

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.723 of 1991

Date of decision: March 23rd, 2015.

Balkar Singh and others

... **Appellants**

v.

Joginder Singh and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Argued by: Shri Sarwan Singh, Senior Advocate with
Shri N.S. Rapri, Advocate for the appellants.

Shri Baldev Kapoor, Advocate for respondent No.1.

Dr. Bharat Bhushan Parsoon, J.

This regular second appeal is directed against judgment and decree dated 2.11.1987 of the lower court below whereby suit of the plaintiff for specific performance of agreement to sell dated 11.6.1983, holding that the sale deed dated 21.5.1986 executed by defendant No.1 in favour of defendant No.2 to 7 in derogation of the agreement and being without the authority and with an intention to cause loss to the plaintiff, was decreed and the appeal preferred by the vendee defendants against the said decree of the lower court, was also dismissed on 7.3.1991.

2. Darshan Singh, defendant No.1 and respondent No.2 herein, being owner of the land in suit had agreed to sell the same to plaintiff Joginder Singh (since deceased and being represented by his LRs), respondent No.1 @ Rs.9,000/- per killa vide agreement to sell dated 11.6.1983, when earnest money of Rs.5,000/- had also been paid. Sale deed was to be executed on or before 8.12.1983. Another sum of Rs.5,000/- was

received by the owner defendant from the plaintiff on 23.6.1984 vide writing made on the back of the original agreement. When defendant owner Darshan Singh did not come forward to execute the sale deed when whereas the plaintiff continued to be ready and willing to perform his part of the contract, on the appointed date he went to the office of the Sub Registrar, Muktsar ready with the balance sale consideration as also money to defray expenses for stamp and charges as also miscellaneous expenses but the defendant did not turn up for execution of the sale deed. Consequently waiting for the whole day, the plaintiff made application (Ex.P1) wherein Naib Tehsildar Muktsar making endorsement Ex.P1/A, noticed his presence.

3. Claiming himself to be ready and willing to perform the agreement, notice (Ex.P7) was sent on 30.11.1984 to the defendant owner Darshan Singh through his counsel calling upon the vendor-defendant to execute the sale deed within a week but the defendant even then did not take any steps in that direction and continued defiance to perform his part of the contract.

4. When the plaintiff had continuously been waiting being ready with the balance sale consideration and money for defraying charges for stamp and registration as also miscellaneous expenses, the defendant sold the land to defendants No.2 to 7 (now appellants) vide sale deed Ex.D1 on 21.5.1986, thus prejudicing the rights of the plaintiff flowing from agreement (Ex.P5). Sequelly, the plaintiff filed the suit seeking specific performance of the agreement and claiming the sale deed in favour of the defendants to be null and void and thus being of no consequence.

5. Non-appearance of defendant No.2 despite service resulted in ex-parte proceedings against him on 21.11.1986.

6. In their joint written statement furnished by vendee defendants No.2 to 7, they have claimed agreement to sell in favour of the plaintiff to be incomplete and uncertain. Suit of the plaintiff was also contested on the plea that as per the agreement, total land was 44 kanal whereas the suit had been filed for specific performance of land only for 35 kanals 11 marlas.

Claiming themselves to be bona-fide purchasers for value and consideration, they had denied knowledge of any agreement in favour of the plaintiff. Rest of the case of the ploaintiff was also denied, praying for dismissal of the suit.

7. In replication preferred by the plaintiff, controverting all the averments of the contesting defendants, case set up by the plaintiff in the plaint, was reiterated.

8. On the pleadings of the parties, following issues were settled for adjudication by the lower court on 7.1.1987:-

1. Whether Darshan Singh defendant executed agreement dated 11.6.81 for sale of land in dispute to the plaintiff? If so to what effect? OPP
2. Whether the plaintiff has been ready and willing to perform his part of the agreement? OPP
3. Whether defendants No.2 to 7 are bona-fide purchasers for value of the suit land? If so to what effect? OPD
4. Whether agreement in dispute is uncertain and incomplete? If so to what effect? OPD
5. Whether the suit is within limitation? OPP
6. Whether suit is properly valued for purposes of court fee and jurisdiction? OPP
7. Relief.

9. After receiving oral as well as documentary evidence from both the parties and providing hearing to their counsel, all the issues were decided in favour of the plaintiff and against the defendants and consequently, the suit of the plaintiff was decreed by the lower court on 2.11.1987. Appeal preferred by the vendee defendants against the said judgment and decree of the lower court, was also dismissed on 7.3.1991.

