IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. RSA No. 2634 of 1988

Molar Ram

..... Appellant

Versus

Kahan Singh

..... Respondent

2. RSA No. 2674 of 1988

Kahan Singh

..... Appellant

Versus

Molar Ram

..... Respondent

Date of decision: 08.12.2015

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Bhoop Singh, Advocate
for the appellant (in RSA No. 2634 of 1988).

Ms. Sangeeta Dhanda, Advocate
for the respondent (in RSA No. 2634 of 1988) and
for the appellant (in RSA No. 2674 of 1988).

None for the respondent (in RSA No. 2674 of 1988).

RAMENDRA JAIN, J.

This judgment shall dispose of two appeals i.e. one filed by plaintiff-Molar Ram (RSA No. 2634 of 1988) and the other by defendant-Kahan Singh (RSA No. 2674 of 1988), against the judgment and decree dated 08.09.1988, passed by the learned Additional District Judge, Kurukshetra, partly allowing the appeal of plaintiff-Molar Ram. For brevity, the facts are being extracted from RSA No. 2634 of 1988.

2. Brief facts, are that respondent-defendant-Kahan Singh agreed to sell two shops bearing Municipal Nos. 401-400/11-M.C.K. (old) along with backside courtyard situated at Railway Road, Kaithal (hereinafter referred to as 'the suit property') allotted to him at reserved price by the State Government on depositing a sum of ₹ 2453/- as 1/4th of the auction money on 29.10.1971, to the appellant-plaintiff-Molar Ram, vide agreement to sell dated 05.02.1972 for a total sale consideration of ₹ 20,000/- and received ₹ 4000/- as earnest money. The relevant salient features of the aforesaid agreement were that (i) the respondent-defendant would collect ₹ 8000/- from the appellant-plaintiff as part of the sale consideration on receipt of allotment/confirmation letter from the Haryana Government for depositing the same with Haryana Government; (ii) the remaining sale consideration of ₹ 8000/- shall be paid by the appellant-plaintiff to the respondent-defendant at the time of attestation and registration of sale deed; (iii) the respondent-defendant would execute and register the sale deed in favour of appellant-plaintiff or his nominee(s) within a period of seven days from the receipt of sale certificate by him from the State Government; (iv) the respondent-defendant would inform the appellant-plaintiff about receipt of sale certificate from the State Government qua the suit property; (v) in case, the respondent-defendant failed to execute and register the sale deed in favour of appellant-plaintiff after receipt of sale certificate in that

eventuality, the appellant-plaintiff would be at liberty either to get the agreement specifically enforced through Court or to recover two times the earnest money as consolidated damages from the respondent-defendant; (vi) in case the appellant-plaintiff fail to get the sale deed executed and registered, in that eventuality, his earnest money would he forfeited; (vii) the actual possession of one shop bearing No. 401/11-MCK along with backside courtyard shall be delivered by respondent-defendant to appellant-plaintiff at the time of registration of sale deed or by 12.04.1972.

3. The appellant-plaintiff came to know that though the respondent-defendant had received the sale certificate from the State Government in his favour, but did not convey this fact to him in violation of the terms and conditions of the agreement in question. He was/is always ready and willing to perform his part of contract. Consequently, he served a legal registered notice dated 12.08.1979 upon respondent-defendant calling upon him to execute and register the sale deed in terms of aforesaid agreement in his favour or his nominee(s), after accepting the balance sale price within a period of 07 days after the receipt of notice, which was received by him on 22.08.1979, but he (defendant) failed to comply with the same. Hence, the appellant-plaintiff filed a suit for specific performance to direct the respondent-defendant to execute the sale deed in his favour, after accepting the balance sale consideration and also to do all other acts which were necessary for the due completion of contract including delivery of possession.

