

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

RSA-1929-1999(O&M)

Reserved on:-1.5.2023

Date of Pronouncement:-8.5.2023

Surinder Pal (since deceased) through his LRs

...Appellants

Versus

Avtar Singh (since deceased) through his LRs

...Respondents

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

Present: Mr.Yagsimant Attri, Advocate
for the appellants.

Mr.Yuvraj Shandilya, Advocate for
Mr.Rahul Sharma-I, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Surinder Pal son of Deputy Lal, resident of Morinda, Tehsil and District Ropar had brought a suit against Avtar Singh son of Raja Ram, resident of Morinda, seeking possession by way of specific performance of agreement to sell land dated 3.8.1988 and registered in the office of

Sub Registrar, Ropar.

2. As per the case of the plaintiff, the defendant had entered into such agreement to sell with him for a sum of Rs.90,000/-, receiving Rs.65,000/- as earnest money for sale of land measuring 0 bigha 9 biswas comprised in Khata no.65/76, 1828/2515, khasra no.4616(0-1) 4617(0-8) situated in the area of Morinda, Tehsil and District Ropar; the agreement was got registered in the office of Sub Registrar, Ropar; the target date for execution of the sale deed was fixed as on or before 1.8.1989; the agreement to sell had been scribed by regular deed writer and attested by witnesses; earnest money of Rs.65,000/- was paid by the plaintiff to defendant in the presence of witnesses and the Sub Registrar.

According to the plaintiff, he requested the defendant several times to come forward to execute the sale deed in his favour but the defendant put off the matter on one pretext or the other; the plaintiff went to the office of Sub Registrar, Ropar on 1.8.1989 having the balance consideration amount and money to bear other expenses and waited there but the defendant did not turn up; the plaintiff executed an affidavit in that regard and got the same attested from Executive Magistrate, Ropar showing his readiness and willingness to perform his part of the contract, however, the sale deed could not be executed since defendant did not turn up to execute and get it registered. According to the plaintiff, he has been and is

still ready and willing to perform his part of contract. Ultimately, he brought the suit in question in the Court. In the suit the plaintiff had sought alternative relief of refund of Rs.65,000/- paid as earnest money and Rs.65,000/- more as damages.

3. On being put to notice, the defendant appeared and filed a written statement contesting the suit denying that he had entered into an agreement to sell with the plaintiff as claimed in the plaint on 3.8.1988. According to him, he had raised a loan of Rs.65,000/- from the plaintiff signing loan papers; since the defendant had blind faith in the plaintiff, as such he did not read the loan documents and signed the same at the asking of the plaintiff, however on receipt of summons from the Court, he came to know that the plaintiff in connivance with the scribe and the witnesses had got the alleged agreement signed from him claiming it to be loan document. The defendant denied his liability to execute the sale deed in favour of the plaintiff and prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the defendant executed the agreement to sell dated 3.8.1988 in favour of the plaintiff? OPP.

2. Whether defendant had received Rs.65,000/- from the plaintiff as a loan and not earnest money? OPP.

3. Whether the execution of the agreement was the result of fraud as alleged in para 2 of the written statement? OPD.

4. Whether the plaintiff has been ready and willing to perform his part of the agreement? OPP.

5. Whether the plaintiff is entitled to the specific performance of the agreement, if so on what terms? OPP.

6. Relief.

6. Both the parties led evidence in respect of their claims.

During the course of its evidence, the plaintiff himself got his statement recorded as PW6 besides examining Jaswant Singh as PW1, Dilbag Singh as PW2, Krishan Chand, Deed Writer as PW3, Piara Singh as PW4 and Raman Kumar as PW5.

In rebuttal defendant Avtar Singh got his statement recorded as DW1 besides examining Hazara Singh as DW2, Rajinder Singh as DW3 and Amar Singh as DW4.

7. After hearing the learned counsel for the parties, the trial Court of Senior Sub Judge, Rupnagar vide judgment and decree dated 7.5.1994 decreed the suit of the plaintiff granting specific performance of agreement to sell in favour of the plaintiff against the defendant.

8. Defendant was aggrieved by the said judgment and

decree and he had filed an appeal before District Judge, Ropar, which was assigned to Additional District Judge, Ropar, who vide judgment and decree dated 15.9.1998 accepted the appeal with costs, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for recovery of Rs.65,000/- along with interest at the rate of 6% per annum from the date of filing of the suit till realisation.

9. Now it was the turn of the plaintiff to feel dissatisfied and he has knocked at the door of this Court by way of filing present regular second appeal, notice of which was issued to the respondent, who put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. In this case the defendant had though not clearly admitted having entered into agreement to sell with the plaintiff but he admits the agreement in a half hearted manner claiming that as a matter of fact it was a loan transaction under which he had received an amount of Rs.65,000/- from the plaintiff. The trial Court of Senior Sub Judge, Rupnagar by proper appraisal and appreciation of evidence and correct interpretation of law had returned findings that the defendant had executed the agreement to sell dated 3.8.1988 in favour of the plaintiff receiving Rs.65,000/- as earnest money and the version set up by the defendant that it was a loan transaction and that

