

# Inderjit Singh And Anr vs Hardev Singh And Anr on 21 October, 2015

**Author: Amit Rawal**

**Bench: Amit Rawal**

RSA No.5275 of 2012 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.5275 of 2012 (O&M)  
Date of decision : 21.10.2015

Inderjit Singh and another

...Appellants

Versus

Hardev Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. B.B.S. Sobti, Advocate for appellants.

Mr. Piyush Kant Jain, Advocate for the respondent No.1.

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AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal. It would be apt to give few facts which are essential and necessary for adjudication of the present appeal. As per the case set out in the plaint, agreement to sell dated 15.02.1993 was entered into between the plaintiff and defendant Nos.1 and 2 in respect of land measuring 8 kanals out of total land measuring 24 kanals. It was stated that defendant Nos.1 and 2 mortgaged the land measuring 8 kanal of Killa No.17, Rectangle No.15 for a sum of `30,000/- with Primary Agricultural Development Bank-defendant No.3. The total sale

consideration for aforementioned land was fixed as `70,000/- and earnest money of `24,000/- stated to have been paid. It was further averred that on 27.02.1993, defendant No.2-Harinder Singh received a sum of `5,000/- and made an endorsement in this regard and on 28.09.1993 both the defendants received earnest money of `8,000/- which fact was endorsed on the agreement to sell. The stipulated date for registration and execution of the sale deed was fixed as 14.02.1994 at the expense of the plaintiff. It was further averred that possession of Killa No.17 of Rectangle No.15 out of suit property was also delivered to the plaintiff. The plaintiff had been ready and willing to perform his part of the agreement but, the defendants did not execute and register the sale deed which necessitated him to send legal notice. Ultimately, suit was filed on 22.02.1994.

The appellants-defendants in the written statement had taken numerous preliminary objections vis-a-vis maintainability, cause of action, locus standi, suit being barred by provision of Section 10 CPC and on merits stated that mortgage money has since been paid to the defendant No.3.

It was stated that agreement to sell was denied on the premise that plaintiff is money lender and defendants approached him for loan which was advanced to them along with interest at the rate of 18% p.a.. In this process, signature of defendants on some papers alleging to be pronote had been obtained. However, `5,000/- was paid back to the plaintiff but, the signed papers were not given and which were converted into execution of agreement to sell in respect of aforementioned land.

The respondent-plaintiff in order to prove the execution of agreement to sell, much less, payment of the earnest money and subsequent premium, examined PW1 Kulwinder Singh, PW3 Maghar Singh (attesting witnesses to the agreement to sell), PW3 (renumbered) Kamlesh Kumar, PW5 Parshotam Dass and he himself appeared as PW2. Legal notice dated 31.01.1994 Ex.P1, Agreement to sell Ex.P2, endorsements Ex.P2/A and Ex.P2/B and photocopy of the entry bearing No.174 entered into the register of Deed Writer as Ex.PW4/1 and photocopy of entry pertaining to issuance of register Ex.PW5/1, had been proved on record.

The appellants-defendants appeared as DW1 and DW2 and examined Surjit Singh (witness to the endorsements) and Pritam Singh as DW3 and DW4 and vide order dated 19.05.2007, tendered into evidence certified copies of judgment and decree dated 26.08.2000 as Ex.DX and Ex.DY and suit bearing No.36 of 04.02.1998 titled as Mann Singh Vs. Inderjit Singh, alleged to have been filed claiming the specific performance of agreement to sell dated 14.02.1991 allegedly executed by defendants in favour of Mann Singh.

The trial Court on the basis of the oral and documentary evidence gave a finding on issue No.1 in favour of the plaintiff whereas vis-a-vis finding on issue qua readiness and willingness also rendered in favour of the plaintiff, but declined the discretionary relief of specific performance on the premise that plaintiff did not challenge the judgment and decree dated 26.08.2000 and ordered for refund of the earnest money for `37,000/- along with interest at the rate of 12% till filing of the suit with future interest @ 6% p.a. Aggrieved against the aforementioned judgment and decree, both the parties to the lis filed appeal bearing No.91 dated 13.09.2007 titled as Hardev Singh Vs. Inderjit Singh and ors. and Appeal No.100 titled as Inderjit Singh and another Vs. Hardev Singh. Lower Appellate Court dismissed the appeal filed by the appellants-defendants, but allowed the appeal

filed by the respondent-plaintiff and decreed the suit and held that plaintiff is entitled to discretionary relief of specific performance of agreement to sell on deposit of balance sale consideration within two months from the date of passing of the judgment and decree. It is in these circumstances the aforementioned RSA has been filed.