4. Upon notice, respondent-defendant contested the suit by

filing written statement *inter alia* amongst on various grounds that the market value of the suit property was not less than ₹ 50,000/- on the date of execution of alleged agreement in question i.e. 05.02.1972. Hence, in case, specific performance of the aforesaid agreement was ordered, the same shall cause undue advantage to the appellant-plaintiff and wrongful loss to the respondent-defendant. While admitting that the suit property had been transferred by the State Government in his name vide sale deed dated 27.04.1989, he denied the execution of any agreement in favour of appellant-plaintiff or acceptance of alleged earnest money of ₹ 4000/-. In fact, he never met the appellant-plaintiff on 05.02.1972 i.e. the date of execution of agreement in question. True facts of the case were that one Lajja Ram was known to him (defendant). The respondent-defendant had some litigation with one Bhagwan Dass resident of Kaithal in respect of one shop. Aforesaid Lajja Ram had assured him (defendant) that in case, the respondent-defendant would execute an agreement purporting it to be the sale of that shop in his favour, then he shall get vacated his shop from Bhagwan Dass aforesaid. Hence, under the garb of help, if, Lajja Ram had got executed any agreement from him in favour of appellant/plaintiff-Molar Ram, the same was the result of fraud and misrepresentation, because Lajja Ram had assured that the said agreement would never be acted upon. With these broad submissions, dismissal of the suit was prayed.

5. Replication was filed, denying the contents of written statement and that of reiterating the plaint. From the pleadings of the parties, the learned trial Court framed the following issues:-

"1. Whether the defendant Kahan Singh had agreed to sell the suit property to the plaintiff as alleged under para no. 3 of the plaint? OPP

2. Whether the plaintiff had always been ready and willing to perform his part of contract? OPP

3. Whether the Lajja Ram is general attorney of the plaintiff? OPP

4. Whether the plaintiff is entitled to the specific enforcement of the agreement of sale? OPP

5. Relief."

6. The parties led evidence to their satisfaction. The learned trial Court dismissed the suit vide judgment and decree dated 20.10.1983, deciding issues No. 1 and 3 in favour of the appellant-plaintiff and issues No. 2 and 4 against him. Appeal filed by appellant-plaintiff was partly accepted by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 08.09.1988, while reversing the findings of learned trial Court under issues No. 2 and 3. It decreed the suit for recovery of ₹ 8000/- along with interest @ 6% per annum from the date of execution of agreement to sell dated 05.02.1972, till the date of payment. It rejected the claim for specific performance by relying upon the judgments in ***Smt. Harbans Atma Singh* Vs. *Ramesh Kumar,* 1986 (1) LLR 241** and ***Shri Ladli Parsad etc.* Vs. *Shrimati Misri Devi and others,* 1981 PLR 9 (Short-note 13)**.

7. Learned counsel for the appellant-plaintiff argued that learned Appellate Court has erred in not granting the relief of specific

performance, despite the fact that it had reversed the findings of the learned trial Court on issue Nos. 2 and 4. The appellant-plaintiff had proved on record beyond any shadow of doubt that he was always ready and willing to perform his part of contract. The learned both the Courts below ought to have decreed his suit in toto directing the respondent-defendant to execute and register the sale deed of suit property in his favour. The judgment of learned Appellate Court ordering refund of the double the amount of earnest money along with interest @ 6% per annum till realization is patently wrong, illegal and arbitrary, because of the unjustifiable reason of steep rise in the prices of suit property. It would be a hardship to the appellant-plaintiff in case, specific performance of the contract was not allowed, despite noticing that there was no fault of him, at any stage. The respondent-defendant was duty bound to inform the appellant-plaintiff as per the terms and conditions of agreement in question about the execution of conveyance deed/sale certificate in his favour by the State Government, but he intentionally did not do so. The legal notice dated 12.08.1979 issued by the appellant-plaintiff was admittedly received by respondent-defendant on 22.08.1979, but he did not reply the same which amounts to his admission of its contents. The suit was filed very promptly, which proves readiness and willingness of appellant-plaintiff to fulfill his part of contract. Mere rise in prices cannot be made the basis to decline the relief of specific performance to a person without any fault.

8. On the other hand, learned counsel for respondent-defendant, namely Kahan Singh contended that both the Courts below have erred in

not dealing with the contention of respondent-defendant qua fraud and misrepresentation at the time of execution of agreement in question. While drawing the attention of this Court towards the statement of Dharam Chand, Scribe of agreement in question Ex. P-1, learned counsel for respondent-defendant further submitted that, in fact, the same was executed on the instructions of Lajja Ram in between him and Kahan Singh-respondent-defendant. Molar Ram-appellant/plaintiff was neither present nor his instructions were there to execute the same, therefore, he was not entitled to get executed any alleged agreement. It was only, Lajja Ram who could file the suit for specific performance. Lajja Ram, had committed fraud upon the respondent-defendant under the garb of helping him in a litigation with one Bhagwan Dass as he had assured the respondent-defendant to get vacated his shop and in lieu thereof, the agreement, if any, was executed in his favour. Hence, Molar Ram had no concern with it and was nowhere in picture at any point of time. Since, due execution of agreement in question with Molar Ram-appellant was not proved on record, therefore, the learned Appellate Court has erred in decreeing the suit partly. Even otherwise the appellant-plaintiff had failed to prove on the record that he was always ready and willing to perform part of his contract. Hence, the fining of the learned Appellate Court in this regard are liable to be reversed. In support of her arguments, learned counsel for the respondent-defendant placed reliance upon judgments in ***Sawaran Singh* Vs. *Ajit Singh,* 2003 (4) RCR (Civil) 230** and ***Tejram* Vs. *Patirambhau,* 1997 (9) SCC 634.**

