

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No.962 of 1989

Date of decision: 18.2.2015

Nirmal Singh

.....Appellant

Versus

Santokh Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Parveen Chauhan, Advocate,
for the appellant.

Mr.J.S.Virk, Advocate
for respondent No.1.

Mr.A.S.Cheema, Advocate,
for respondents No.2 to 5.

Raj Mohan Singh, J.

1. Plaintiff Nirmal Singh is in appeal against the judgment and decree dated 7.12.1988 passed by Additional District Judge, Hoshiarpur, whereby, judgment and decree dated 10.12.1987 passed by the Additional Senior Sub Judge, Hoshiarpur was set aside and the suit of the plaintiff for alternate relief was decreed.

2. Plaintiff filed suit for specific performance in respect 12 kanals 14 marlas of land on the basis of agreement to sell dated 28.6.1982 on the ground that agreement to sell was executed in respect of 12 kanals 14 marla of land for a total sale consideration of ₹ 20,000/-. An amount of ₹ 15,000/- was paid as earnest money and the remaining amount of ₹ 5,000/- was agreed to be paid on the date of registration of the sale deed. As per the agreement,

defendant No.1 was to execute and register the sale deed as and when the same was redeemed and within one month from the date of receiving such information of redemption. It was alleged that defendant No.1 committed breach of agreement and he instead executed sale deed in favour of defendants No.2 and 3. Plaintiff alleged that he was always ready and willing to perform his part of agreement and defendants No.2 and 3 had all the knowledge of the agreement to sell in favour of the plaintiff as he was delivered possession of the land in question.

3. Defendant No.1 contested the suit and did not deny the execution of agreement, but it was pleaded that only an amount of ₹ 5,000/- was paid to him. The agreement to sell was claimed to be a result of fraud and misrepresentation. It was also admitted that the land was under mortgage and the plaintiff was duly informed about the redemption of the land but the plaintiff himself failed to perform his part of obligation. Delivery of possession in favour of the plaintiff was denied. However, transfer of land in favour of defendants No.2 and 3 was admitted as he was in need of money on account of marriage of his daughter.

4. Defendants No.2 and 3 also contested the suit, claiming themselves to be bona fide purchasers for consideration. They also pleaded that they had no knowledge about the agreement to sell in favour of the plaintiff.

5. On the basis of pleadings of the parties, trial Court framed the following issues:-

“1. Whether the agreement in dispute dated 28.6.1982

was got executed from Santokh Singh by Nirmal Singh plaintiff by fraud and mis-representation ? OPD

2. If issue No.1 is not proved, whether the defendants No.1 and 2 are bona fide purchasers for value without notice for agreement of sale in favour of the plaintiff ? OPD

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the plaintiff is entitled to specific performance of the contract ? OPP

4-A. Whether the plaintiff has always been ready and willing to complete his part of contract ? OPD

4-B. Whether the plaintiff is estopped by his act and conduct from filing the suit ? OPD

5. Relief.”

6. Both the parties led their respective evidence. Trial Court held under issue No.1 that the agreement to sell dated 28.6.1982 was not the result of fraud and misrepresentation and execution of agreement to sell was duly proved. Under issue No.4-A, trial Court held that the plaintiff was always ready and willing to perform his part of obligation. Accordingly, this issue was also decided in favour of the plaintiff. Under issue No.2, trial Court held that defendants No.2 and 3 were not proved to be bona fide purchaser without notice of the agreement and accordingly, this issue was decided against defendants No.2 and 3. Suit was held maintainable under issue No.3 and plaintiff was not estopped from filing the suit. Resultantly,

the suit of the plaintiff was decreed for specific performance of agreement to sell on payment of balance sale consideration of ₹ 5,000/-. Defendants No.2 and 3 were also directed to join defendant No.1 for execution and registration of the sale deed in favour of the plaintiff within a period of one month, vide judgment and decree dated 10.12.1987.

7. The aforesaid judgment and decree was assailed by defendants No.2 and 3 as well as by defendant No.1 in two different civil appeals before Additional District Judge, Hoshiarpur. The lower Appellate Court, vide judgment and decree dated 7.12.1988 by setting aside the judgment and decree of the trial Court, decreed the suit for alternate relief of recovery of ₹ 15,000/- with interest @ 10% per annum from the date of filing of the suit till date with a future interest @ 6% per annum on the principal sum of ₹ 15,000/- with cost throughout.

