
(2005) 01 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 821 of 1984

Parmod Bhushan Pal

APPELLANT

Vs

Bachan Singh (Dead) through his L.Rs. and Others

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Specific Relief Act, 1963 — Section 16

Citation : (2005) 2 CivCC 122 : (2005) 139 PLR 776

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Shiahya Sud, for the Appellant; M.S. Bedi, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court whereby suit for specific performance of agreement decreed by the trial Court was dismissed in appeal.

2. Bachan Singh defendant agreed to sell land measuring 37 Kanals 4 Marias by virtue of an agreement dated 3.4.1973 with Dr. Hari Ram Pal father of the plaintiff. The total sale consideration was Rs. 23500/- out of which Rs. 18500/- was paid as earnest money. The sale deed was to be executed on 25 Maghar, 2030 BK. However, vide another agreement dated 9.1.1975, the time for execution of the sale deed was extended to 23.06.1975. The plaintiff put in appearance before the Sub Registrar on 23.06.1975 for registration of the sale deed but the defendant did not turn up. The father of the plaintiff has been ready and willing to perform his part of the contract. Since the father of the plaintiff died on 3.6.1976, the plaintiff filed the present suit for specific performance of the agreement alleging therein that he was also ready and willing to execute the sale deed in terms of the agreement in question on the payment of remaining sale consideration. It is also alleged that Bachan Singh executed sale deed in respect of land measuring 2 kanals 19 marlas in favour of defendants No. 7 and

8 on 8.2.1977 even though there was prior agreement of sale of land in favour of the predecessor-in-interest of the plaintiff.

3. Bachan Singh defendant contested the suit by denying the claim of the plaintiff in its entirety. The execution of the agreement was denied and it was asserted that the land in dispute has not been recorded as exclusive ownership of Bachan Singh. However, it was the stand of defendants No.7 and 8 that they are bona fide purchasers of land in dispute for consideration and without notice.

4. The learned trial Court found that the agreement dated 3.4.1973 is proved to be executed as well as it is proved that a sum of Rs. 18,500/- was paid to defendant No. 1 in the presence of Ajit Singh (PW2), the scribe of the agreement. The plaintiff examined Rulia Ram (PW8), attesting witness of the agreement. The plaintiff also examined Ranjit Singh (PW4), stamp vendor, to prove the purchase of stamp papers for the purpose of agreement by Bachan Singh defendant. Thus, the learned trial Court recorded the finding that the agreement was executed by Bachan Singh defendant for sale of agricultural land in the presence of witnesses and that he has received sale consideration of Rs. 18,500/-. The learned trial Court also recorded a finding that the time for the purpose of execution of sale deed was extended by mutual consent vide agreement dated 9.1.1975, Exhibit P2. Such document is proved on the basis of statement of Parshotam Lal scribe (PW3) and statement of Ramji Dass (PW6), attesting witness. While returning finding on Issue No. 2, the plaintiff was also found to be heir of Dr. Hari Ram Pal and, thus, competent to sue for specific performance of the agreement. The learned trial Court returned the finding on Issue No. 3 and 4 that the plaintiff and his father were ready and willing to perform their part of the agreement and it is defendant No. 1 who has failed to perform his part of the agreement. The learned trial Court also found that the plea of bona fide purchaser raised by defendant No. 7 and 8 is not tenable as the father of said defendant got executed sale deed Exhibit DW4/A and Exhibit DW4/B in the name of his own sons though he had the knowledge about the agreement executed by Bachan Singh in favour of Dr. Hari Ram Pal.

5. However, the learned first Appellate Court accepted the appeal filed by Bachan Singh and relying upon the judgment of this Court in the case reported as Dhanna Singh and Ors. v. Malkiat Singh and Anr. (1983) 85 P.L.R. 275, held that the plaintiff was not ready and willing to perform his part of the contract as it was incumbent upon the plaintiff to show that he has money at his disposal to pay the sale consideration at the time when he sale deed was to be executed/The judgment and decree passed by the learned trial Court was set aside and a decree for recovery of Rs. 18,500/- was passed in favour of the plaintiff and against the defendant.

6. Aggrieved against the findings recorded by the learned first Appellate Court, the plaintiff has filed the present appeal. The following substantial question of law arise for consideration of this Court:-

Whether the plaintiff has pleaded and proved that he or his predecessor-in-interest were ready and willing to perform their part of the contract?

