

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

RSA-4467-2012(O&M)

Date of decision:-9.5.2019

Shiv Ram

...Appellant

Versus

Ran Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vikas Singh, Advocate
for the appellant.

Mr.G.S. Bhatia, Advocate
for the respondent.

Mr.Bhag Singh, Advocate
for the applicant in CM-14662-C-2015.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff - Shiv Kumar had filed a suit against defendant - Ran Singh seeking possession by way of specific performance of agreement to sell dated 24.8.2002, in the alternative seeking a decree for recovery of Rs.3 lacs along with interest and as a consequential relief craving that the defendant be restrained from alienating the suit land to any other person except the plaintiff.

As per the case of the plaintiff, the defendant had entered into an agreement dated 24.8.2002 with the plaintiff to sell 10 kanals 15 marlas of land comprised in khewat No.118 min., khatoni No.170 min. rect no.48, killa no.3/2(0-6), 4/2(2-9), Rect. No.49 killa no.1(8-0) kittas 3 for a consideration amount at the rate of Rs.3 lacs per 8 kanals, total Rs.4,12,500/-, receiving Rs.1,50,000/- as earnest money; that both the parties had agreed that the sale deed would be executed by the defendant in favour of the plaintiff on or before 23.8.2003 and in case the plaintiff failed to perform his part of agreement, then the earnest money would be forfeited and if the defendant did not perform his part of agreement, then the plaintiff would be at liberty to get the sale deed executed and registered by way of filing a suit for specific performance; that as per the terms and conditions of the agreement, the plaintiff through his wife offered the balance sale consideration on 22.8.2003 asking the defendant to execute and got registered the sale deed but it was informed that on 23.8.2003 and 24.8.2003 were holidays being Saturday and Sunday; that the defendant had promised to be present in the office of Sub Registrar on 26.8.2003, which was the next working day for registration of the sale deed; that the wife of plaintiff went to the office of Sub-Registrar on 26.8.2003 along with balance sale consideration amount and sufficient money for bearing other expenses and she remained there from 9:00 a.m. to 5:00 p.m., but the defendant did not turn up,

then wife of the plaintiff got her presence marked in the office and got attested her affidavit showing her readiness for completion of the transaction; that the plaintiff himself was in District Jail, Kurukshetra as an under trial being an accused in FIR No.195 dated 15.10.2002, therefore wife of the plaintiff was acting on his behalf being fully authorized to do everything in respect of execution of the sale deed; that the wife of the plaintiff had personally approached the defendant on 27.8.2003 requesting him to get the sale deed executed but the defendant put off the matter on one pretext or the other; thereafter the wife of the plaintiff served a legal notice dated 5.12.2003 upon the defendant calling upon him to get the sale deed executed and registered but the defendant avoided receipt of that notice, which was returned back unclaimed. As per the version of the plaintiff, he is still ready and willing to perform his part of the agreement and requested the defendant to execute the sale deed in his favour but to no effect, rather the defendant threatened to alienate the suit land to some other person, giving rise to a cause of action to the plaintiff to bring the suit.

On notice the defendant had appeared and filed written statement contesting the suit raising preliminary objections challenging the locus standi of the plaintiff to file the suit contending that the suit was not maintainable; that no cause of action arose to the plaintiff to bring the same; that the suit was not properly valued for

the purpose of jurisdiction; that the plaintiff had concealed true and material facts from the Court and plaintiff was not entitled to any relief since he was a money lender and the answering defendant had borrowed a sum of Rs.1,50,000/- from him and in lieu of security of the said amount, the plaintiff had taken thumb impressions of the defendant on some blank papers, however, later on defendant returned the entire amount to plaintiff in presence of one Dilwar Singh and when the defendant demanded his stamp papers back, then the plaintiff did not return the same and later on, he has converted that stamp paper into present alleged agreement to sell, which is totally false, fake and forged document. On merits, the defendant denied having entered into any agreement with the plaintiff or receiving any money from him as sale consideration. According to the defendant, no terms and conditions as alleged by the plaintiff were ever agreed upon between the parties, therefore there was no question to execute and register the sale deed in favour of the plaintiff by defendant. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to decree of possession of the suit land by way of specific performance agreement to sell dated 24.8.2002? OPP.