8. Plaintiff has come in regular second appeal against the judgment and decree of the lower Appellate Court dated 7.12.1988. Validity and genuineness of the agreement to sell dated 28.6.1982 (Ex.P-1) was never in dispute. The moot question was whether or not vendee/defendants were bona fide purchasers of the land for consideration without notice of agreement to sell. PW-3 Mehnga Ram, Sarpanch was attesting witness to the agreement to sell as well as witness to the sale deed in favour of defendants No.2 and 3. Lower Appellate Court maintained the validity of the agreement to sell and also held that defendant No.1 received earnest money from the plaintiff to the tune of ₹ 15,000/-.

9. The only question which weighed with lower Appellate Court was whether or not vendees were bona fide purchaser for consideration without notice of agreement to sell. On this aspect of the matter, lower Appellate Court considered whether or not the plaintiff was put in possession under the sale agreement, vide which it could be inferred that the subsequent vendees/ defendants No.2 and 3 had the knowledge about existence of agreement to sell. In the revenue record, defendant No.1 Santokh Singh was shown to be in possession. The correction proceedings filed by plaintiff Nirmal Singh were accepted by the revenue officer. However, in appeal filed by defendant No.1, the same were reversed and had attained finality. Lower Appellate Court considered that feature to infer that the possession was never delivered to the plaintiff in pursuance to agreement to sell and, therefore, there was no occasion for subsequent vendee/ defendants No.2 and 3 to make reasonable inquiries about title of the vendor and also with regard to incumbrance created over the land in question. Lower Appellate Court held on the premise that it was not proved that defendants No.2 and 3 had any knowledge about the existence of sale agreement in favour of the plaintiff. Since on the basis of revenue entries in favour of defendant No.1 and correction of khasra girdawari proceedings ultimately culminated in favour of Santokh Singh, lower Appellate Court held that the plaintiff was never put in possession under agreement to sell Ex.P-1. Lower Appellate Court also considered the statement of PW-3 Mehnga Ram, Sarpanch, who was marginal witness to the sale agreement as well as of the sale deed

and by discussing his cross-examination held that the subsequent vendees had no knowledge about the agreement to sell in favour of the plaintiff. The statement of PW-3, in his cross-examination, was considered to be an incriminate denial by the witness by pleading ignorance as to whether any talk regarding the agreement to sell at the time of execution of sale deed took place or not. Lower Appellate Court took note of the statement of Mehnga Ram and also disbelieved the statement of PW-4, who was also one of the marginal witness. Lower Appellate Court held that the judgment in **Dr.Govinddass and another vs. Shantibai etc. 1972 PLR 227** was not applicable to the facts of this Case and reversed the findings of the trial Court. However, Lower Appellate Court affirmed the findings regarding existence of agreement to sell as well as payment of earnest money. With the reversal of findings on issue No.2, alternate decree for recovery of earnest amount with interest was passed by the lower Appellate Court.

10. The present regular second appeal was filed under Section 41 of the Punjab Courts Act. Framing of question of law was not necessary in the light of decision rendered by Full Bench of this Court in '**Ganpat versus Smt. Ram Devi and Ors. 1977 PLR Page-1**', wherein it was held that the provisions of Section 41 of the Punjab Courts Act, are in no way effected and curtailed by the amendment made in Section 100 of CPC. Now, since the regular second appeal is maintainable only with the aid of section 100 CPC, therefore, substantial questions of law is *sine qua non* for maintaining the appeal.

11. Prior to amendment of Section 100 CPC, a second appeal could have been filed before this Court on the grounds set out in clauses (a) to (c) of Section 100 (1) CPC i.e. (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law and (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

12. Now the interference in the second appeal could only be made if substantial question of law arises in the case. Therefore, the interference cannot be only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim '*interest reipublicae ut sit finis litium*'. The underlined purpose was to bring finality to the issues/litigation at some point of time.

13. In the present appeal, the substantial question of law has not been framed. Thus, the Court proposes to frame following substantial questions of law in order to test the legality of claim of appellants:-

1. Whether lower Appellate Court has reversed the findings of trial Court under issue No.2 by misreading the evidence on record thereby committing perversity?
2. Whether plaintiff was entitled to the relief of specific performance once it is established that agreement to sell

was duly executed and the plaintiff was always ready and willing to perform his part of obligation?