7. The agreement was entered upon 3.4.1973 for a total consideration of Rs. 23,500/- out of which substantial amount of Rs. 18,500/- has been proved to be paid as earnest money. The plaintiff has pleaded that Dr. Hari Ram Pal went to the office of Sub Registrar on 23.6.1975 for the purpose of execution of sale deed along with balance sale consideration but since defendant No. 1 did not come present, he came back after waiting the entire day. It has also been pleaded that father of the appellant was ready and willing to get the sale deed executed and after his death, he is ready and willing to get the sale deed executed on payment of balance consideration of Rs. 5,00/-. The plaintiff has appeared as his own witness as PW1 and has deposed that his father came to the court compound on 23.6.1975 with the remaining sale consideration and sale expenses but the defendant did not turn up. He has deposed that notice Exhibit P-7 was served upon Bachan Singh but the defendant did not turn up even after notice. He has further deposed that he is ready and willing to perform his part of the contract in terms of the agreement and his father also remained ready and willing to perform his part of the contract during his life time. He even deposed that he is now ready and willing to perform his part of the contract. He has also deposed that though the land is less than the area to be sold but he is ready and willing to pay the whole consideration. In cross-examination, the witness deposed that his father took the amount from the house at the time of execution of the agreement and that his father did not pay income tax but he filed return on his behalf after his death.

8. There is nothing on the record to doubt bona fide statement of the plaintiff on oath that he is ready and willing to perform his part of the contract. He has pleaded that necessary ingredients required in terms of Section 16 of the Specific Relief Act, 1963, that he was ready and willing to perform his part of the contract. The defendant has not only denied the agreement of sale but also the notice issued calling upon the defendant to execute the sale deed. The learned first Appellate Court has held that the plaintiff is not ready and willing to perform his part of the contract for the reason that the plaintiff has not shown that he has offered money as held by this Court in Dhanna Singh's case (supra).

9. The said finding of the learned first Appellate Court is clearly erroneous and not sustainable in law. The judgment referred to by the learned first Appellate Court was considered by this Court in the case reported as Basheshar Nath v. Radha Kishan, (1993-2)104 P.L.R. 56 found to be a judgment per incuriam. The following para from the judgment would be relevant for consideration of this Court:-

"I have given due consideration to the argument of the learned counsel for the appellant but regret my inability to accept the same. In the plaint, all the facts have been narrated, as stated above. Thereafter, it was pleaded that the plaintiff-respondent was ready and willing to perform the agreement. It has been

mentioned in paragraphs 5 and 6 of the plaint that on 1.2.1974 the plaintiff-respondent waited for the defendant-appellant in the office of the Sub Registrar, Kaithal, along with the balance of sale price and the necessary amount required for other expenses but the defendant-appellant did not deliberately meet the plaintiff-respondent either in the bazar or in the office of Sub Registrar, Kaithal; that the plaintiff-respondent then got his presence marked before the Sub Registrar, Kaithal, through an affidavit duly attested to this effect by the Sub Registrar, Kaithal, in his capacity as Executive Magistrate IIInd Class, Kaithal, and that the defendant-appellant has deliberately committed the breach of agreement and he is not ready and willing to perform his part of the contract. From all the pleas, it is evident that the plaintiff-respondent was alleging that he was always ready and willing to perform his part of the agreement. Therefore, it cannot be held that a plea has not been taken by the plaintiff-respondent that he was ready and willing to perform his part of the agreement. Similarly, in his statement he has stated all the above-said facts. The inference is that he was always ready and willing to perform his part of the agreement. As stated above, the plaintiff-respondent has alleged in the plaint that he is still ready and willing to perform his part of the agreement and he has also made the same statement. The judgment in Dhanna Singh's case (supra) was rendered in ignorance of the law and, therefore, the said judgment is per incuriam".

10. As a matter of fact, the Supreme Court in the decision reported as Motilal Jain Vs. Smt. Ramdasi Devi and Others, , has considered the entire case law in respect of requirements of pleading and evidence to prove the readiness and willingness of the plaintiff including the argument that the plaint shall meet the requirements of form 47 and 48 of the First Schedule of the Code of Civil Procedure. The Court held to the following effect:-

"That decision was relied upon by a three-Judge Bench of this Court in Syed Dastagir Vs. T.R. Gopalakrishnasetty, wherein it was held that in construing a plea in any pleadings, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pitch and substance of the plea. It was observed: (SCC Head note)

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not

a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is the subject - matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

11. Keeping in view the said principles of law, the finding recorded by the learned first Appellate Court that the plaintiff has not offered any money at the time of execution of sale deed and proved to be not ready and willing to perform his part of the contract is not sustainable in law.

12. The only argument raised by learned counsel for the respondent is that the finding of fact has been recorded by the learned first Appellate Court that the plaintiff was not ready and willing to perform his part of the contract which shall not be interfered with in second appeal. The said argument is without any substance inasmuch as such findings were returned by applying the principles of law which were not found to be laid down a binding precedent.

13. Consequently, the appeal is allowed and the judgment and decree passed by the learned first Appellate Court is set aside and that the learned trial Court is restored with no order as to costs.