

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 1085 of 2012

Date of decision : September 17, 2015

Santokh Singh

... Appellant

vs.

Sukhdev Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Atul Jain, Advocate
for the respondent.

Surinder Gupta, J

1. This regular second appeal has been filed against the judgment of first appellate court whereby the judgment and decree passed by Additional Civil Judge (Sr. Division), Sultanpur Lodhi allowing alternate relief of recovery of ₹1,10,000/- with interest and declining the relief of specific performance of agreement dated 21.6.2001 was set aside and suit of the plaintiff Sukhdev Singh seeking relief of specific performance of agreement to sell was allowed.

2. Before proceeding further, it will be relevant to have a look at certain material dates which are as follows :-

- i) *Agreement to sell was executed on 21.6.2001.*
- ii) *The sale consideration of the suit land measuring 3 kanal 16 marla was settled at ₹1,66,250/- out of which ₹1,10,000/- was paid as an earnest money.*
- iii) *On the same day i.e. 21.6.2001, the above land was mortgaged for a sum of ₹2 lacs vide registered mortgage deed dated 21.6.2001 in favour of – Nephew of plaintiff.*
- iv) *The date for execution and registration of sale deed was*

fixed as 20.4.2004 on which date it was not executed and the plaintiff has alleged that he remained present in the office of Sub Registrar but the defendant (appellant) did not turn up.

- v) The plaintiff has alleged that he issued a legal notice dated 14.8.2004 requesting the defendant to execute the sale deed on 20.8.2004 on which date also he did not turn up.*
- vi) The instant suit was filed on 10.4.2007 i.e. almost about three years from the date fixed for execution of sale deed.*
- vii) The plaintiff has alleged that he always remained ready and willing to perform his part of contract but the defendant prolonged the matter and finally refused to execute the sale deed.*

3. The defendant contested the claim of plaintiff, *inter alia*, pleading that on 20.6.2001, a mortgage deed of suit land was executed in favour of nephew of plaintiff, namely, Paramjit Singh. The mortgage deed was executed as the defendant had to pay ₹1,20,000/- to Hardayal Singh Commission Agent. Out of the amount of ₹2 lacs, a sum of ₹1,20,000/- was paid to Hardayal Singh and ₹50,000/- were paid to defendant. The remaining amount was paid by plaintiff who is the *karta* of family about 10 days later. The agreement in dispute was forged and fabricated document. The plaintiff under the garb of the agreement tried to take forcible possession of the suit land and put the house of defendant on fire. The incident was reported to the police vide FIR No.152 dated 20.11.2004.

4. Pleadings of the parties led to the framing of issues as follows :-

- 1. Whether the plaintiff is entitled to specific performance of agreement to sell dated 21.06.2001 executed by*

defendant in favour of plaintiff in respect of suit property, after payment of balance sale consideration?OPP

2. *Or in the alternative, whether the plaintiff is entitled to recover Rs.1,66,250/- along with interest @ 18% per annum from the date of agreement to sell till realization of amount?OPP*
3. *Whether the plaintiff was ready and willing and is still ready and willing to perform his part of the contract?OPP*
4. *Whether the plaintiff is entitled to permanent injunction restraining the defendant from alienating/transferring the suit property to any body else except the plaintiff?OPP*
5. *Whether the plaintiff has not brought the true facts before the Court?OPD*
6. Relief.

5. Learned Additional Civil Judge (Sr. Division), Sultanpur Lodhi, held the execution of agreement dated 21.06.2001 as proved and while declining the relief of specific performance of agreement and allowing the alternative relief held as follows :-

“The date of execution of sale deed was fixed as 20.04.2004 and major amount i.e. Rs.1,10,000/- was paid as earnest money. However, the plaintiff after getting his presence marked and service of notice kept silent and filed the suit only on 10.04.2007 i.e. towards the expiry of limitation period. It also comes out that the plaintiff might be knowing about the mortgage deed in favour of Paramjit Singh who is his nephew. It does not appear possible if the plaintiff would have kept mum for such a long time when parted with major amount of sale consideration. Perusal of the revenue record also shows that possession is with the mortgagee i.e. Paramjit Singh as

per jamabandi Ex.P5. The plaintiff has stated that he is ready to pay the mortgage amount to the mortgagee, but this plea, rather, shows the eagerness of the plaintiff to get specific performance of agreement to sell after such long time. From the evidence and circumstances of the case it is not proved if the plaintiff always remained ready and willing to perform his part of the agreement to sell dated 21.06.2001. Allowing the specific performance of agreement to sell in his favour will be unfair to the defendant in these circumstances. Thus, the plaintiff is not entitled to specific performance of agreement to sell dated 21.06.2001, though, he has proved due execution of the same.....”

6. Not satisfied, the plaintiff Sukhdev Singh preferred appeal which was allowed by the learned Additional District Judge, Kapurthala. Learned Additional District Judge, Kapurthala observed that sale deed was to be executed after getting the land re-deemed. Admittedly, the land was not re-deemed by the respondents and now the plaintiff himself is ready to get the land re-deemed. The mere delay in filing the suit for specific performance is no reason to deny the relief of specific performance of agreement.

