In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4318 of 2012(O&M) and
Cross objections No. 14-C of 2015
Date of Decision:16.3.2020

Budh Ram

---Appellant

vs.

Natha Singh

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Akshay Jain, Advocate
for the appellant

Mr. Sandeep Punchhi, Advocate
for the respondent-cross objector

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Rekha Mittal, J.

This order will dispose of RSA No. 4318 of 2012 and cross objections No. 14-C of 2015 as these have emerged out of the judgment and decree dated 9.8.2012 passed by the Additional District Judge, Sirsa.

The appellant-plaintiff filed suit for possession qua land measuring 18 kanal 10 marlas by way of specific performance of agreement dated 17.6.2002. As per case set up by the appellant, the respondent-cross objector agreed to sell the suit land @ Rs. 1 lakh per acre and received Rs. 2 lakh as earnest money at the time of execution of agreement dated 17.6.2002. The sale deed was agreed to be executed on 17.12.2002. On the stipulated date, the appellant remained present in the office of Sub Registrar, Sirsa alongwith balance sale consideration and registration charges etc. but respondent did not turn up. He executed affidavit marking his presence, duly attested by Executive Magistrate, Sirsa. The appellant requested the respondent several times to get the sale deed executed and also served legal notice but to no avail. Hence the suit.

The respondent-defendant denied the allegations with regard to execution of agreement to sell, receipt of earnest money and promise to execute the sale deed on 17.12.2002 with the allegations that he made a request to the appellant to give a loan of Rs. 25,000/- with interest @ 2% per month. The appellant gave a loan of Rs. 25,000/- and asked him to purchase the stamp papers and signatures were obtained on blank stamp papers as security for repayment of loan. On 30.5.2003, he repaid the amount of loan with upto date interest and demanded return of blank signed papers but the appellant promised to return the same after 2-3 days. Later, the defendant requested the plaintiff several times to return the blank papers but the appellant told him that the same have been destroyed and it would not be misused. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial court framed following issues for determination:-

1. Whether the plaintiff has forged and fabricated the alleged agreement for sale? OPD
2. Relief.

The evidence adduced by the parties finds reference in paras 5 and 6 of the judgment of trial court. Having heard counsel for the parties in the light of materials on record, the trial court negated plea of the defendant that agreement to sell is forged and fabricated document. On the contrary, plea of the appellant was accepted that defendant agreed to sell the suit land vide agreement dated 17.6.2002 and is entitle to specific performance thereof. A relevant extract from the judgment of trial court, reads as follows:-

> "As a result of above findings on issue No. 1, wherein the plaintiff has been able to prove his case, the suit of the plaintiff succeeds and thus is hereby decreed with costs of the suit, for possession of the suit land by way of specific performance of the agreement dated 14.6.2002 on payment of balance sale price by the plaintiff to the defendant. Defendant is under direction from the court to get the sale deed executed in favour of the plaintiff within a period of one month from today after getting the land free from all encumbrances and after notifying the plaintiff of his intention to get the sale deed executed, who in turn shall deposit the balance sale price in favour of defendant in some nationalized bank within a period of seven days of such notice of defendant, and shall also bear registration expenses per agreement. In case, the defendant fails to get the sale deed executed within time the plaintiff would be at liberty to get the same executed through process of the court after depositing the balance sale price as and when ordered by executing court. Decree sheet be drawn accordingly and file be consigned to the record room after due compliance."

The appeal preferred by the defendant/cross objector was allowed by the appellate court on the solitary ground that as the agreement to sell is not a registered document, relief of specific performance of the same can not be granted. For this purpose, reliance has been placed upon judgment of this Court **Gurbachan Singh vs. Raghubir Singh 2010(5) Recent Civil Reports, 737.** Resultantly, the appellate court directed to refund the earnest money of Rs. 2 lakh with interest @ 18% per annum from the date of execution of agreement to sell (Ex. P1) till actual realization, to be paid by the appellant within two months from the date of decree i.e. 9.8.2012.