10. In the present regular second appeal against verdict of both the

courts below, it has been set up by the appellant-defendants that the appellant-defendants had purchased the suit land when they had no knowledge or information about the agreement to sell of the land existing in favour of the plaintiff. Assailing this agreement, it is claimed that it was vague and uncertain and the suit had also been filed for part of the land and thus was liable to be dismissed but the courts below did not take these aspects into consideration. It is claimed that neither the plaintiff had been ready and willing to perform his part of the contract nor had come forward to expeditiously file the suit. It is claimed that even notice to the vendor defendant was issued very late and even thereafter he had been whiling away the time. It is also canvassed that the plaintiff neither was ready nor was willing and had also no funds to pay the balance sale consideration for purchasing the land.

11. It is averred that the conclusion of the courts below that the agreement to sell was in the knowledge of the vendees-defendants is wrong, whereas the parties are from different villages and the land is located in yet another village. Praying for acceptance of the appeal, reversal of decree of both the courts below has been sought.

12. As per stand of the appellants, following substantial questions of law arise for determination by this Court:-

1. Whether the plaintiff is required to plead and prove readiness and willingness to perform his contract as held in AIR 1989 SC 606 'Jawahar Lal Wadhwa & Anr. vs. Hari Padma Chhakarwari'?
2. Whether the plaintiff was required to show by evidence his capacity to perform his part of contract and he had funds to pay balance sale consideration?
3. Whether the contract was vague and indefinite and hit by Section 29 of the Indian Contract Act, 1872?
4. Whether the statement of defendant alone is sufficient to prove negative and the onus thereafter shifts to the plaintiff to prove the subsequent transferee has no

knowledge about the agreement?

5. Whether the findings of the courts below to the effect that the appellants are not bonafide purchaser for the value without notice are based on legal evidence on record?
6. Whether the specific performance could be ordered when the suit was filed after two months less than three years when the sale deed was to be executed. It is held that inordinate delay would bar the relief of specific performance of the contract?

13. Main claim of the appellants is that they are bona-fide purchasers for value and consideration of the land and the agreement to sell in favour of the plaintiff was not only vague and indefinite but he had also been whiling away the time and in fact had not been ready and willing to perform his part of the contract and rather even did not have the capacity and money to do so. It is claimed that they did not have knowledge of any agreement to sell executed by the vendor-defendant. It is claimed that the plaintiff is to establish the same to negate the plea of bona-fide purchasers set up by the defendants. It is also urged that belated filing of the suit also dis-entitles the plaintiff for the relief of specific performance.

14. Counsel for the respondent-plaintiff on the other hand has urged that all the points taken by the appellant-defendants have duly been considered by both the courts below and have been decided against the appellants. It is contended that the appellants once more had raised the same pleas which have no merit particularly when when they had purchased the suit land knowing it fully that the agreement to sell the same land was subsisting in favour of the plaintiff. Dismissal of the appeal has been sought.

15. Before rival claims of the parties in this appeal in the interface of substantial questions of law which need determination by the court, are adjudicated, it would be proper to take stock of the facts about which there is no dispute.

16. Agreement to sell is of 11.6.1983 (Ex.P5). As per version of the respondent-plaintiff, earnest money of Rs.5,000/- was paid on the day of execution of the agreement to sell and yet another sum of Rs.5,000/- was paid on 23.6.1983 vide writing Ex.P6 recorded on back of the agreement. Agreement (Ex.P5) is proved by attesting witness Achhar Singh PW2; writing (Ex.P6) of 23.6.1983 on the back of the agreement (Ex.P5) is proved by Jeet Singh PW3. Plaintiff Joginder Singh himself entering the witness box as PW1, has deposed in conformity with his pleadings, specifically stating payment of Rs.5,000/- as earnest money by him to defendant Darshan Singh on 11.6.1983 when the agreement to sell was executed by him in his favour and states further that yet another sum of Rs.5,000/- was paid on 23.6.1983. The land was agreed to be sold @ Rs.9,000/- per killa.

17. Vendor Darshan Singh appearing as PW5 has in no uncertain terms admitted execution of agreement (Ex.P5) in favour of the plaintiff and has accepted entire version of the plaintiff. Thus, neither agreement to sell Ex.P5) nor writing (Ex.P6) is disputed.

18. Faced with this situation, not only appearance of vendor Darshan Singh as witness of the plaintiff was questioned but even insinuations were made against him that he was demanding Rs.3,000/- from them but when they did not give him this amount, he appeared as a witness for the plaintiff. It is worth notice that when defendant Darshan Singh entered the witness box as PW5, he has accepted each and every aspect of the case of the plaintiff and has elaborated that before executing sale deed (Ex.D1) in favour of defendants No.2 to 7, now appellants, he had clearly disclosed about subsistence of agreement to sell of the same land in favour of the plaintiff. Despite detailed cross examination effected on him, nothing impugning his his credence surfaced on record. When more scrutinizing and grilling became the cross examination, more transparently emerged the case of the plaintiff, demolishing the case of the appellant-defendants. He has also categorically deposed that the plaintiff had, and always continued to be ready and willing to perform his part of the contract but he himself

was not ready to execute the sale deed in favour of the plaintiff, thus himself had betrayed his readiness and willingness to perform his part of the contract, in favour of the plaintiff.

