IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 1495 – 2020 (O&M)
Date of decision : 08.10.2020

Charanjit Singh ……..Appellant

Versus

Gurcharan Singh Sahni and others ….Respondents

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present: Mr. Nitin Kant Setia, Advocate for the Appellant.

(proceedings conducted through video conferencing)

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Gurvinder Singh Gill, J.

1. Aggrieved by judgment and decree dated 9.1.2020 passed by learned Additional District Judge, Rupnagar, dismissing an appeal filed against judgment and decree dated 29.4.2019, passed by Civil Judge (Junior Division), Rupnagar, the appellant/plaintiff Charanjit Singh (hereinafter referred to as 'the appellant') has preferred the instant appeal. The appellant/plaintiffs's suit for possession by way of specific performance of an agreement dated 6.1.2014 had been dismissed qua the main relief by the Civil Judge (Junior Division), Rupnagar vide judgment and decree dated 29.4.2019, while granting alternate relief of recovery of earnest amount only.

2. The appellant/plaintiff Charanjit Singh instituted a suit against the

respondents/defendants Gurcharan Singh and others (hereinafter referred to as 'the respondents') averring therein that the respondents had executed an agreement dated 6.1.2014 in his favour for sale of land measuring 7 kanals and 8 marlas, situated in village Bhallian, Tehsil and District Rupnagar, at the rate of ₹ 16 lacs per acre and had received an amount of ₹ 14 lacs as earnest money. As per plaintiff, it was agreed that the sale deed would be executed by 5th of January, 2015. However, since the respondents did not come forward to execute the sale deed even on the last day i.e. 5th of January, 2015, despite having been informed and did not even come on the next day i.e. on 6th of January, 2015, the plaintiff instituted the present suit.

3. The respondents, while denying all the material averments made in the plaint, took a stand that the plaintiff is infact a commission agent at Grain Market, Rupnagar and that the defendants were selling their crops through the plaintiff and during the course of various transactions amongst them, the plaintiff used to issue temporary receipts and sometimes used to get signatures of respondents on blank papers in order to complete the proceedings in the bank account and had now prepared a false document.

4. The appellant/plaintiff filed replication to the written statement filed by the defendants/respondents controverting the stand taken by the respondents. The parties were put to proof on the following issues:

   1. Whether the plaintiff is entitled to the relief of possession as prayed for? OPP.
   2. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP.

2A. Whether the plaintiff is entitled to alternate relief of recovery as prayed for in the plaint? OPP.

3. Whether the present suit is not maintainable? OPD.

4. Whether the plaintiff has no locus-standi to file the present suit? OPD.

5. Whether the plaintiff has not approached the Court with clean hands and suppressed the material facts? OPD.

6. Whether the plaintiff has no cause of action to file the present suit? OPD.

7. Relief.

5. The plaintiff, in order to substantiate his case himself stepped into the witness box as PW-1 and also examined PW-2 Karnail Singh, attesting witness, PW-3 Manjit Singh, attesting witness, PW-4 Shaminder Pal, Deed-Writer, PW-5 Vinderpal Singh Stamp-Vendor and PW-6 Mani Bhushan Kumar. The respondents/defendants on the other hand examined DW-1 Rajinder Singh, DW-2 Kulwant Singh and DW-3 Amandeep Singh. Both the parties also led documentary evidence in support of their respective cases.

6. The learned lower Court, upon appraisal of the evidence on record, held that the execution of the agreement dated 6.1.2014 (Ex. P-1) as well as factum of passing on of an amount of ₹ 14 lacs by the appellant/plaintiff to the defendants/respondents stood duly established but further went on to hold that the said agreement was infact not executed with an intention of sale of land but was executed as a security for an amount of ₹ 14 lacs which had been advanced by the plaintiff to the respondents during the course of business transactions amongst them as defendants/respondents

used to sell their produce at the commission agency of the plaintiff. Consequently, the Lower Court while declining the main relief of possession by way of specific performance of the agreement in question, granted the alternate relief of recovery of an amount of ₹ 14 lacs along with interest at the rate of 6% to the applicant/plaintiff, vide judgment and decree dated 29.4.2019.