Feeling aggrieved against the decree passed by the Court in Appeal, modifying the judgment and decree passed by the trial court thereby allowing alternative relief of recovery in place of specific performance of the agreement, the instant appeal has been filed by the plaintiff-appellant.

The cross objections have been filed by the defendant-respondent after delay of 706 days in regard whereof application under Section 5 of the Limitation Act for condonation of delay has been filed.

Counsel for the appellant would argue that court in appeal modified the decree passed by the trial court on the sole premise that the agreement is not a registered document. It is further argued that the judgment in **Gurbachan Singh's case (supra)** is no longer a good law in view of Division Bench judgment of this Court **Ram Kishan and another vs. Bijender Mann alias Vijender Mann and others 2013(2) RCR (Civil) 419.** It is further argued that since the appellant proved execution of agreement to sell by examining various witnesses as well as readiness and willingness of the appellant to perform his part of the agreement, disallowing relief of specific performance of agreement would amount to putting premium upon false plea raised by the respondent that his signatures were obtained on blank paper(s) on the pretext of preparing a security document for repayment of loan of Rs. 25000/- with interest. It is argued that self serving statement of the respondent/defendant, by no means, can be taken sufficient to rebut evidence adduced by the appellant or establish plea of the defendant that agreement has been prepared using signatures obtained on blank paper(s).

Counsel representing the respondent/cross objector, on the contrary, has disputed findings of the courts in respect of agreement of sale, readiness and willingness of the appellant to perform his part of the agreement and entitlement to specific performance thereof. It is argued that the trial court framed only one issue, noticed hereinbefore. No issue was framed with regard to readiness and willingness of the appellant to perform his part of the agreement or entitlement to specific performance thereof. It is further argued that the appellate court framed two more issues, noticed in para 9 of judgment of said court but thereafter neither the case was remitted to the trial court for decision of additional issues nor an opportunity was allowed to the cross objector to adduce further evidence.

To assail findings regarding validity of the agreement in question, it is argued that on the second page of agreement, there is no attestation by the witnesses, therefore, testimony of one of the so called attesting witnesses examined by the appellant can not be taken into consideration. It has further been argued that agreement does not contain signatures of the purchaser on the second page, therefore, document Ex. P1 can not be construed as an agreement for sale of immovable property.

Counsel would argue that even if plea of the appellant is accepted that there was an agreement for sale of property, the appellant is not entitle to discretionary relief of specific performance. To bring home his contention, it is argued that the target date for execution and registration of sale deed was December 2002. The legal notice Ex. P3 was issued on 14.5.2004 and suit for specific performance was filed on 4.6.2004 meaning thereby that the appellant did not take any steps for getting sale deed executed and registered for a period of one and a half years from the target date, sufficient to negate his plea of readiness and willingness to perform his part of the agreement, therefore, he is not entitle to principal relief of specific performance. For this purpose, reliance has been placed upon judgments of Hon'ble the Supreme Court **K.S.Vidyanadam vs. Vairavan 1997 (2) RCR (Civil) 312** and **H.P.Pyarejan vs. Dasappa (dead) by Lrs and others 2006 (1) RCR (Civil) 646**.

Counsel for the appellant, in reply, would argue that even if the agreement is not at all signed by the purchaser or the same is signed by the vendor alone, it would be a valid agreement that can be enforced through process of the court. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Alka Bose vs. Parmatma Devi and others 2009(1) RCR (Civil) 450.** It is argued that there is no mandate in law that agreement to sell must be attested by a witness.