2. Whether the plaintiff has locus standi and cause of action to file and maintain the present form? OPP.
3. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Relief.

In order to prove his case, the plaintiff had got recorded his statement as PW1, further examining Sh.Som Nath, Numberdar as PW2, Sh.Rajiv Kumar, Deed Writer as PW3, Sh.Rattan Lal, Member Panchayat as PW4 and Smt.Leelawati as PW5 besides tendering some documents.

On the other hand, the defendant had appeared himself as DW1 besides examining Sh.Surinder Kumar, Copyist as DW2, Sh.Lakhmi Chand as DW3, Sh.Dilawar Singh as DW4 and Sh.Surinder Kumar, Copyist as DW5.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendant, issues No.2 and 3 in favour of the plaintiff and against the defendant, issue No.4 against the defendant and in favour of the plaintiff. Resultantly, the trial Court vide judgment and decree dated 7.12.2009 decreed the suit of the plaintiff with costs and a decree for possession by way of specific performance of agreement dated 24.8.2002 was passed in favour of the plaintiff and against the

defendant directing the defendant to execute and got registered the sale deed in favour of the plaintiff qua land measuring 10 kanals 15 marlas as mentioned in para no.1 of the plaint and as per recitals mentioned in the agreement to sell dated 24.8.2002 after receiving the balance sale consideration from the plaintiff. The defendant was further restrained from alienating the suit land in any manner in favour of any other person except the plaintiff. It was also made clear that the plaintiff would deposit the balance sale consideration either with the defendant or in the Court within two months from the date of decree, failing which, the suit would stand dismissed automatically and if the defendant did not execute and get registered the sale deed, then the plaintiff would be at liberty to get the assistance of the Court for that purpose.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment dated 1.9.2012 allowed the appeal partly in as much as keeping in view the fact that the plaintiff was a Government servant and there was nothing on record to show that he had obtained permission of Government to purchase immovable property in light of the judgment **Jagir Singh and another Versus Chanchal Singh, died and represented by his legal heirs namely Jasjit Singh and others, 1984 S.L.J. 471**, the plaintiff was not found

entitled to specific performance of agreement to sell. However, in view of the admission by the defendant that he had received a sum of Rs.1,50,000/- from the plaintiff, though according to defendant, it was as a loan in the year 2002, the plaintiff was found entitled to recover a sum of Rs.1,50,000/- along with interest @ 12% per annum from the date of agreement till realization.

Being dissatisfied with the judgment and decree passed by the learned Additional District Judge, Kurukshetra, the plaintiff filed the present regular second appeal before this Court, notice of which was issued and the respondent-defendant appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that judgment passed by Additional District Judge, Kurukshetra is not sustainable and is liable to be set aside by way of acceptance of the appeal.

The trial Court by proper appraisal of evidence and correct interpretation of law had reached the conclusion that the parties had entered into an agreement to sell dated 24.8.2002 in respect of 10 kanals 15 marlas of agricultural land belonging to the defendant, under which the defendant had received a sum of Rs.1,50,000/- from the plaintiff; fixing the final date for execution of the sale deed as on or before 23.8.2003 and that the plaintiff has been ready and willing to perform his part of the agreement. However, the

transaction could not mature since the defendant did not come forward to perform his part of agreement i.e. to execute the sale deed in favour of the plaintiff after accepting the balance consideration amount. However, Additional District Judge, Kurukshetra wrongly denied the relief of specific performance to plaintiff for unconvincing reasons. Though he had rejected most of the contentions raised on behalf of the defendant that there was material alteration in the agreement regarding name of attesting witness PW2 Som Nath observing that he was not related to the plaintiff; the second being that defendant had returned the amount in presence of Dilawar Singh. In para No.16 of the judgment, learned Additional District Judge, Kurukshetra has observed that PW5 Leelawati has duly proved that she had visited the office of Sub Registrar on 26.8.2003 with balance sale consideration and necessary stamp charges but defendant did not turn up, therefore, plaintiff has been ready and willing to perform his part of agreement. The First Appellate Court has noted that stamp papers for agreement to sell were purchased by Ran Singh – defendant and it was he who had arranged the jamabandi as admitted by him. Therefore, agreement to sell was duly proved. The readiness and willingness of the plaintiff to perform his part of agreement was also there, as such there was no reason to decline the relief of specific performance. The First Appellate Court in para No.17 has found that the plaintiff by bringing evidence had successfully proved the

