance amount. In case of any default on the part of defendants, the

appellants-plaintiffs shall be at liberty to seek execution of decree in accordance with law. The second appeal is allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 21, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No