7. The plaintiff, aggrieved by the aforesaid judgment dated 29.4.2019, preferred an appeal but the same was also dismissed by the Court of learned Additional District Judge, Rupnagar vide judgment and decree dated 9.1.2020 which is being assailed by way of the instant appeal.

8. The learned counsel for the appellant while assailing the impugned judgment and decree has submitted that the learned lower Courts, having held that the respondents had executed the agreement to sell the land in question, fell in error in holding that the agreement was not actually intended to be implemented. The learned counsel has submitted that it was never the case of the defendants that the agreement had been executed for the purpose of any security and as such, the findings to this effect as recorded by the Courts below are virtually beyond pleadings.

9. I have considered aforesaid submissions addressed before this Court. The learned trial Court after having reached at a conclusion that the respondents had indeed executed the agreement in question and had also received an amount of ₹ 14 lacs, went on to examine the evidence and observed that when a substantial amount of ₹14 lacs had already been paid as earnest money then it remains unexplained as to why a period of one year was fixed for payment of the balance amount which was infact a

small fraction of the total sale consideration i.e. an amount of ₹ 80,000 only, which the plaintiff who was working as a commission agent could have easily paid in the very first instance and could have got the sale-deed executed. The lower Court also noticed that on an earlier occasion the respondents had entered into an agreement with one Jagvinder Singh who is a cousin of the plaintiff and wherein also there had been litigation in respect of the said earlier agreement and wherein the present plaintiff was an attesting witness. It was observed that under such circumstances when the defendants had not honoured the agreement on an earlier occasion and the plaintiff was fully aware of the said fact, then the chances of plaintiff choosing to enter into an agreement with the plaintiff despite being aware of such past were highly unlikely. The fact that the plaintiff was assisting his father in the shop of commission agency of his father and uncle is not denied. The said findings were duly affirmed by the lower Appellate Court. The relevant paras from the judgment of learned Additional District Judge, Rupnagar affirming the aforesaid findings read as follows:

> "14)In the case in hand, the respondents/defendants have not assailed the impugned judgment meaning thereby as far as the execution of the agreement to sell in question is concerned that has been proved on record and has not been assailed by the respondents/defendants. Now the question is whether the intention of the parties was entered into an agreement to sell or it was a document to secure the repayment of loan amount. The perusal of the agreement to sell Ex.P1 on the record and further the evidence reflects that out of total sale consideration of Rs.14,80,000/-, the amount of Rs.14,00,000/- has already been paid by the appellant/plaintiff to the respondents-defendants. Meaning thereby that more than 90% of the amount of the sale consideration has already been paid and

only meager amount of Rs.80,000/- was left which could have been paid easily by the appellant/plaintiff but still the one year gap was kept for registration of the sale deed. It has also come up in the cross-examination of Charanjit Singh appellant/plaintiff PW1 that Charanjit Singh was assisting in the shop of Commission Agent of his father and Chacha (uncle). He did not deny that the respondents-defendants have been selling their crops with his father. It has further come up in the cross-examination of Charanjit Singh that there was loan over the land which is subject matter of the agreement to sell in question. It is further important to mention here that there is another undisputed fact on the record that Jagwinder Singh (brother) cousin of the present appellant/plaintiff filed a suit against the present respondents-defendants Jaswinder Singh, Rajinder Singh alongwith one Chhaja Singh that they had not executed the sale deed in favour of Jagwinder Singh and then suit for specific performance was filed earlier to this. In that case, the agreement to sell was of year 2011 and sale was to be made in the year 2013. The present appellant/plaintiff was the attesting witness of the agreement of the said case so in these facts and circumstances there was no reason for the appellant/plaintiff to enter into another agreement to sell with the respondents/defendants, in view of their conduct. Meaning thereby that in totality of the said evidence coming on record it is clear that the intention of the parties was not to enter into an agreement to sell but it was a document to secure the repayment of the amount given by the appellant/plaintiff to the respondents-defendants. As such there is no question of readiness and willingness on the part of the appellant-plaintiff as the intention of the parties was different from entering into agreement to sell. In view of the same, the case law relied upon by learned counsel for the appellant-plaintiff is not applicable to the facts and circumstances of the present case."

