

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2224 of 2016 (O&M)

Date of decision:21.02.2019

Shiv Raj Singh

... Appellant

Vs.

Vikas Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Dinarpur, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful before both the Courts below in staking the claim of symbolic possession by way of specific performance of the agreement to sell dated 12.9.1996 allegedly executed by defendant no.1 for total sale consideration of Rs.94,500/- and was stated to have put into possession of the suit property. Defendant no.1 was served with a legal notice dated 26.5.2006 to appear before the office of Sub Registrar but he did not adhere to the request necessitating the plaintiff to institute the suit on 25.07.2006.

The defendants contested the suit and denied the maintainability of the suit being time barred as well as execution of the agreement to sell.

The plaintiff in support of the evidence examined Jagjit Singh as PW1, Chhapinder Singh as PW2 and Ram Dhan Babbar as PW3 and

brought on record Ex.P1 to Ex.P22. On the other hand, defendants examined two witnesses and brought on record Ex.D1 to Ex.D3.

Mr. S.S.Dinarpur, learned counsel appearing on behalf of the appellant-plaintiff submitted that agreement to sell has been proved through the testimony of attesting witnesses, much less handwriting expert. The defendants have not been able to overcome the aforementioned un-rebutted and un-controverted evidence. Non-examination of the plaintiff in such circumstances could not be significant, much less could not result into denial of discretionary relief.

I am afraid the aforementioned arguments are not sustainable as it is settled law that a person who has entered into agreement to sell, is required to appear in the witness box enabling the other party for cross-examination qua intention of the party, much less readiness and willingness.

The aforementioned view of mine is supported by the law laid down by the Hon'ble Supreme Court in **Man Kaur (Dead) by LRs Versus Hartar Singh Sangha 2010(10) SCC 512**. For the sake of brevity, para 12 of the aforementioned judgment reads as under:-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can

only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a

son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

In this view of the matter, the Courts below had no other occasion but to decline the discretionary relief.

As an upshot of my findings, arguments of Mr. S.S.Dinarpur, 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 Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 21, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No