9. For seeking relief under the Specific Relief Act (hereinafter

referred to as 'the Act') for specific performance of contract, the appellant-plaintiff had to prove two main ingredients (i) due execution of a legal enforceable agreement; and (ii) readiness and willingness to perform part of his contract. In the instant case, the appellant/plaintiff-Molar Ram proved the agreement to sell Ex. P-1 and receipt Ex. P-2 of ₹ 4000/- paid as earnest money to respondent-defendant beyond any shadow of doubt by examining its scribe Dharam Chand, PW-1 and its attesting witness namely Bhagwan Dass (PW-4). That apart, on denial by the respondent/defendant-Kahan Singh, seller of the suit property about the execution of the aforesaid documents, the appellant-plaintiff got proved the same by examining hand-writing and finger print expert namely Pt. Gian Parkash Sharma, who vide his report dated 01.06.1980 Ex. PW-2/B and his deposition as PW-2 deposed that respondent-defendant-Kahan Singh had appended his thumb impressions upon the aforesaid documents. Another attesting witness of the agreement to sell in question and receipt thereof is Gurdev Singh own son of Kahan Singh, seller. The respondent-defendant could not rebut the above full proof evidence led by the appellant-plaintiff by leading any evidence, what to talk of any cogent and convincing. He simply appeared in the witness box as DW-1, before the learned trial Court and denied the execution of the aforesaid documents. There was no corroboration to his testimony either oral or documentary. Both the learned Courts below have, thus, rightly decided issue No. 1 in favour of appellant-plaintiff qua execution of agreement to sell by respondent-defendant Kahan Singh in his favour. Hence, findings of both the Courts below in this respect are not liable to be interferred with.

10. The appellant-plaintiff proved general attorney Ex. P-3 executed by him in favour of Lajja Ram and examined him as PW-6 who, categorically deposed that the suit property was sold by respondent-defendant-Kahan Singh to appellant-plaintiff-Molar Ram, for a total sale consideration of ₹ 20,000/-. The appellant-plaintiff had paid ₹ 4000/- as earnest money to respondent-defendant as earnest money who was his cousin in relation. The appellant-plaintiff had to rush back for the sudden illness of his wife and for this reason, he represented him at the time of execution of said agreement. The respondent-defendant had failed to put any dent in the aforesaid evidence led by the appellant-plaintiff. The plea of respondent-defendant-Kahan Singh that Lajja Ram, aforesaid had got executed the agreement Ex. P-1 in his favour from him under the garb of assurance to help him in his litigation with one Bhagwan Dass resident of Kaithal in respect of one shop has not legs to stand, in the absence of any such evidence on record. His bald statement in this respect is of no avail. It does not lie in his mouth that he did not executed any agreement to sell Ex. P-1 and receipt Ex. P-2 and if any, found executed on his behalf, the same were executed in favour of Lajja Ram and not in favour of appellant/plaintiff-Molar Ram. Accordingly, findings of learned Courts below on issue No. 3 relating to this aspect of the case are liable to be upheld.

11. Findings of the learned trial Court on issue No. 2 regarding readiness and willingness of appellant-plaintiff to perform part of his contract against him were reversed by the learned Appellate Court.

Undisputedly, the respondent-defendant got the requisite sale certificate qua the suit property from Haryana Government in his favour on 27.04.1979, but he did not convey this fact to the appellant-plaintiff in utter violation of the agreement to sell Ex. P-1. Hence, on coming to know of this fact, the appellant-plaintiff immediately served a legal notice dated 12.08.1979, duly admitted to have been received by respondent-defendant to execute and get register the requisite sale deed. However, the same was never replied or adhered to by the respondent-defendant forcing the appellant-plaintiff to file the suit for specific performance immediately on 31.08.1979 within 15 days of service of registered legal notice. Thus, it is proved beyond any shadow of doubt that the appellant-plaintiff was always ready and willing to perform part of his contract. Not replying the registered legal notice by the respondent-defendant, itself speaks that he was never ready and willing to perform his part of contract. Hence, the findings of learned Appellate Court on issue No. 2 regarding readiness and willingness of the appellant-plaintiff to perform his part of contract also do not warrant any interference, therefore, are hereby affirmed.