execution of agreement to sell and in para No.18, it had observed that readiness and willingness on the part of the plaintiff to perform his part of agreement was also there. Whereas version of the defendant was not believable and had been concocted to avoid specific performance of agreement to sell. In para No.19, the version of defendant that he had raised loan of Rs.1,50,000/- from the plaintiff, which he had returned has been rejected giving sound reasoning. In para No.20, the plea of defendant that agreement Ex.P1 was prepared by forging blank signed/thumb marked stamp papers was also not accepted. Thereafter, the First Appellate Court started changing its stand coming to the conclusion that agreement to sell Ex.P1 was a security document and the plaintiff was entitled to refund of Rs.1,50,000/- received by defendant from him on 24. 8.2002.

The findings recorded by First Appellate Court are mutually contradictory, pointing out towards vacillating approach showing non-application of mind and lack of judicious approach. The law is well settled that the fact should be first pleaded then proved and no party can travel beyond its pleadings. Here in the written statement, the defendant had not taken any plea that plaintiff being a Government servant was required to obtain permission from his Department before purchasing the property and he having not done so could not purchase the property in question. No such plea seems to have been raised before the trial Court. Similarly the First

Appellate Court appears to have acted on conjectures, suppositions and guesswork while coming to the conclusion that plaintiff had not obtained permission from his department before entering into an agreement. A perusal of cross-examination of PW1 goes to show that he had admitted that he was convicted by Sessions Judge, Kurukhsetra in a murder case on 11.11.2005 and he is behind bars since 18.11.2002. The agreement to sell is dated 24.8.2002. He stated that he was working as Clerk in ITI and he had been in service since the year 1981. He has not been asked any question as to whether he had applied to his department seeking permission to purchase the property and as to whether the same was granted to him or declined. The defendant has not brought any evidence in that regard by summoning record from the employer of the plaintiff. Under the circumstances, the First Appellate Court presumed of its own that plaintiff had not obtained permission from the Government to purchase immovable property and applying judgment Jagir Singh's case (supra) wrongly denied specific performance of agreement to sell to the plaintiff. The judgment Jagir Singh (supra) was misread and misinterpreted by the First Appellate Court. As per facts of that case the defendant had taken up a specific plea in the written statement incorporated by way of amendment that plaintiff being a Government servant was not competent to enter into an agreement to purchase land as it was against public policy. Two additional issues

in that regard had been framed and the trial Court after remand of the case had given specific findings on those issues, which had been affirmed in appeal by lower Appellate Court. In this case neither any such plea had been taken by the defendant in the written statement nor any issue framed in that regard. The parties were not afforded opportunities to lead evidence and the First Appellate Court merely by conjectures and guesswork has come to the conclusion that the plaintiff had not obtained permission from his department for entering into agreement. A perusal of the agreement to sell goes to show that as agreed upon between the parties, the plaintiff could get the sale deed executed in his own name or in the name of some other person. The permission, if any, was required for purchase of the property and not for entering into an agreement in that regard. On the date fixed for execution of the sale deed, the plaintiff was behind bars and his wife had gone to office of Sub Registrar for the purpose of getting the sale deed executed. As submitted by learned counsel for the appellant that the plaintiff being behind bars in a murder case had been placed under suspension by his department, therefore, there was no question of his obtaining permission from the Government. Therefore, the judgment Jagir Singh's case (supra) is not applicable to this case and specific performance cannot be denied to the plaintiff for the reason given by the First Appellate Court. The law is well settled that specific performance of agreement relating to immovable

property should not normally be declined. The entering into an agreement by plaintiff cannot be said to be against public policy and he is definitely entitled to specific performance.

The judgment and decree passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge, Kurukshetra. That wrong is being undone by acceptance of the present appeal.

Resultantly the judgment and decree passed by Additional District Judge, Kurukshetra are set aside and the judgment and decree passed by the trial Court decreeing the suit of plaintiff are restored.

The appeal stands allowed accordingly with costs.

9.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No