

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

RSA No.681 of 1989 (O&M)

Date of Decision.29.03.2019

Ajmer Kaur (since deceased) through LR's and othersAppellants

Vs

Lakhjit Singh and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the appellants.

Mr. S.S. Dinarpur, Advocate
for the respondents.

-. -

AMIT RAWAL J.(ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby Civil Appeal No.95 of 1985 preferred by the plaintiffs against the judgment and decree of the trial Court declining discretionary relief under Section 20 of the Specific Relief Act and finding of refund of ₹4500/- towards stamp charges has been allowed by decreeing the suit in toto and the cross appeal bearing No.87 of 1985 of the appellants-defendants against refund of ₹4500/- dismissed.

Respondents-plaintiffs in the suit dated 21.09.1982 sought possession of land measuring 20 kanals comprised in Khewat/Khatoni No.47/680, 86, 116, Khasra No.4//26-12, 11, 5//15 min (east) by challenging sale deeds dated 26.08.1980 and 27.08.1980 in favour of defendant Nos.9 to 12 and sought specific performance of agreement to sell dated 20.09.1979 allegedly entered into orally between them and one Atma Ram, defendant No.1 for total sale consideration of ₹45,000/-. It is

matter of record that no earnest money or any other consideration exchanged between the parties.

As per the averments, both the parties approached office of Sub Registrar for registration of the sale deed but the same was impounded on the ground that it was undervalued. Parties were directed to appear before the Sub Registrar but they were told that case file was not received. Atma Ram did not appear before the Sub Registrar. Mohinder Singh son of Atma Ram filed a suit for injunction and obtained a stay regarding alienation. Plaintiffs had been ready and willing to perform their part of the agreement but the defendants without notice to the plaintiffs sold the aforementioned land, which was, during the subsistence of the oral agreement.

Defendants objected to the aforementioned suit by raising the objection that the plaintiffs were not ready to pay correct court fee for the purpose of execution of the fresh sale deed as he had already entered into agreement to sell with other party to whom he had to pay price. In other words, he was in the dire need of the money, thus, prayed for dismissal of the suit on the premise that sale had already been performed.

The contesting subsequent vendees i.e. defendants No.9 to 12 also claimed themselves to be bona fide purchasers having no knowledge of oral agreement.

Since the parties were at variance, the trial Court framed following issues:-

“1. Whether defendant No.1 entered into an oral agreement of sale of the suit property on 20.09.79, in favour of the

plaintiff as alleged, in para 1 of the plaint (which have been denied by plaintiffs No.2 to 5)? OPP

2. Whether the plaintiff was ready and willing to perform his part of the contract as alleged in part of the contract as alleged in para No.4 & 5 of the plaint? OPP

3. Whether defendants No.2 to 5 are the purchasers without notice of agreement of sale and for consideration if so its effect? OPD

4. Whether the sale deed dated 28.8.80 and 27.8.80 executed by defendant No.1 in favour of defendant No.2 to 5, are null and void as alleged in para 11? OPP

5. Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPP

6. Whether the suit is within time? OPP

7. Whether the suit is not maintainable in the present form? OPP

8. Relief.”

Both the parties led extensive evidence to prove their respective case.

The trial Court on the basis of evidence confined the decree only to refund of ₹4500/- i.e. stamp duty charges, however, in lower Appellate Court, as noticed above, appeal of the plaintiffs had been allowed and that of the defendants was dismissed.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain, learned counsel appearing on behalf of the appellants-defendants submitted that the lower Appellate Court non-suited the appellants-

defendants only on the ground that the evidence brought on record with regard to agreement with other parties by Atma Ram was not pleaded. Pleading under Order 6 Rule 2 CPC has to be concise. There is categorical admission of the witnesses of the plaintiffs wherein it was disclosed that the plaintiff had knowledge that Atma Singh was in dire need of money as he had already entered into agreements to sell dated 25.05.1979 Ex.D3 and D4 in some other village and target date was 05.12.1979. During the course of hearing, cross-examination of DW2, DW3 and DW4 was read out wherein in order to bring the case within the realm of discretionary relief, it was further contended that readiness and willingness, if at all, oral agreement had been proved, was conspicuously absent as the suit was filed at the fag end i.e. one day before the expiry of limitation. There was no consideration as parties had allegedly agreed to part with the consideration of ₹4500/- at the time of registration of sale deed. Charan Singh in cross-examination admitted qua warning given by Atma Ram of parting with the property to third party to the plaintiffs within a period of two months but no steps were taken, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. S.S. Dinarpur, learned counsel appearing on behalf of the respondents-plaintiffs submitted that preparation of the sale deed reflect readiness and willingness of the parties. Since the plaintiffs had already spent ₹4500/- as charges of stamp duty, if at all, Atma Ram was in dire need and could not wait owing to alleged agreements which were not pleaded, existence of fresh deal was required to be admitted by him, which has specifically been denied. Since parties had entered into oral agreement to sell and execute sale deed, question of consideration outside

the premise of office of Sub Registrar did not arise, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper, records of Courts below and of the view that following Substantial Question of Law arises for determination by this Court;

“Whether the judgment and decree of the lower Appellate Court in non-suiting appellants/defendants of having not pleaded the evidence is sustainable in the eyes of law?”

It would be apt to reproduce Order 6 Rule 2 CPC and Sections 145 and 146 of the Indian Evidence Act and the same read as under:-

“2. Pleading to state material facts and not evidence. - (1)

Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

“145. Cross-examination as to previous statements in

writing.-A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

“146. Questions lawful in cross-examination.- When a witness is cross-examined, he may, in addition to the

questions hereinabove referred to, be asked any questions which led -

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code(45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”

Pleadings have to be concise and evidence is not required to be pleaded. In support of pleadings, as per provisions of Section 140 of the Indian Evidence Act, parties are permitted to raise questions in cross-examination to check veracity and demeanor of witness. Cross-examination of PW3 and PW4 read out in the Court revealed that they were aware of the intention of Atma Ram to part with property and also sold after the sale deed in favour of defendants No.9 to 12. No explanation has come forth in not espousing the grievance in spite of the fact that there was alleged breach. Readiness and willingness has to be continuous throughout during the subsistence of agreement, filing and pendency of trial and till the decree is passed. This view of mine is derived from the judgment of Hon'ble Supreme Court rendered in **B.**

Vijaya Bharathi Vs. P. Savitri and others AIR 2017 (SC) 3934. The lower Appellate Court non-suited the appellants on the ground of having not pleaded the evidence, is totally alien to the statutory provisions of Order 6 Rule 2 CPC.

In my view, finding of the trial court for refund of stamp duty was most equitable and justified. For the reasons aforementioned, judgment and decree of the lower Appellate Court is not sustainable in the eyes of law. The substantial question of law is answered in favour of the appellants-defendants and against the respondents-plaintiffs and accordingly, judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored. The appellants-defendants are directed to refund amount of ₹4500/- within a period of one month from the date of receipt of certified copy of this order, if not paid or deposited, failing which the same shall entail interest @9% per annum.

Resultantly, the second appeal is allowed.

(AMIT RAWAL)
JUDGE

March 29, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No