the agreement was result of fraud was considered and rejected. It was found that plaintiff has been ready and willing to perform his part of contract and his entitlement to specific performance of agreement was there. While arriving at this conclusion, the trial Court had referred to depositions of PW1 Jaswant Singh and PW2 Dilbag Singh, attesting witnesses of the agreement to sell Ex.P1, who had categorically deposed regarding its execution by defendant in favour of the plaintiff and the same having been scribed by Krishan Chand, Deed Writer, who had read over the same to the defendant and such defendant having put his signatures thereon after admitting the contents to be correct, whereas such witnesses had attested the agreement. They further deposed that thereafter they had gone to the office of Sub Registrar, Ropar and before Sub Registrar, Ropar, the plaintiff had paid Rs.65,000/- on behalf of the plaintiff to defendant as earnest money. The agreement to sell was read over to defendant by Sub Registrar and defendant after receiving Rs.65,000/- as earnest money and admitting the contents of the document to be correct had put his signatures on agreement Ex.P1. Then both the attesting witnesses as well as Raman Kumar on behalf of plaintiff had put their signatures. PW3 Krishan Chand, Deed Writer and PW4 Piara Singh, Clerk from the office of Sub Registrar, Ropar had lent support to the case of the plaintiff, former proving the agreement and latter endorsement of Sub Registrar as Ex.P1/A made on Ex.P1.

12. It was noticed by the trial Court that the defendant is a well educated person and it is not believable that his signatures were got by putting him under some misconception. The facts and circumstances of the case, evidence available on the record clearly proved that defendant had entered into an agreement to sell with the plaintiff receiving earnest money and the plaintiff has been ready and willing to perform his part of the contract throughout. The testimony of PW6 Surinder Pal plaintiff is very clear in that regard. He had stated that on 1.8.1989, the date fixed for execution of the sale deed, he had gone to the office of Sub Registrar, Ropar and remained present there; at that time, he was having balance sale consideration and other expenses. In absence of any cogent and convincing evidence led in rebuttal his deposition deserved to be relied upon. The judgment of the trial Court was quite detailed and well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law.

But learned Additional District Judge, Ropar clearly misappriased the evidence and wrongly interpreted the law while upsetting the judgment and decree passed by the trial Court ignoring the overwhelming evidence adduced by the plaintiff to prove the execution of agreement to sell and his readiness and willingness throughout to get the sale deed executed. Learned Additional District Judge, Ropar wrongly relied upon the version set up by the defendant

that the plaintiff was in habit of giving loan to the persons and instead of scribing loan documents, he got agreements to sell of property scribed in his favour. Learned Additional District Judge, Ropar wrongly arrived at the conclusion that the plaintiff was a money lender. The amendment of the written statement to incorporate these facts was wrongly allowed by learned Additional District Judge, Ropar.

13. May it be so, the whole approach of Additional District Judge, Ropar towards the case was not based upon proper understanding of factual and legal position. The reasoning given by Additional District Judge, Ropar in denying specific performance of agreement to sell to the plaintiff is least convincing and contrary to the settled legal position. Learned Additional District Judge, Ropar conveniently ignored the settled law that in case of agreement to sell immovable property specific performance is normally granted unless there are strong reasons to deny the same. None of those reasons were there in the instant case. The First Appellate Court of Additional District Judge, Ropar went on to accept the version of the defendant as if it was gospel's truth ignoring overwhelming oral as well as documentary evidence adduced by the plaintiff to prove his case. Too much has been made of the fact that possession remained with the defendant though in the agreement it is mentioned that it had been delivered to the plaintiff and further that outer limit for

execution of sale deed was fixed as 1.8.1989 i.e. after about one year of entering into agreement when major amount of the money had been paid by the purchaser to the seller. How these two things adversely affect the right of the plaintiff to get the agreement specifically enforce is difficult to understand.

14. Limitation for filing a suit for specific performance is three years. In this case, suit had been filed within a period of limitation. Additional District Judge, Ropar has wrongly doubted the bona fide of the plaintiff for specific performance citing the reason that he had filed a suit for specific performance after one year of entering into agreement.

15. Learned counsel for the appellant has argued on the lines that under the circumstances of the case since execution of the agreement was duly proved on record and so was the fact that plaintiff has been ready and willing to perform his part of contract throughout and his claim had been accepted by the trial Court but wrongly upset by the First Appellate Court of Additional District Judge, Ropar and that wrong be undone by restoring the judgment and decree passed by the trial Court.

16. Whereas learned counsel for the respondents has refuted those assertions and defended the judgment and decree passed by Additional District Judge, Ropar. He has referred to judgment **Jamal Versus Naresh Kumar, 2023(1) RCR(Civil)364.**

17. The arguments advanced by learned counsel for the appellants are found to have merit, whereas those by learned counsel for the respondents are not convincing and do not deserve acceptance. The judgment referred to by learned counsel for the respondents is not applicable to the present case due to different facts and circumstances of the case and the context in which such observations had been made.

18. The conclusion arrived at by learned Additional District Judge, Ropar was obviously wrong and erroneous in denying specific performance to the plaintiff and rather ordering refund of earnest money with interest @ 6% per annum. That judgment cannot stand judicial scrutiny and is liable to be set aside.

19. Therefore, the appeal has got merit. The same is allowed with costs and the impugned judgment passed by Additional District Judge, Ropar setting aside the judgment and decree passed by the trial Court is set aside, whereas judgment and decree passed by the trial Court are restored.

Since the appeal stands allowed, the miscellaneous application(s), if any stand disposed of accordingly.

8.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No