Mr. B.B.S. Sobti, learned counsel appearing on behalf of appellants-defendants in support of his grounds of appeal, raised following submissions:-

- a) The Lower Appellate Court has committed illegality and perversity in decreeing the suit inasmuch as without noticing the fact that respondent-plaintiff did not challenge the judgment and decree aforementioned, despite having tendered in 2007.
- b) The respondent-plaintiff was not ready and willing to perform his part of the agreement to sell and same was conspicuously absent.
- c) DW3 Surjit Singh is the attesting witness to the endorsement dated 27.02.1993 Ex.P2/A. It has been proved that defendants had taken a loan to the tune of `5,000/- and in lieu thereof, signatures of the defendants as well as of DW3 Surjit Singh were taken.
- d) Lower Appellate Court wrongly held that agreement stood proved through the testimony of Kulwinder Singh another witness, whereas there has been a gross misreading and misdirection of the oral and documentary evidence.
- e) Agreement to sell dated 15.02.1993 is in Punjabi which would reveal that only name of one witness Sampuran Singh has been thumb marked, whereas name of other witness Maghar Singh has been written with hand.
- f) From the perusal of the agreement, only blank space is available to adjust the signature and thumb impression of the parties.
- g) Endorsements Ex.P2/A dated 27.02.1993 and Ex.P2/B dated 28.09.1993 bears only thumb impression of Harminder Singh and there are no signature or thumb impression of other appellant Inderjit Singh whereas endorsement Ex.PW2/A is signed by Harminder Singh and Inderjit Singh also.
- h) The evidence led by the plaintiff had totally demolished their case inasmuch as that agreement to sell Ex.P2 was nothing else but the created document. PW1 Kulwinder Singh is only a clerk of the counsel who produced to prove the copy of the notice issued by the counsel.
- i) Maghar Singh was related witness i.e. real chacha of the plaintiff.
- j) PW5 Parshotam Dass, Stamp Vendor, did not stand in cross-

examination, as he has admitted that he did not bring the register in which entry of the stamp paper was made but he feigned ignorance, much less, person who had purchased the stamp paper.

k) No specific issue with regard to the readiness and willingness was framed and, therefore, the Courts below have committed illegality and perversity in decreeing the suit in the absence of such issue.

In support of his contentions, he has relied upon various judgments but all of them are on particular point so I only intend to refer few of them to avoid repetition, which are as follows:-

1. H. Siddiqui (dead) by Lrs. Vs. A. Ramalingam, 2011(2) Civil Court Cases 405 (S.C.)
2. J. Kalayarasi and another Vs. S.A.M. Ibrahim Sahib, 2011(6) R.C.R. (Civil) 1706.
3. Pantangi Balarama Venkata Ganesh Vs. State of Andhra Pradesh, 2009(3) Apex Court Judgments 550 (S.C.)
4. Vimalleshwar Nagappa Shet Vs. Noor Ahmed Sheriff and ors., 2011 (2) Apex Court Judgments 623 (S.C.) He further submits that appellants-defendants had filed cross appeal against the judgment and decree vis-a-vis findings rendered by the trial Court qua execution of the agreement to sell and readiness and willingness of such appeal was maintainable in view of provision of Order 41 Rule 33 CPC. He further submits that mere admission of signatures without proving the execution of the agreement to sell would not entail into exercise of discretion under Section 20 of the Specific Relief Act.

In support of his contentions, he has relied upon various judgments as follows:-

1. State of Haryana and another Vs. Vinod Tayal, 2011 (Suppl.) Civil Court Cases 895 (P&H)
2. K. Muthuswami Gounder Vs. N. Palaniappa Gounder, 1999 (Suppl.) Civil Court Cases 131 (S.C.)
3. S. Nazeer Ahmed Vs. State Bank of Mysore and ors., 2007(1) R.C.R. (Civil) 705
4. Dasondha Singh Vs. Zalam Singh, 1997(2) R.C.R. (Civil) 694
5. Abnash Chander Vs. Surat Singh, 1992(1) R.R.R. 569
6. Roshanbeg Singh Vs. Harmitter Singh and ors, 1976 PLJ 150 and submits that following substantial questions of law arises for determination by this Court:-