3. Whether the discretion exercised by the lower Appellate Court was based upon principle of equity, good conscience and fairness and satisfied the equitable considerations of provision of Section 20 of the Specific Relief Act, 1963 (for short the Act)?

4. Whether the judgment of the Hon'ble Supreme Court in **Dr.Govinddass's case (supra)** was wrongly interpreted by the lower Appellate Court?"

14. Learned counsel for the appellant contended that the decree passed by the lower Appellate Court is wholly unsustainable in the eyes of law. Once the agreement to sell was duly proved on record, then all of its terms recited therein should have been construed to have their logical meaning including the delivery of possession in favour of the plaintiff. Learned counsel further argued that the onus has been misplaced and was not discharged by the defendants under issue No.2 inasmuch as that the defendants had the knowlege about the agreement to sell between the plaintiff and defendant No.1 on more than one counts. The statement of PW-3 even if considered to be wayward in terms of his cross-examination, but he being sarpanch of the village was supposed to be having knowlege about pending litigation in the nature of correction of khasra girdawari. The village being small having limited number of families and the land of defendants No.2 and 3 and houses being situated adjoining to the land in question, the factum of litigation

between plaintiff and defendant No.1 could not have remained confined to the parties alone. Learned counsel contended that the earlier portion of the statement of PW-3 was the result of natural consequence and it was reasonably expected from a person none else a sarpanch of the village to have inquired about the pending litigation and talked about the agreement to sell when he witnessed the sale deed in favour of the subsequent vendees. The situation of land, composition of village population and dispute regarding possession between the plaintiff and defendant No.1 were the necessary features in which it was reasonably expected from the subsequent vendees to have made necessary and reasonable inquiries about the title or incumbrance over the land in question.

15. Learned counsel for the appellant further argued that the plea of bona fide purchaser raised by the subsequent vendees should not have been entertained as the recital in the sale deed dated dated 15.12.1983 (Ex.DW-4/A) gave rise many glaring facts. Firstly, the sale was proved to be without consideration. According to the sale deed, some earlier amount of ₹ 20,000/- as given against pronote dated 24.10.1983 was adjusted as sale consideration. In the concluding part of the sale deed, it was recited that if the land goes out of possession of vendees then they would be entitled to get another land of their choice from the vendor. In ordinary circumstances, such type of condition does not form part of the sale deed. Once the possession was delivered to the vendees themselves then they were responsible to retain the same and there was no occasion for the vendor to undertake their obligation to

provide them alternate land in case they could not retain the possession of the land in question. Learned counsel further submitted that the recital of the sale deed go in a long way to prove that the subsequent vendees were aware of the earlier agreement to sell and were apprehensive about losing the land in the event of filing of suit for specific performance.

16. Learned counsel for the appellant further submitted that at the time of spot inspection conducted by the Assistant Collector, IInd Grade during correction proceedings of khasra girdawari, plaintiff was found to be in possession of the land in question. The spot inspection was conducted in the presence of defendant No.1. The onus of bona fide purchaser was heavily rested upon defendants No.2 and 3 and in view of evidence on record the dictum laid down by the Apex Court in **Dr.Govinddass's case (supra)** should have been rightly interpreted by the lower Appellate Court.

17. According to learned counsel for the appellant, lower Appellate Court has not met the reasoning given by the trial Court under issue No.2. Para Nos.12 to 14 of the judgment of the trial Court have not been lawfully answered, while reversing the findings of the trial Court.

18. PW-3, Mehnga Ram Sarpanch was the attesting witness to the agreement to sell as well as the sale deed and it could not be belied on the basis of evidence on record that the subsequent vendees were not having any knowledge about existence of previous agreement to sell in favour of the plaintiff. The haste shown by the defendants squarely made **Dr.Govinddass's case (supra)**

applicable to the facts of the case which specifically laid down that where all the parties are residents of the same vicinity and in a small locality then it was highly improbable that the transferee could not have the knowledge of execution of agreement to sell. Secondly, the undue haste in which sale deed was executed on 15.12.1983 after its redemption in November 1983 also a glaring phenomenon to attribute knowledge of existence of agreement to sell to the defendants.