10. From the facts, it can safely be discerned that the real intention of the parties was never the sale of land but was to secure the loan advanced by the plaintiff to the respondents during the course of their transactions as the plaintiff was working as a commission agent. The fact that there was no real intention on part of the parties for sale of the land can well be gauged from the fact that despite a substantial payment out of the sale consideration having been made as earnest money, still a long period of one year was fixed for the purpose of getting the sale deed executed which is rather strange as the plaintiff being a commission agent could have very well paid the balance consideration which was a fractional amount, alongwith earnest money . This Court finds support from ***Suresh Singla vs. Smt. Phool Pati and another 2012(3) PLR 729(P & H)***, wherein in somewhat identical circumstances, where substantial amount had been paid as earnest money and yet a period of six months was yet fixed for executing the sale -deed, it was held as follows:

> "14. There is concurrent finding of fact recorded by both the courts below that intention of the parties was not to execute the agreement to sell but was to secure a loan. That being a finding of fact cannot be interfered in the regular second appeal. No doubt, the defendant has not specifically taken the said plea but she has taken a stand that agreement is the result of fraud committed upon her. Both the courts below have held that since the plaintiff is a money lender and a shopkeeper and as such, he was not interested in purchasing the property but was to secure a loan. The reasoning given by both the courts below in this regard appeals to the common sense. In case the intention of parties was actually to execute agreement in that case after paying 90% of the consideration the sale deed would not have been postponed for such a long period. As per Section 20 of the

> Act, the Court is not bound to grant the discretionary relief of specific performance. No doubt the discretion in withholding the said relief should not be arbitrary and should be based upon sound principles but on the facts of present case both the Courts below have judiciously exercised the jurisdiction by invoking the provisions of Section 20 of the Act in withholding the relief of specific performance."

11. In *Prem Singh vs. Mangu Ram 2004(3) PLR 29(P & H)*, also the position was almost similar as would be noticed from the relevant extracts reproduced below:

> "5. …. ….. ….. It has further been found that the sale price of the land fixed was Rs. 1,50,000/- per acre and an amount of Rs 1,00,000/- had already been paid. The marginal amount of Rs. 20,000/- alone remained to be paid at the time of execution of the sale deed on 5.11.1996. Plaintiff-respondent who was the commission agent could have easily paid the small amount of Rs. 20,000/- on the date for execution of the agreement dated 5.12.1996 itself. On the basis of the afore-mentioned facts, the ld. Addl. District Judge came to the conclusion that the real intention of the parties was not to sale and purchase the land. He found that the transaction may be merely to secure the payment of Rs. 1,00,000/- by the plaintiff-respondent from the defendant-appellant. It is in these circumstances that the ld. Addl. District Judge modified the findings by refusing to pass the decree for specific performance. However, he granted the alternative relief of recovery of Rs. 1,00,000/- alongwith interest @ 6 percent p.a. from the date of execution of the agreement till realisation.
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> 6. …. …… ……
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> 7. ….. …… …… Therefore, the discretion under Section 20 of the Specific Relief Act, 1963 has been rightly exercised by refusing the decree for specific performance of the agreement and granting alternative relief of recovery of Rs. 1,00,000/-

alongwith interest @ 6 percent p.a. Therefore, I do not find any legal infirmity in the views taken by the ld. Addl. District Judge."

12. Bearing in mind the facts of the present case and the ratio of the above referred judgments, this Court does not find any infirmity in the concurrent findings as recorded by the Courts below, which are hereby affirmed. Finding no merit in the appeal the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

08.10.2020
(kamal)

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**