12. One of the grouse raised by respondent-defendant in the grounds of appeal is that before filing the suit for specific performance, the appellant-plaintiff had already transferred his rights to Lajja Ram by executing an agreement to sell Ex. D-1, thus, he was not competent to file any suit.

13. The learned Appellate Court has carefully dealt with the above point in detail and has observed that "it is not understood as to how

the defendant-Kahan Singh could take the benefit of above agreement to show that the plaintiff was not ready and willing to perform his part of contract". At the most, it was some agreement in between the appellant-plaintiff-Molar Ram and Lajja Ram. More so, the said agreement Ex. D-1 had already been got declared null and void vide decree sheet Ex. P-7 in a regular suit. Thus, on the basis of agreement Ex. D-1, it could not be said that the appellant-plaintiff was not ready and willing to perform his part of contract. I am not inclined to differ with the above findings of the learned Appellate Court, because agreement Ex. D-1 from any angle does not dislodge the claim of appellant-plaintiff for specific performance, more particularly when the same has already been declared null and void.

14. The learned Appellate Court though decided all the issues in favour of appellant-plaintiff, but moulded the relief. It instead of decreeing the suit for specific performance in toto, ordered the respondent-defendant-Kahan Singh to pay ₹ 8000/- along with interest @ 6% per annum from the date of execution of agreement to sell dated 05.02.1972 till the date of payment to the appellant-plaintiff-Molar Ram, by observing that in due course of present litigation of 7 years, the prices of suit property had escalated abnormally and still it was rising. Thus, it would be a hardship to the respondent-defendant, if specific performance was allowed at this stage.

15. Under Section 20(1) of the Act, the jurisdiction to decree *specific performance* is discretionary and a Court is not bound to grant such relief merely, because it is lawful to do so; but with respect to the

discretion to be exercised, a caveat is lodged: that the discretion should not be exercised arbitrarily, but should be sound and reasonable guided by Judicial Principles.

16. The delay in disposal of case or the rise in prices during interregnum cannot be made the basis of denial of a legitimate relief to appellant-plaintiff. Reference can be had to ***S.V.R. MUDALIAR (DEAD) BY LRS. & ORS. Vs. MRS. RAJABU F. BUHARI (DEAD) BY LRS. & ORS., 1995 AIR (Supreme Court) 1607,*** wherein it was held that merely because the prices have risen during the pendency of litigation, the delay not having been occasioned by any act of the plaintiff, he may not be punished for the same on the principle of ' actus curiae neminem gravabit". An act of the Court shall prejudice no man, because by the time the litigation comes to an end, sufficiently long period is likely to elapse in most of the cases. This factor, therefore, should not normally weigh against the suitor in exercise of discretion by a court in a case of the present nature.

17. The Allahabad High Court in ***Lala Sumer Chand Goel (since deceased by Lrs) Vs. Rakesh Kumar, 2002 AIR (Allahabad) 82,*** has taken the same view that specific performance cannot be denied on the ground that by the lapse of time prices of property has increased.

18. In ***Vimaleshwar Nagappa Shet Vs. Noor Ahmed Sheriff & Ors., AIR 2011 (Supreme Court) 2057,*** it is held that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In that case, the agreement to sell was executed on 02.05.1988 and the suit for

specific performance was filed in the year 1991 i.e. approximately after three years. In these circumstances, it was held as above, whereas, in the instant case, the appellant-plaintiff filed his suit immediately, very promptly without any delay within 04 months on 31.08.1979 by serving registered legal notice dated 12.08.1979 upon the respondent-defendant, on coming to know of the execution of sale certificate in his favour by the Haryana Government on 27.04.1979. Thus, with due respect the facts and circumstances of the above case are distinguishable as in the present case there was no delay and laches on the part of appellant-plaintiff to refuse him relief of specific performance. Even otherwise, the facts and circumstances of the above referred case are not identical to the facts of the present case.