7. I have heard learned counsel for parties and perused the paper book with their assistance.

8. The substantial question of law that arise for determination in this case is as follows :-

“Whether the plaintiff, who had remained silent and taken no steps to perform his part of contract under agreement for a long period of more than 2 years and 7 months, could be allowed the relief of specific performance of agreement in this case?”

9. The dispute now revolves only regarding the relief to be allowed to the plaintiff in this case as the defendant/respondent has by now accepted the finding of the court below on the execution of the agreement and receipt of the earnest money. The plaintiff has alleged that on 21.6.2001, the date fixed for execution of the sale deed, he had appeared before the Sub Registrar and also got his affidavit to this effect attested but the defendant did not appear to get the sale deed executed. This was followed by notice sent by the plaintiff on 14.8.2004. Till the filing of the suit on 10.4.2007 i.e. for a period of about 2 years and 7 months the plaintiff had remained silent and took no steps to seek specific performance of the agreement.

10. No doubt, the time is not the essence of the contract in case of immovable property but it is also evident that price of property have seen an upward trend during the period of this transaction i.e. from the year 2001 onwards till filing of suit in the year 2007. The Apex Court took note of this fact in the case of ***K.S. Vidyadnam and Ors. vs. Vairavan***, AIR 1997 Supreme Court 1751 and observed in para 10 as follows :-

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for

doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the Court by both Sections 10 and 20. As held by a Constitution Bench of this court in Chand Rani v. Kamal Rani, (1993) 1 S.C.C. 519, "itis clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are (evident)? : (1) From the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract." In other words, the court should look at all the relevant circumstances including the time-limits specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades - particularly after 1973. In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil Nadu. The suit agreement was in December 1978 and the six months' period specified therein for completing the sale expired with 15th of June, 1979. The suit notice was issued by the plaintiff only on 11.7.1981, i.e., more than two years after the expiry of six months' period. The question is what was the plaintiff doing in this interval of more than two years?....."

11. The Apex Court in the above referred case while taking note of the fact that the plaintiff was sitting quite without taking any steps to

perform his part of contract under the agreement for the period of 2½ years observed as follows :-

“.....Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so. learned Counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as nonexistent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribes certain time-limits for taking steps by one or the other party, it must have some significance and that the said time-limits cannot be ignored altogether on the ground that time has not been made the essence of the contract [relating to immovable properties].

12. Applying the above ratio on the facts and circumstances of the present case, it is to be seen that the property was situated in district Kapurthala and there has been a sharp increase in the price of the immovable property during the period between 2004 to 2007. Firstly, the

time gap of three years was kept between the date of agreement for execution and registration of sale deed. The plaintiff was very well aware of the fact that the property in dispute was mortgaged with his nephew on the same day, on which the agreement was executed, for a sum of ₹2 lacs. Though this fact is quite amazing that the mortgage money of the property was more than the sale price but at this stage it cannot be looked into as the defendant has conceded the findings of the courts below about the execution of the agreement dated 21.6.2001.

13. Keeping in view the above facts and circumstances, I am of the considered opinion that the court of Additional Senior Sub Judge, Sultanpur while exercising discretion had not exceeded its powers while declining the relief of specific performance of the agreement. The discretion exercised by that court is not arbitrary but sound and reasonably guided by the judicial principles. After such a delay, it will be inequitable to allow the relief of specific performance of agreement to the plaintiff. The mere plea that the land was under mortgage was no ground for the plaintiff to sit idle for a period of more than 2 years and 7 months. It is evident that after the expiry of such long period he was guided by sharp increase in price of immovable property to file this suit seeking specific performance of agreement.

14. Learned counsel for respondent has argued that limitation provided for seeking relief of specific performance of agreement is 3 years and the plaintiff has filed the suit within 3 years and when the suit is within limitation, he cannot be denied the relief of specific performance of agreement.

15. I agree with the learned counsel for respondent to the extent that the suit is not barred by limitation. Article 54 of Limitation Act

prescribed 3 years as period within which a suit for specific performance can be filed. “The jurisdiction to decree specific performance is discretionary and the court is not bound to grant such a relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by the court of appeal” is the dictum of Section 20 (1) Specific Relief Act. In the instant case, the plaintiff has not come up with any explanation on his part for delay of more than 2 years and 7 months in filing suit and the discretionary powers exercised by learned Additional Civil Judge while decreeing the suit for alternative relief is apt, in accordance with law, facts and circumstances of this case and call for no interference in appeal. The judgment and decree passed by first appellate court is perverse and not in accordance with settled canons of law and justice.

16. In view of the above circumstances, the substantial question of law as framed is answered in favour of appellant.

17. This appeal has merits and is allowed. The judgment and decree passed by the first appellate court is set aside and that of Additional Civil Judge (Sr. Division), Sultanpur Lodhi is restored. There shall be no orders as to costs.

September 17, 2015

deepak

(Surinder Gupta)
Judge