

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.734 of 2016 (O&M)

Date of Decision: January 31, 2019

Smt.Raj Kaur (since deceased) through L.Rs

...Appellant

Versus

Kishan Kaur (since deceased) through L.Rs. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Himanshu Jain, Advocate,
for the appellant.

Mr. Vikas Bahl, Senior Advocate with
Ms. Priyanka Kansal, Advocate &
Ms. Vedika Gandhi, Advocate,
for caveator-respondent No.2.

AMIT RAWAL, J.

CM No.1994-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 152 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.734 of 2016

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact, whereby the suit for specific performance of the agreement to sell dated 31.12.1990 has been dismissed by the trial Court and affirmed in appeal.

Plaintiff, by filing the suit on 16.07.1994, sought the specific

performance of the agreement to sell dated 31.12.1990, *ibid*, on the ground that Hardayal Singh son of Angrej Singh was owner of land measuring 128 acres 7 kanals and 8 marlas situated in village Ram Nagar and 1/6th share out of land measuring 820 kanals in Village Gulabgarh. Hardayal Singh, vide agreement aforementioned, agreed to sell land measuring 29 acres 7 kanals and 8 marlas to the plaintiff @ ₹ 73,000/- per acre and received a sum of ₹ 5,00,000/- as earnest money by way of different cheques. The stipulated date for registration and execution of the sale deed was fixed as 30.06.1991. Plaintiff had always been ready and willing to perform the agreement, but the defendant had been putting off the matter. However, on 12.03.1991 Hardayal Singh received another amount of ₹ 1,20,000/-, in total ₹ 6,20,000/-. Since 30.06.1991 was holiday, Hardayal Singh was requested to get the sale deed registered on 29.06.1991, but on the said date plaintiff kept on waiting for the defendant along with the balance sale consideration. Despite that, the defendant did not come forward. Hardayal Singh died on 02.05.1993 leaving behind defendant Nos.1 and 2 as legal representatives and mutation in their name was sanctioned.

As per the written statement, the suit was stated to be barred by law of limitation, bad for mis-joinder and non-joinder of parties. As regards the ownership of Hardayal Singh, it was claimed that he was a co-sharer and not owner of specific khasra numbers. The execution of the agreement and the rate were emphatically denied. Rather, it was explained that the rate at the relevant point of time was ₹ 3,00,000/- per acre.

As regards the amount of ₹ 5,00,000/- it was explained that the said amount was deposited in the account of Hardayal Singh by the plaintiff as the sale amount of forest trees which were sold by his father Hardayal

Singh and this fact, in the month of April, 1990, was revealed from the receipt of the letter by Hardayal Singh, from the Income Tax Department, regarding the entry of ₹ 1,00,000/- deposited on behalf of Anil Kumar. Owing to the denial of the execution of the agreement to sell, the readiness and willingness of the plaintiff was also emphatically disputed. It was also explained that Hardayal Singh was addicted to alcohol and died due to liver cirrhosis.

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

“1) Whether the agreement of sale dated 31.12.1990 was entered into between plaintiff and defendant no.2, as alleged?

OPP

2) Whether the plaintiff has always been ready and willing to perform his part of agreement? OPP

3) Whether the agreement of sale has been obtained by the plaintiff by practising fraud? OPD

4) Whether the suit property is coparcener property and cannot be sold? OPD

5) Whether the plaintiff is estopped by her own act and conduct from filing the suit? OPD

6) Whether the suit is time barred? OPD

7) Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD

8) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

9) Relief.”

Plaintiff in support of the evidence examined fifteen witnesses and tendered into evidence agreement Ex.P1, copy of bank account statement Ex.P2, photocopies of the cheques Ex.P3 to Ex.P11, affidavit dated 12.03.1999 Ex.P12, applications dated 29.06.1991 Ex.P13 and

Ex.P14, affidavit dated 29.06.1991 Ex.P15, applications dated 01.07.1991 Ex.P16 and Ex.P17, affidavit Ex.P18, jamabandies Ex.P20 to Ex.P24, photostat copy of bank draft and cheques Ex.P1, documents of Handwriting and Finger Prints Expert Ex.PW13/1 to Ex.PW13/27, copy of bank document Ex.P15 and jamabandi Ex.P19.

