

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

**RSA No.1523 of 2012 (O&M)
Date of decision: 27.01.2015**

Smt. Kako Bai and another ... Appellants

Vs.

Malkiat Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.K.Ganga, Advocate
for the appellants.

Mr. Sandeep Punchhi, Advocate
for respondents No.1 to 3.

AMIT RAWAL J. (Oral)

This regular second appeal is directed at the instance of appellants/defendants No.1 and 2 against the judgments and decrees of the Courts below whereby the suit for specific performance of the agreement to sell dated 18.03.1982 has been decreed and the plaintiffs have been held to get possession of the land of the share of the appellants i.e. defendants No.1 and 2 after payment of the balance sale consideration.

As per the decree, defendants No.1 and 2, have been directed to get the sale deed executed of their share in favour of the plaintiffs within a period of two months, failing which the plaintiffs would be entitled to get the sale deed executed in their favour through the process of the Court.

The case has a checkered history. Earlier the suit filed on 6.9.1985 was dismissed by the trial Court vide judgment and decree dated 10.05.1990. Thereafter, the appeal filed by the plaintiffs/respondents against the aforementioned judgment and decree was also dismissed vide order dated 28.02.1992. Against the aforesaid judgments and decrees of both the Courts below, the respondents/plaintiffs preferred regular second appeal before this Court i.e. RSA No.1144 of 1992.

The suit of the plaintiffs-respondents was dismissed primarily on the ground that other than defendants No.1 and 2, other co-owners of the property were minors and permission of the minors had not been obtained till filing of the suit. Vide order dated 23.03.2009, this Court remanded back the matter to the trial Court for adjudication of the matter afresh by holding as under:-

“In view of the order passed in the application for amendment allowing amendment of plaint the judgments and decree passed by the learned courts below are set aside and the case is remanded back to the trial court to adjudicate the matter afresh after giving an opportunity to the defendant-respondents to file amended written statement to amended plaint, and thereafter proceed with the matter by framing additional issues, if any, which may arise in view of the amended pleadings.

However, it is made clear that the plaintiff/appellants

would not be entitled to claim enforcement of agreement regarding share of defendants No.3 to 9.”

From the observations of this Hon'ble Court, it is crystal clear that plaintiffs were not entitled to claim enforcement of agreement regarding share of defendants No.3 to 9 (minors). The trial Court on the basis of oral and documentary evidence decreed the suit qua the share of defendants No.1 and 2.

It is pertinent to mention here that plaintiffs-respondents suffered a statement before the trial Court and relinquished the claim over defendants No.3 to 9. The appeal preferred by defendants No.1 and 2 against the judgment and decree dated 15.12.2009 passed by the Additional Civil Judge, Sirsa was also dismissed by the lower Appellate Court. Hence the present regular second appeal

Mr. P.K.Ganga, learned counsel appearing on behalf of the appellants in support of his case contends that many issues were pressed but not dealt with by the Courts below. In case, decree is not set aside, extreme hardship would be caused to the appellants/defendants No.1 and 2, who have been called upon to execute the sale deed for a sale consideration which is too meager. He further submitted that both the Courts below have committed illegality and perversity in exercising of discretion under Section 20 of the Specific Relief Act.

Mr. Sandeep Punchhi, Advocate appearing on behalf of the respondents/plaintiffs submitted that ingredient of Section 16 (c)

read with explanation (i) and (ii) of the Specific Relief Act have not only averred but proved. In support of his contention, he has referred to averments made in para 6 of the plaint. For the sake of brevity, para No.6 is reproduced herein below:-

“6. That as mentioned above, the plaintiffs were ever ready and willing to perform their part of contract accordingly to the spirit of agreement dated 18.3.1982 and at present also they are ready and willing to do so, but on the other hand, the defendants after executing the agreement changed their mind and they are refusing to get the sale deed executed and changed their mind and they are refusing to get the sale deed executed and registered and thus, they have ignored to perform their part of contract under the spirit of agreement dated 18.03.1982.”

Respondents while rebutting the aforementioned averments in para No.6 of the written statement, which read as under:-

“6 That this para No.6 is wrong and hence denied. False facts have been alleged by the plaintiffs.”

From the perusal of the reply, it is irresistibly concluded that appellants/defendants No.1 and 2 did not specifically deny averments made in corresponding para of the plaint.

It is settled proposition of law i.e. as per provisions of

order 6 Rule 5 CPC that in the absence of specific denial, the pleadings made in the corresponding paragraph, are deemed to be admitted.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

The submission of the learned counsel for the appellants is devoid of merits and I am of the considered view that the appeal deserves to be dismissed for the following reason:-

Appellants-defendants No.1 and 2 have not specifically denied the averments made in para No.6 of the plaint extracted above. In the absence of specific denial, averments made in the corresponding paragraph are deemed to be admitted. Respondents/plaintiffs before filing of the suit sent a legal notice dated 31.1.1983 (Ex.P4), and it has been a categorical case of the plaintiffs-respondents that they were ready and willing to perform their part of contract and had approached the defendants to perform their part and when defendants did not accede, compelled to institute the suit. As regards the plea of hardship, it has been pointed out that respondents filed amended written statement yet did not take the plea of hardship.

Mr. Ganga, Advocate in support of the aforementioned submission relied upon the judgment of Hon'ble the Supreme Court in **V.Muthusami (Dead) by LRs vs. Angammal and others (2002) 3 Supreme Court Cases 316** to contend that discretion of specific

relief ought to have not been granted where purchasers had bought the land more than 25 years prior to matter reaching the Supreme Court and had invested a large sum of money on improvement. In the instant case, no such evidence has been led on behalf of the appellants to show that they have caused huge investment in the land in dispute. Thus, the view of the ratio descendi laid down in **V.Muthusami (dead) by LRs** (supra) do not apply to the facts and circumstances of the present case.

It is a matter of record that appellants-defendants No.1 and 2 admitted the execution of the agreement to sell. Both the Courts below after examining the oral and documentary evidence have rendered a finding of fact and law. There is no illegality much less perversity in the findings.

Before parting with the appeal, it is pointed out that this Court vide order dated 01.08.2012, while noticing the contention of the appellants/defendants, that since the suit for specific performance had been partly decreed qua share of defendants No.1 and 2 and in view of the decree, respondents/plaintiffs would become co-shares and in order to avoid litigation, showed their bona fide to deposit a sum of ₹10 lacs in the Registry of this Court with a hope that respondents/plaintiffs would not press the claim of specific performance.

In compliance of order dated 01.08.2012, appellants/defendants deposited the amount of ₹ 10 lacs vide receipt

dated 3.12.2012, this fact had been noticed in the order dated 12.12.2012 while issuing notice of motion. Since the appeal does not survive, a sum of ₹ 10 lacs is ordered to be refunded back to the appellants.

No substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 27, 2015
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