19. This Court has considered the rival contentions of both the parties. The learned counsel for defendants-respondents has argued the same line of attack as laid before the lower Appellate Court besides attacking on the ground of maintainability of single appeal against composite nature of impugned judgment and decree passed by lower Appellate Court.

20. In fact there were two appeals before the lower Appellate Court filed against the judgment and decree of the trial Court. Only one appeal was filed by the plaintiff against one decree and not against the second decree, therefore, it was claimed that the present appeal was liable to be rejected on that score alone. The aforesaid contention according to this Court though attractive but is found to be misconceived. Since both the appeals were disposed of by single judgment and the appellant was aggrieved by the judgment and decree providing him the alternate relief, therefore, this appeal could not be dismissed for want of challenge against the decree in the appeal filed by other party which was also rejected.

21. Apparently, the evidence on record showed that the

parties to the litigation were neighbours and one person attested both the transactions. The dictum laid down in **Dr.Govinddass's case (supra)** squarely covers the field and the subsequent vendees could not be said to be bona fide purchasers for consideration especially in view of redemption of the land in the month of November 1983 and execution of sale deed on 15.12.1983 in a clandestine manner showing undue haste. No evidence has come on record on behalf of defendant No.1 that after redemption of the land in question any notice was ever given to the plaintiff, calling upon him to perform his part of agreement. The statement of PW-3, if culled out as a whole, gave rise aspersions against the subsequent vendees because he being a sarpanch of the village was naturally concerned about the outcome of litigation between plaintiff and defendant No.1 on account of issue of correction of khasra girdawari. So it was reasonably expected from him to have a talk about agreement to sell at the time of registration of the sale deed. No amount of denial in his cross-examination would give rise any positive interpretation in favour of subsequent vendees. Therefore, the findings under issue No.2 recorded by the lower Appellate Court are hereby reversed thereby making findings of both the Courts concurrent.

22. Now question arises for determination is whether on account of delay, specific performance could be enforced at this juncture. The answer lies in the domain of Section 16 (c) and Section 20 of the Act. The lower Appellate Court has awarded the alternate relief of recovery of earnest amount along with interest.

Principle of equity, good conscience and fairness are the foundation

for the grant of relief of specific performance. Section 16 (c) of the Act clearly envisages that the plaintiff must plead and prove his readiness and willingness to perform his part of obligation and such readiness and willingness should be continuous and the same is a condition precedent for relief of specific performance. A reliance can be made to **N.P.Thirugnanam (Dead) by LRs. vs. Dr.Ra.Jagan Mohan Rao 1995 (2) RCR (Rent) 647**, wherein, this Court held as under:-

“It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under section 20 of the Specific Relief Act 1963 (for short, 'the Act'). Under section 20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails

to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.”

23. In **Atma Ram Mittal vs. Ishwar Singh Punia 1988 (2) RCR (Rent) 423**, the Hon'ble Apex Court held that once execution of lawful agreement is proved and the judicial conscience of the Court is satisfied, then the equity demands that the agreement should be enforced rather than to grant alternate relief of damages to the plaintiff. It needs to be reiterated that equity must give relief where equity demands. *'equitas nuquam liti ancillatur ubi remedium protest clare'*”.

24. An erring person who violates the terms and conditions of the agreement cannot be permitted to seek advantage over the

other party in equity. In **M.L. Devender Singh and others vs. Syed Khaja** AIR 1973 SC 2447, the Hon'ble Apex Court held that the jurisdiction of the Court to decree specific relief is discretionary and must be exercised on sound and reasonable grounds. "Guided by judicial principles and capable of correction by a court of appeal". The jurisdiction cannot be curtailed or taken away by merely fixing a sum even as liquidated damage.

25. The provision in terms of Section 20 of the Act is an exception to the rule of grant of relief of specific performance but the same in itself cannot be construed as a rule. The Courts are obligated to exercise this equitable jurisdiction in consonance with the settled principle of law and the discretion has to be exercised in judicious manner. Even the alternate prayer made by the plaintiff in a suit cannot be construed to be a waiver or abandonment of his main claim. The object of the provisions is to avoid resultant undue hardship to one party while avoiding undue gain to other. Mere lapse of time and inadequate consideration on that count are no grounds to exercise such discretion under Section 20 of the Specific Relief Act. Therefore, award of alternate relief according to this Court was wholly unjustified.

