

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.2980 of 2010(O&M)
Date of Decision: 30.03.2015**

Suman ... Appellant
Versus

Swaraj ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. BS Bajwa, Advocate,
for the appellant.

Mr. R.S. Mahas, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This appeal is against the concurrent findings of facts recorded by Civil Judge (Junior Division), Gurdaspur in judgment and decree dated 11.6.2009 as affirmed by learned District Judge, Gurdaspur on 16.2.2010.

Briefly stated, the facts are that the plaintiff and the respondent entered into an agreement of sale on 19.8.2005 with respect to a shop of which a site plan was there in the sale agreement but the property was not described. The date fixed for execution of the sale deed was 20.12.2005. Plaintiff alleged that vendor backed out which compelled vendee Suman to institute a suit on 9.3.2006 for specific performance of contract by way of possession of the corpus with an alternative prayer that in case the specific performance is not granted, the plaintiff should be refunded earnest money along with Rs.50,000/- as damages.

Having contracted to sell suit property it was revealed that the pretending vendor Swaraj had sold the corpus to her son namely Kishore

Kumar on 20.10.2003 prior to the sale agreement. The mutation, which was entered in the revenue record a few years later, is reflected in the jamabandi for the year 2006-07. In these circumstances, when vendor Swaraj entered into an agreement with vendee Suman in 2005, she had seized to hold title to the property since she had conveyed it sale deed to her son and therefore, she could not enter into an agreement of sale with the appellant Suman.

What is made much of by the learned counsel for the appellant is that Swaraj's son Kishore Kumar was an attesting witness to the agreement of sale and therefore had knowledge of the sale deed in his favour and this conspiracy should be a reason enough to discredit the sale deed and pave the way to a decree of specific performance in favour of the plaintiff/appellant. I am afraid; the argument is not acceptable since the property rights are determined by conveyance deed duly registered in public office and stamp duty paid to protect the rights of the State exchequer. The conduct of both mother and son may be reprehensible and cannot be complimented but it is not for this Court while sitting in second appeal to make any comment on their conduct for which there are other competent courts in case put in issue. This is not a case where the sale agreement was entered into and the land sold subsequently to avoid contract. If the corpus was not encumbered then it would have been a different matter. The right to property having passed from mother to son, for any reason whatsoever, is protected by a sale deed the agreement of sale stands frustrated and incapable of performance.

The validity of the sale deed of 2003 or cancellation thereof has not been put to trial and therefore, can receive no comment from this Court.

The Courts below have refused specific performance but have ordered

refund of claimed amount of Rs.60,000/- with 6% simple interest per annum from the date of filing of the suit till realization. In any case specific performance is a discretionary remedy and jurisdiction is to be judiciously exercised in the discretion and wisdom of the trial Court and the first Appellate Court as the last court of fact and of law with only substantial questions arising therefrom open to examination in proceedings under Section 100 of the Code. The facts in this case are so apparent that the concurrent findings of the Courts *a quo* are not liable to be disturbed in second appeal jurisdiction. However, since this Court feels that a wrong was committed on the plaintiff, by mother and son duo then they deserve refund of money immediately so that they have not left to resort to the tardy process of execution proceedings. If the amount decreed has not paid till date then it is directed that the respondent would deposit the amount in the trial Court within two months from the date of receipt of certified copy of this order, failing which the appellant would have right to interest @18% per annum calculated on the principal amount plus interest as awarded as on the date of decree, payable from the date of decree @ 18% till realization.

The appeal is dismissed, subject to the aforesaid compliance of directions.

30.3.2015
monika

(RAJIV NARAIN RAINA)
JUDGE