On the other hand, the defendant examined four witnesses and brought on record certified copy of civil suit No.34/01 as Ex.DW3/A, agreement of Hardayal Singh Ex.DW3/B, copy of the agreement of Hardayal as Ex.DW3/C and Ex.DW3/D, medical certificates mark-X and mark-Y and challan mark-Z.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr.Himanshu Jain, learned counsel for the appellant-plaintiff submitted that both the courts below have abdicated in not noticing the receipt of ₹1,20,000/- on 12.03.1991 by Hardayal Singh, which was an acknowledgment of agreement to sell as the parties had actually intended to sell and purchase the suit property. Both the courts below have ignored the fact that the plaintiff has not only been able to prove the due execution of the agreement to sell but payment of ₹ 5,00,000/- and ₹ 1,20,000/- additional amount as earnest money. Testimony of all the witnesses remained unassailed. Filing of the suit for injunction prior to the present suit cannot be a ground for non-suiting and declining of discretionary relief, much less the provisions of Order 2 Rule 2 CPC cannot be attracted.

Once the agreement to sell had been proved and the court found that the plaintiff was not ready and willing to perform her part of the agreement, the decree could have been confined to alternative relief.

Readiness and willingness has been proved through the testimony of PW-3

Clerk of Sub Registrar and his presence was marked vide Ex.P13 and Ex.P14.

The foremost illegality committed by the courts below was that Hardayal Singh was addicted to alcohol, which had been proved by Dr.Ashok Bhatt DW-2, but failed to notice that Hardayal Singh in case was unable to do day-to-day functions properly, he could not have been doing the timber business. Payment of ₹ 5,00,000/- was in lieu of the suit property and not with regard to the sale of the timber trees. In support of the aforementioned submissions, reliance has been laid to the judgments rendered by this Court in **Durlabh Singh Versus Nahar Singh and another, 1991(2) PLR 92** and **Sant Singh Versus Amarjit Singh, 2015 (9) R.C.R. (Civil) 185.**

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chadha.

The break up of ₹ 3,00,000/- had been as under:-

₹ 10,000/- cash on 18.09.1990;

₹ 45,000/- each, total ₹ 90,000/- on 08.02.1990 (Ex.P7 and Ex.P8)

₹ 1,00,000/-, i.e., ₹ 50,000/- each on 27.03.1990 vide Ex.P1.

₹ 1,00,000/- on 31.12.1990.”

No explanation has come forth in not claiming the relief of specific performance after despatch of legal notice dated 12.03.1991. Before filing the present suit, on 09.10.1990, plaintiff vide Ex.DW3/C sought the injunction against the defendant which was withdrawn on 06.04.1991 (Ex.DW3/B). Another suit Ex.DW3/E was filed on 23.02.1991.

The same was dismissed in default on 06.08.1991 (Ex.DW3/F). Pleadings

are wanting qua disclosure of the aforementioned two suits. After the expiry of the target date, plaintiff instituted another suit for injunction on 26.09.1991 (Ex.DW3/A) which was also dismissed in default on 15.06.1992, whereas the present suit was, as noticed above, filed on 16.07.1994. Readiness and willingness, as per the settled law, has to be from the date of the agreement, till its subsistence, filing of the suit and during its pendency, much less passing of the decree. A person, who does not come to the court with clean hands, cannot be granted discretion under Section 20 of the Specific Relief Act or any alternative relief. No explanation has come forth as to why filing of the previous suit was not disclosed.

Once there was already a breach, a person claiming simpliciter injunction in the absence of specific performance deemed to have abandoned specific relief as per the provisions of Order 2 Rule 2 CPC. The aforementioned proposition of law has been laid by Hon'ble the Supreme Court in **M/s. Virgo Industries (Eng.) P. Ltd. Versus M/s. Venturetech Solution P.Ltd., 2012(4) R.C.R. (Civil) 372= 2013(1) SCC 625.**

It is most intriguing that when Raj Kaur plaintiff was summoned as DW-4, she feigned ignorance about the agreement to sell or the details of the property. All these factors lead to an irresistible conclusion that the plaintiff miserably failed to prove the execution of the agreement to sell, much less the intention and in such circumstances, the discretionary relief or the alternative relief could not have been remotely granted.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference

is made out, much less involvement of any substantial question of law.
Resultantly, the appeal is dismissed.

January 31, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No