19. In ***P.S. Ranakrishna Reddy*** ***Vs.*** ***M.K. Bhagyalakshmi and another,*** ***(2007) 10 SCC 231*** decided on 20.02.2007, Hon'ble the Apex Court while relying upon ***P.D'Souza*** ***Vs.*** ***Shondrilo Naidu,*** ***(2004) 6 SCC 649,*** held that rise in the price of an immovable property by itself is not a ground for refusal to enforce a lawful agreement of sale. Further in ***Man Kaur (Dead) by LRs*** ***Vs.*** ***Hartar Singh Sangha,*** ***2010 (10) SCC 512,*** Hon'ble the Supreme Court has held that the plaintiff would be entitled to seek specific performance, even in the absence of a specific provision therefor subject to his proving breach by the defendant and that he was ready and willing to perform his obligation under the contract, in terms of the contract.

20. In the light of the above discussed law, the facts of the instant case are to be looked into. The respondent-defendant, admittedly,

got allotted the suit property on payment of ₹ 2453/- as 1/4th of the auction money 29.10.1971. Its total sale price comes to ₹ 9812/-. The balance 3/4 i.e. ₹ 7359/- had to be paid by him on confirmation and issuance of of the sale certificate in his favour by the State Government. However, he sold the same to the appellant-plaintiff for a total sale consideration of ₹ 20,000/- and received ₹ 4000/- as earnest money at the time execution of impugned agreement to sell on 05.02.1972. Further a sum of ₹ 8000/- has to be paid by the appellant-plaintiff to him at the time of confirmation and issuance of sale certificate by the State Government in his favour and the remaining ₹ 8000/- at the time of execution or registration of the sale deed. Hence, it is clearly evident on the record that the respondent-defendant had not to spent even a single penny from his own pocket for allotment of the suit property. Rather, he before allotment, sold it to the appellant-plaintiff for a total sale consideration of ₹ 20,000/- i.e. in more than double the amount to be paid by him to the Government.

21. In view of the above factual situation, it can safely be held that it would be unreasonable and inequitable to make the respondent-defendant, the sole beneficiary of escalation of real estate prices and the enhanced value of the suit property. While denying the relief of specific performance to the appellant-plaintiff-Molar Ram, further the respondent-defendant-Kahan Singh, cannot be promoted to take advantage of his own wrongs and then plead that decree for specific performance would be unfair advantage to the appellant-plaintiff. Escalation of price during the period may be a relevant consideration under certain circumstances for

either refusing to grant the decree for specific performance or for decreeing the specific performance. However, a wrongdoer cannot be benefitted for his own wrongs. The respondent-defendant in the instant litigation throughout remained dishonest and, thus, ordering him to refund only a meagre amount of ₹ 8000/- along with interest @ 6% per annum from the date of execution of agreement to sell dated 05.02.1972, till the date of payment by the learned Appellate Court is totally unjust and unreasonable.

22. The facts and circumstances of the case law relied upon by the learned counsel for the respondent-defendant-Kahan Singh are not identical to the facts of present case, therefore, no benefit of the same can be given to him. In ***Tej Ram's case (supra)***, the respondent was a money lender. He alleged to have parted ₹48,000/- as part payment of consideration of agreement. The balance sale consideration of ₹ 2000/- was neither paid by him nor possession of the property was taken by him and he kept quite for 03 years. The suit was filed on the last date of limitation. In these circumstances, it was held that the document purporting to be agreement for sale cannot be treated as sale in truth, looking to the doubtful conduct of the parties, no satisfactory conclusion can be reached as to what amount was actually due and what amount was actually paid. In ***Sawaran Singh's case (supra)***, the agreement to sell was found to be the result of fraud and misrepresentation, whereas there is not such circumstance in the instant case.

23. In view of the above discussion, the appeal filed by appellant-plaintiff-Molar Ram (RSA No. 2634 of 1988) is accepted and

that of respondent-defendant-Kahan Singh (RSA No. 2674 of 1988) is dismissed. Hence, the findings of the learned Appellate Court under issues No. 4 and 5 (relief clause) are hereby reversed. The suit of the appellant-plaintiff-Molar Ram for specific performance of contract is decreed in toto, directing the respondent-defendant-Kahan Singh to execute and get registered the sale deed in respect of the suit property in his favour, on depositing the balance sale consideration and to do all other acts which are necessary for the due completion of sale deed including delivery of possession.

December 08, 2015 **(RAMENDRA JAIN)**
rishu **JUDGE**