19. It is worth notice that the vendee-defendants had been concentrating on proving sale deed of 21.5.1986 (Ex.D1) in their favour from the defendants, execution of which in fact is not denied either by the vendor defendant Darshan Singh or by the respondent-plaintiff.

20. The moot point for consideration rather is as to whether the vendee defendants, now appellants, had any knowledge or information about agreement to sell (Ex.P5) in favour of the plaintiff or not before getting the sale deed (Ex.D1) executed in their favour?

21. Sequelly, the authority titled as Bhagwan Singh v. Nawab Mohammad Iftikhar Ali Khan and others, 1983(1) All India Land Laws Reporter 95, cited by the vendee defendants claiming that the agreement is vague and indefinite, does not help them. In the said authority neither boundaries nor exact area of the land had been given. Exact location of the land was also not discernible. It was held that such an agreement is not capable of specific performance.

22. In the present case, sale deed (Ex.D1) in favour of defendants No.2 to 7 has exactly the same description of the land as is available in agreement to sell (Ex.P5). When each and every khasra number is specifically mentioned in both the documents, the appellant-defendants have no ground to raise a pointed finger at the validity and legality of the agreement (Ex.P5). Similarly to suffer repetition, plea of absence of exclusive ownership with vendor Darshan Singh does not cut any ice because he alone had executed sale deed of the same land in their favour. By applying the same test, validity of agreement in favour of the plaintiff cannot be questioned by the defendants.

23. Before this aspect is taken for further discussion, it may be pointedly noticed that plea of the appellants that agreement to sell is vague,

indefinite and uncertain, has no merit. Merely because it had mentioned the land to be 44 kanal, giving detailed particulars thereof, but in fact from the revenue record it was clear that the land was only 35 kanals 11 marlas., does not make the agreement to be vague. This plea taken by the defendants even otherwise is not tenable because even the sale deed in their favour is only of 35 kanal 11 marlas. This sale deed (Ex.D1) in favour of the defendants proves the stand of the plaintiff that notwithstanding recital of land being 44 kanals, in fact the defendant had total land holding only of 35 kanals 11 marlas as per the details of the land in agreement to sell as also in terms of jamabandi for the year 1978-79 (Ex.P2). Similarly, version of the appellant-defendants that Darshan Singh was not absolute owner of the land in suit and thus could not have entered into agreement with the plaintiff stands demolished because even the sale deed in favour of the defendants is executed only by defendant Darshan Singh and sale consideration of the share of other co-owners with him was duly deposited in their respective Bank accounts.

24. When there is specific statement of vendor Darshan Singh that before execution of the sale deed, he had disclosed about subsisting agreement in favour of the plaintiff to defendant Balkar Singh and his father Mohinder Singh, who also have entered the witness box as DW3 and DW6, defendants have no cheeks to deny knowledge of agreement to sell (Ex.P5). Plaintiff Joginder Singh belongs to village Chaklamochan, as is clear from the title of the plaint itself. Ram Singh, Sarpanch of village of the defendants viz. Nurpur Kirpal Ke, coming in support of the vendee defendants is natural. But taking on its own merits, testimony of Ram Singh DW5 that the plaintiff had never told him or any Panch of his village about execution of the agreement to sell in his favour by vendor Darshan Singh, is of no significance. Since the plaintiff concededly belongs to another village and there was no dispute pending adjudication, the matter was not to be brought to the notice of Sarpanch of the village. In absence of any dispute, the plaintiff was not expected to go around the village telling Sarpanch or

Panches that he had agreement to sell of land of owner Darshan Singh in his favour. Counsel for the appellants has nothing to wriggle out of the statement of defendant Darshan Singh (PW5) who has stated that he had disclosed about subsisting agreement of the same land in favour of plaintiff Joginder Singh and Balkar Singh and his father Mohinder Singh. It is thus clear that the defendants themselves had taken the risk of purchasing the land which had always been agreed to be sold to the plaintiff by vendor defendant Darshan Singh and the agreement was still subsisting.

25. Darshan Singh (PW5) was never cross examined on the aspect that he had never told defendant Balkar Singh or his father Mohinder Singh about his having executed agreement (Ex.P5) and about endorsement (Ex.P6) in favour of the plaintiff meaning thereby that the statement on this aspect goes un-rebutted and unchallenged in absence of cross examination on this vital aspect. Further, it is a clear admission of his testimony on this count by defendants No.2 to 7, now appellants. In this situation, claim of the defendants that they are bona-fide purchaser stands shattered and is of no value in the eyes of law.