With regard to readiness and willingness of the appellant to perform his part of the agreement, it is argued that substantial amount of sale consideration had already been paid at the time of execution of agreement and on the stipulated date, the appellant along with balance sale consideration and expenses of registration etc. was present in the office of Sub Registrar, Sirsa, proved by documentary evidence. It is argued that as the respondent had denied execution of agreement to sell, it is otherwise not open for him to raise any such plea that the appellant was not ready and willing to perform his part of the agreement.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the trial court framed two issues and the second issue deals with relief and as such only one issue was framed in respect of agreement to sell, noticed hereinbefore. However, the Court in Appeal framed two more issues, read thus:-

1. Whether the plaintiff is entitled to specific performance of the agreement to sell dated 17.6.2002 on the terms and conditions mentioned in the agreement? OPP
2. Whether the plaintiff has been ready and willing to perform his part of the contract? OPP

In para 10 of the judgment, it has been mentioned that counsel for the parties did not opt to lead any evidence on the aforesaid issues as they have already led evidence. Counsel for the cross objector/defendant has not challenged correctness of observations recorded in para 10 of the judgment by appellate court. There is nothing on record suggestive of the fact that after framing of additional issues aforesaid, the cross objector either made a request for leading further evidence or remittance of the case to the trial court for decision afresh. In the given circumstance, the cross objector can not derive any advantage to his contention with regard to failure of the trial court to frame proper issues or non-remittance of the matter to the trial court after framing of additional issues by the appellate court. This apart, counsel for the respondent/defendant has not made any submissions from the point of view of prejudice.

There is no denial that the appellate court rejected specific performance of agreement on the sole ground that the agreement is not registered and can not form the basis for allowing specific performance thereof by relying upon judgment of this Court in **Gurbachan Singh's case (supra).** Counsel for the cross-objector/defendant has not disputed that judgment in **Gurbachan Singh's case (supra)** has been overruled by the Division Bench judgment of this Court **Ram Kishan and another's case (supra).** As such, findings of the appellate court rejecting plea of the appellant for specific performance for want of registration of agreement to sell can not sustain and accordingly set aside.

Indisputably, the agreement to sell has been signed by defendant Natha Singh though he has raised the plea that his signatures were obtained on blank stamp papers. It is also admitted by the defendant that stamp paper on which he appended his signatures was purchased by him. The appellant examined stamp vendor, scribe of the agreement, the attesting witness namely Bhoop Singh besides examining himself to prove agreement Ex. P1 and readiness and willingness of the appellant to perform his part of the agreement. The scribe of the agreement had admitted in cross examination that earnest money was not paid in his presence. In the agreement, there is no recital that earnest money was paid in presence of scribe. Rather it has been mentioned that earnest money had been received by the vendor in the presence of witnesses. Counsel for the cross objector has failed to point out any materials elicited in cross examination of the witnesses to impeach their credibility. There is nothing on record suggestive of the fact that either the scribe or Bhoop Singh attesting witness had any hostility against the defendant/cross objector to extend their hand for preparing the agreement to sell and supporting cause of the appellant before the court of law. On the contrary, plea of the defendant with regard to blank signatures to create security for repayment of Rs. 25000/- with interest is highly improbable and does not appeal to reason. No prudent person would append his signatures on blank papers at the cost of incurring risk of creating liability of any kind and magnitude. It is not plea of the defendant that he had an emergent situation to meet by raising loan of Rs. 25000/-, thus, was constrained to append his signatures on blank papers. The self serving statement of the defendant, in my considered opinion, is not at all sufficient to rebut case of the appellant and testimony of the witnesses examined to prove Ex. P1. This apart, the defendant has raised the plea that he returned loan of Rs. 25,000/- with interest upto date on 30.5.2003 and the appellant promised to return the blank signed papers in 2-3 days time. The first notice was issued by the appellant in May 2004 calling upon the defendant to execute the sale deed. Admittedly, the defendant did not send any reply to the notice. Conversely, he never issued any notice upon the appellant to return the blank signed papers at any point of time. It is difficult to accept to reason that if a person had signed blank papers at the time of taking loan, he would return the loan with interest without insisting for return of those papers or at least a receipt acknowledging refund of loan amount. All these facts go a long way to prove that story propounded by the defendant with regard to taking of loan or putting signatures on blank papers has no legs to stand and the same has been concocted with a clear intent to wriggle out of agreement to sell. In this view of the matter, I do not find any reason to differ with findings of the courts on the aspect of agreement to sell having been executed by the defendant for selling land in dispute @ Rs. 1 lakh per acre and receipt of earnest money of Rs. 2 lakh at the time of execution of agreement.