- a) As to whether the Ld. Lower Appellate Court being a fact finding Court was not required to formulate points for its discussion and decision and as to whether the Ld. Lower Appellate Court was not required to return its findings on each and every issue?
- b) As to whether the agreement could be considered to be proved merely on the basis of admission of signatures without proving the due execution and the payment of consideration?
- c) As to whether relief of specific performance could be granted without framing an issue of readiness and willingness?
- d) As to whether a judgment and decree passed by the Lok Adalat Ex.DX and Ex.DY in favour of Mann Singh (not a party to the suit) could be set aside or could be commented upon by the Ld. Lower Appellate Court without there being any challenge by the respondent to the same and that too in the absence of Mann Singh?
- e) As to whether, without setting aside the judgment and decree of Lok Adalat Ex.DX and Ex.DY and the sale deed executed under the directions of the executing court in favour of Mann Singh, the appellants could be directed to execute another sale deed of the same property?

Mr. Piyush Kant Jain, learned counsel appearing on behalf of respondent No.1 has raised the following submissions:-

- 1) That there is no illegality and perversity in the findings rendered by the lower Appellate Court while exercising the discretion under Section 20 of the Specific Relief Act.
- 2) The application filed by Mann Singh under Order 1 Rule 10 was dismissed by the trial Court.
- 3) Ex.DX and Ex.DY have not been proved in accordance with law they were only tendered into evidence. No pleadings or any statement recorded by the Lok Adalat, resulting into passing of the aforementioned decree, has been placed on record.
- 4) The appellants-defendants did not plead in the written statement with regard to the alleged execution of the agreement to sell dated 14.02.1991 as the agreement to sell between the parties to the lis was executed on 22.02.1994, thus, in essence, in case agreement to sell dated 14.02.1991 was in existence it could have well been pleaded. In the absence of the pleadings, it is crystal clear case of fraud being played upon Vendee by antedating the agreement to sell.

5) No explanation has come forth in filing the suit on 04.02.1998 in respect of the aforementioned agreement to sell by Mann Singh and the decree dated 26.08.2000 has been passed on the basis of the compromise which has not seen the light of the day.

6) Notice Ex.P1 dated 31.01.1994 was served upon the appellants-

defendants but was not relied. Nothing prevented them to take the plea which has been taken for the first time in the written statement.

7) Non-framing of the issues vis-a-vis readiness and willingness should not be come in the way of the parties to the lis, much less, fatal, for, it is settled law where parties are alive to the situation and have led evidence vis-a-vis their respective claims in non framing of the particular issue cannot be considered to be a ground for setting aside the well-reasoned judgment and decree.

8) The appellants-defendants have admitted the signature on agreement to sell and no witness has been examined to prove that the signatures were on the blank paper or on the typed paper.

9) The witness of the defendants has not categorically deposed that signatures were on stamp paper or on the blank paper. The register of the stamp vendor has been proved on record to show that stamp paper was issued for the purpose of execution of the agreement to sell.

10) The plaintiff had been throughout ready and willing to perform his part of the agreement to sell and appellants-defendants had played a fraud not only upon the Court but also on the respondent-plaintiff by suddenly tendering the judgment and decree Ex.DX and Ex.DY on 19.05.2007, whereas suit had been instituted on 22.02.1994. For all these years, ex parte judgment and decree in respect of suit filed on 1994 has been kept secret.

11) The trial Court erroneously gave a finding in passing of the aforementioned judgment and decree. The plaintiff would not be entitled to exercise the discretion.

There is no illegality and perversity in the judgment rendered by the lower Appellate Court, much less, no substantial questions of law arises and appeal is liable to be dismissed.

I have heard learned counsel for the parties and appraised the paper book and as well as the case law cited at bar during the course of the arguments and am of the view that appeal is liable to be dismissed for following reasons:-

1) There is no dispute to the ratio decidendi culled out in the judgment cited by Mr. Sobti, Advocate vis-a-vis compliance of ingredients of Section 16(c) of the Specific Relief Act.

2) The respondent-plaintiff categorically proved that he had appeared before the office of Sub-Registrar on target date dated 14.02.1994 for execution and registration of the sale deed but the appellants-

defendants did not put in appearance.

3) No reasoning has come forth at the behest of the appellants-

defendants in not disclosing the existence of the judgment and decree Ex.DX and Ex.DY despite the same they were tendered in 2007.