26. Finding their ship caught in the storms of their own admission by the appellant-defendants, other periphereal issues have been raked up by the appellants. Citing Jawahar Lal Wadhwa and another v. Haripada Chakraberty, AIR 1989 SC 606, it is claimed that when the plaintiff was not keeping contract alive by performing his part of the contract and did not show his readiness and willingness in order to claim specific performance, his claim only for damages survives.

27. Not only there are specific pleadings with regard to his readiness and willingness to perform his part of the contract by respondent-plaintiff Joginder Singh but even otherwise, there is overwhelming evidence to support and sustain such pleadings. Claim of the appellants that the plaintiff had no money to pay the balance sale consideration as also to defray stamp and registration charges and other miscellaneous expenses, is also of no significance because ready with the balance sale consideration as

also money to pay stamp registration and other miscellaneous expenses on the appointed day, the plaintiff had reached the office of the Sub Registrar, Muktsar. Plaintiff Joginder Singh appearing as PW1 is vivid and elaborate on this count in making deposition in consonance with his pleadings that he had been ready and willing to perform his part of the agreement. He has also proved application dated 8.12.1983 (Ex.P1) made by him to Sub Registrar, Muktsar for getting his presence marked in that office. Even thereafter, when the defendant was playing truant and was not coming forward to execute the sale deed, he had issued notice Ex.P7 on 30.11.1984 through his counsel Shri K.K. Sharma, whose Clerk Amar Lal PW4 entering the witness box has proved notice Ex.P7. There is unassailed testimony of Joginder Singh PW1 that even thereafter and till date, he continues to be ready and willing to perform his part of the agreement.

28. Even Darshan Singh appearing as PW5, sustaining and supporting case of the plaintiff, has conceded that whereas the plaintiff was ready and willing to perform his part of the agreement but he had not been willing to execute the sale deed and thus has clearly admitted that the default was with the vendor defendant Darshan Singh, whereas the plaintiff had throughout been ready and willing to perform his part of the contract.

29. Merely because the suit had been filed after more than two years of execution of the agreement but within limitation, ipso-facto is no ground to non-suit the plaintiff. Support sought from Mrs.Sandhya Rani Sarkar v. Smt. Sudha Rani Debi and others AIR 1978 SC 537 by the appellants does not support the claim of the defendants, because in the said authority there was inordinate delay on the part of the plaintiff to perform her part of the contract and in that eventuality decree for specific performance was refused. In the present case not only the plaintiff has substantiated and sustained his pleading, he being ready and willing to perform the contract throughout, even vendor defendant Darshan Singh has supported his claim while conceding that the fault of non performance of the agreement was with him and not with the plaintiff. When the defendant

executed the sale deed Ex.D1 in favour of the appellant-defendants, the plaintiff did not take much time in approaching seeking specific performance of the agreement (Ex.P5), as also for avoidance of the sale deed in favour of the appellant-defendants.

30. It is relevant to mention here that to rebut the claim of the vendor defendant Darshan Singh that he himself was not ready and willing to execute the sale deed in favour of the plaintiff, evidence was sought to be produced by the appellant-defendants when they had summoned deed writer Vijay Kumar on 26.5.1987 along with Registrar on 8.12.1987 to show that on the appointed day, the defendant was present in the office of Sub Registrar and was ready to execute the sale deed in favour of the plaintiff. It is not explained by the defendants as to why the said summoned witness Vijay Kumar was not examined by them in additional evidence though permission for the same had been granted by the court and accordingly the witness had also been summoned. Non examination of Vijay Kumar, deed writer, thus goes against the cause of the defendants.

31. Counsel for the appellants has cited Motilal Jain v. Smt. Ramdasi Devi and others, AIR 2000 SC 2408(1), urging that alternative relief of damages having been pleaded, specific performance should have been refused, particularly in view of the delayed filing of the suit.

32. Concededly the suit is within limitation. Vendor-defendant himself entering the witness box as PW5 has claimed that it was his fault, whereas the plaintiff has throughout been ready and willing to perform his part of the contract. Even in the cited authority, after the appointed day notice had been issued to the vendor defendant after 14 months thereafter and the suit was filed still 9 months after the last notice, it was held that these circumstances were sufficient enough to hold the suit to be belated so as to deny the relief of specific performance. In the present case, the sale deed was to be executed on 8.12.1983, the defendant had not come forward to execute the sale deed, the plaintiff had got his presence marked vide Application Ex.P1. Notice was issued on 30.11.1984. The defendant even

then did not turn up. He rather betrayed the plaintiff and sold the suit land to the defendants and just after a short while, the suit was filed, which cannot be said to have been filed belatedly so as to refuse the relief of specific performance.

33. In view of the detailed discussion, all substantial questions of law are answered against the appellant-defendants.

34. Finding no merit, this regular second appeal is dismissed with costs. Decree sheet be drawn.

[Dr. Bharat Bhushan Parsoon]
Judge

March 23rd, 2015.
kadyan

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