Counsel for the defendant has raised an issue that second page of agreement has not been signed by the purchaser and attesting witness. As has rightly been argued by counsel for the appellant that even if the agreement is signed only by a seller but the same is delivered to the purchaser and accepted by him, it is a valid contract enforceable in law. The controversy, in this regard, is squarely covered against the respondent by judgment of Hon'ble the Supreme Court in **Alka Bose's case (supra).** The agreement to sell, admittedly, does not require attestation.

The appellant-plaintiff has proved execution of agreement of sale. The plea of respondent-defendant of blank signatures or taking of loan has been found to be false. Out of sale consideration of Rs. 2 lakh and approximately Rs. 30,000/-, a sum of Rs. 2 lakh had already been paid under the agreement. On the stipulated date, the appellant remained present in the office of Sub Registrar as has been proved by way of oral and documentary evidence. The notice issued by the appellant Ex. P3 was not replied by the respondent-defendant. There is no such plea raised by the defendant that price of land increased in between the date of agreement and filing of suit. No other tangible reason is forthcoming which can negate plea of the appellant with regard to readiness and willingness to perform his part of the agreement. The mere fact that suit has been filed after 1½ years from the stipulated date *ipso facto* is not sufficient to negate plea of the appellant qua readiness and willingness to perform his part of the agreement or denial of specific performance, in exercise of discretionary jurisdiction of the Court.

Under Section 20 of the Specific Relief Act, jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. In the case at hand, the defendant has not raised any plea under Section 20(2) of the Act. On the contrary, his plea to challenge the agreement has been found to be patently false. He has also failed to adduce any evidence that price of land, at the relevant time, was Rs. 3.5 lakh per acre. There is no evidence with regard to increase of price from the date of agreement till filing of the suit. That being so, there is no reason to deny specific performance.

The judgment in **Vidynadam's case (supra)** has got no bearing on the facts of the case at hand because in the said case vendee woke up after two years to claim specific performance attracted by increase of price of the property in the area. In the circumstances, it was held that there was total inaction on the part of plaintiff for 2½ years in clear violation of terms of the agreement and delay is coupled with substantial rise in prices, according to evidence, three times between the date of agreement and the date of suit notice. Further held that delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff. Counsel for the respondent/cross objector has failed to draw any similarity between facts of the case at hand and referred authority except that suit has been filed after 1½ years of the target date. Above all, since the defendant/cross objector has denied execution of the agreement to sell, it is otherwise not open for him to rake up an issue with regard to the plaintiff being not ready and willing to perform his part of the agreement. Analyzed from any angle, I find it difficult to accept contention of the respondent/cross objector that either the appellant was not ready and willing to perform his part of the agreement or he is otherwise not entitle to specific performance of the agreement in exercise of discretionary jurisdiction of the court.

In view of what has been discussed hereinbefore, the appeal is allowed and cross objections are dismissed. The judgment and decree passed by the appellate court is modified to the effect that the appellant shall be entitle to specific performance of agreement to sell and suit filed by him is decreed accordingly. The appellant shall deposit balance sale consideration, if not already deposited, with the trial court within a period of three months. The respondent shall execute the sale deed within two months on expiry of period of three months provided for deposit of balance sale consideration. In case the respondent fails to execute the sale deed within the stipulated period, the appellant shall be at liberty to get the sale deed executed and registered through process of the court. On the other hand, in case the appellant fails to deposit balance sale consideration within the stipulated period in aforesaid terms, the appeal shall be deemed to be dismissed.

(**Rekha Mittal)**
Judge

16.3.2020
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No