26. Once the lawful agreement is proved, equity would demand its enforcement rather than to grant alternate relief of damage or recovery of earnest amount. Equity has to be balanced. Defendants are not placed at any inequitable situation if the specific performance of the agreement to sell is ordered. The conduct of the defendants, the haste in which the sale deed was executed and the

readiness and willingness of the plaintiff from the time of execution of agreement till passing of decree made all the fronts conducive to his entitlement. Breach of agreement on the part of defendant No.1 cannot come to the aid of the defendant thereby entitling him to any protection of equity. Reference can be to **Ram Dass vs. Ram Lubhaya 1998 (2) RCR (Civil) 642** in which this Court considered number of past precedents including **Atma Ram Mittal's case (supra)** and **M.L.Devender Singh's case (supra)** and ultimately held that a lawful agreement if proved and satisfied the judicial conscience of the Court than equity demands its enforcement rather than to grant an alternate relief of damages.

27. In a specific performance of a contract, the discretion of the Court is not to be exercised merely because it is lawful to do so. The Court is not obligated and bound to grant such relief but the discretion has to be exercised on sound and reasonable grounds guided by judicial principles which are capable of being corrected by court of appeal.

28. In **Prakash Chandra vs. Narayan 2012 (3) RCR (Civil) 335**, the Hon'ble Supreme Court has highlighted the plea of hardship when it is to be taken care of. Apparently, in the present case, after proving due execution of agreement, no fact has been pleaded whether grant of specific relief would cause any hardship to the defendant within the meaning of clause (b) of sub section (2) of Section 20 of the Act. Since the defence of hardship was not taken, therefore, grant of specific relief is the natural consequence of proof

of due execution of agreement to sell.

29. Learned counsel for the respondents has vehemently argued that the possible view on appreciation of evidence taken by the lower Appellate Court should not be disturbed in second appeal. Learned counsel relied upon **Karnail Singh vs. Gian Singh 2010 (4) ICC 639** on the aforesaid proposition. The aforesaid contention was sought to be further corroborated on the strength of judgment rendered by the Hon'ble Apex Court in **Thiagarajan and others vs. Sri Venugopalaswamy B.Koil and others 2004 (2) RCR (Civil)**

444. There cannot be any dispute about the proposition of law as given in the aforesaid cases. The facts of the present case are altogether different in which the judgment and decree passed by the lower Appellate Court are found to be the result of misreading of evidence on the pertinent aspect of previous knowledge of agreement to sell. The dictum laid down in **Dr.Govinddass's case (supra)** was squarely applicable in the given case and in view thereof there was only one irresistible conclusion that the impugned judgment and decree passed by the lower Appellate Court was not in consonance with the evidence on record and the spirit attached to Section 16 (c) and Section 20 of the Act.

30. In view of aforesaid, the substantial questions of law as formulated in the case stand answered: question of law No.1 is answered in favour of the appellant thereby holding that the impugned judgment and decree passed by the lower Appellate Court are the result of misreading of evidence and, thus suffered with perversity. Question of law No.2 is thus answered in favour of the plaintiff-appellant thereby making him entitled to a decree for specific

performance and not for the grant of alternate relief of recovery of earnest amount with interest. Question of law No.3 also goes in favour of the plaintiff-appellant and the impugned judgment and decree passed by the lower Appellate Court is found to have violated the spirit attached to the equitable principles as enshrined under Section 20 of the Act and finally the dictum laid down in **Dr.Govinddass's case (supra)** is also proved to have wrongly interpreted by the lower Appellate Court and thus the impugned judgment and decree passed by the lower Appellate Court is found to have suffered with patent illegality and misreading of evidence.

31. Consequently, this appeal is allowed. The impugned judgment and decree dated 7.12.1988 passed by the lower Appellate Court is set aside and that of the trial Court i.e. dated 10.12.1987 is restored. Suit of the plaintiff is decreed with costs. Defendants/ respondents are directed to execute sale deed in favour of the plaintiff-appellant on receiving balance sale consideration within a period of three months from today on receipt of certified copy of judgment and decree. Decree sheet be drawn.

(RAJ MOHAN SINGH)
JUDGE

February 18, 2015
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