4) Similarly, is the position with regard to the non-disclosure of the alleged agreement to sell dated 14.02.1991 inasmuch as there is no passing of reference, much less, even vague reference of the same in the written statement. In case agreement to sell dated 14.02.1991 was in existence, nothing prevented the defendants to categorically plead and take the plea of non/mis-joinder of the necessary parties.

5) Both the parties to the lis have led evidence with regard to all the issues and as well as readiness and willingness and it is now a settled law as has been held by the judgment of Hon'ble Supreme Court in P. Purushottam Reddy Vs. M/s Pratap Steels Ltd. 2002 (2) RCR Civil 70. In the absence of any framing of issues, in case parties have led evidence which is vital, it should not come in the way of the parties who have succeeded in a suit.

6) Assuming the plea of defendants, that it was a loan transaction but the fact remains that it has not been explained by the defendants as to how the plaintiff acquired the particulars of the property or land for converting the alleged documents into the agreement to sell.

7) Manner and mode of the written statement, much less, of the witnesses, irresistibly point a finger as it was only a blank signed paper which was allegedly executed by the defendants, had been converted into agreement to sell, whereas, Ex.P2 (agreement to sell) is on a stamp paper.

8) None of the witnesses had said that they appended the signatures on a blank stamp papers.

9) The plea taken in the written statement was that it was only property for subsistence of the families and, therefore, they could not have remotely thought of selling the land. Had it been so, there was no occasion for the defendants to enter into a compromise in suit bearing No.36 dated 04.02.1998 filed by Mann Singh, which resulted into passing of judgment and decree dated 26.08.2000 as Ex.DX and Ex.DY.

10) Application filed by Mann Singh for impleading him as a party in the suit, has been dismissed as he has not assailed the said order by filing a revision or filing the appeal as now it is settled law that any party effected by the judgment and decree can file the appeal by seeking leave of the Court.

11) The judgment and decree, as noticed above had seen the light of the day in 2007, therefore, there was no occasion for Hardev Singh to challenge the same during the pendency of the suit filed in the year 1994.

12) PW4 Kamlesh Kumar as Deed Writer who is scribe to agreement to sell (Ex.P2) had stated that he entered the same in his register at Sr. No.174, thus, it has been proved that agreement to sell was duly scribed by the Regular Deed Writer.

13) There is no denial to the receipt of the notice dated 31.01.1994 Ex.P1. Nothing prevented the defendants to take the plea as has been taken in the written statement by controverting the averments in the notice, much less, not being averred in the written statement, in essence, Ex.DX and Ex.DY have rightly not been taken into consideration by the lower Appellate Court as such evidence is beyond the pleadings.

14) There is no denial to the position that in the absence of appeal or filing cross-objections, adverse parties can assail the findings rendered in judgment and decree which has been passed in his favour, in essence, Order 41 Rule 33 is take care of such situation.

15) The plea of Mr. Sobti, Advocate that since judgment and decree passed by trial Court was in his favour but cross-objections were filed, for the reasons that trial Court had rendered a finding against the appellants-defendants vis-a-vis the execution of the agreement to sell and readiness and willingness.

16) The contention of Mr. Sobti, Advocate that lower Appellate Court could not have exercise the discretion under Section 20 of the Specific Relief Act is not tenable for the reasons that witnesses of the respondent-plaintiff had been consistent and coherent and have undoubtedly prove the execution of the agreement to sell, much less, passing of consideration paid by way of earnest money and subsequent payments.

17) No evidence has been led as to how and when and through what means the alleged loan of `5,000/- was repaid.

In my view, the appellants-defendants have not been fair to the Court in not disclosing the execution of agreement to sell dated 14.02.1991, much less, of passing of a decree dated 26.08.2000 as late as till 2007.

In view of aforementioned observation, I am of the view that there is no illegality and perversity in the findings rendered by the lower Appellate Court, whereby the appeal filed by the respondent-plaintiff has been allowed, in essence, the decree for specific performance of agreement to sell dated 24.02.1994 has been granted and the appeal filed by the appellants-defendants vis-a-vis findings rendered on certain issues has been dismissed.

The questions of law as noticed above are thus answered in favour of respondent-plaintiff and against the appellants-defendants.

Resultantly, the appeal is dismissed.



21.10.2015  
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(AMIT RAWAL)  
JUDGE