

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1640 of 2012 (O/M)
Date of decision : 23.9.2015

Jaibir

..... Appellant

Versus

Hari Chand

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. T.C. Dhanwal, Advocate, for the appellant.
Mr. Sudhanshu Makkar, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH, J. (ORAL)

Challenged in the impugned regular second appeal is the judgment and decree dated 18.8.2011, passed by the learned Additional District Judge, Bhiwani, affirming the judgment and decree dated 16.10.2009, passed by the learned Additional Civil Judge (Senior Division), Bhiwani, vide which the suit of the plaintiff/respondent herein was decreed with costs and it was held that the plaintiff/respondent is entitled to specific performance of contract dated 1.8.2000, executed by defendant/appellant herein in favour of the plaintiff regarding the suit land. The defendant/appellant was therefore directed to get the sale deed executed within two months from the date of passing of judgment

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and decree, failing which the plaintiff/respondent can take the assistance of the Court to get the sale deed executed. The defendant was further restrained from alienating the suit land and also from dismantling the construction, if any raised over the suit land.

The short facts, which are required to be noticed for the purpose of disposal of the present appeal, are that according to the plaintiff, the defendant executed an agreement of sale dated 1.8.2000 in favour of plaintiff regarding sale of 2 kanals of land, situated at Bhiwani Khera, District Bhiwani, bearing khasra No. 516-1/2/1(2-0). The total consideration was Rs. 1,85,000/-, out of which Rs. 1,75,000/- was paid as earnest money. The date of execution of sale deed was fixed for 31.7.2001, on the payment of balance consideration. However, according to the plaintiff, a few days earlier i.e. on 25.7.2001, he paid the balance sale consideration amount, regarding which receipt (Ex.P3) was executed by the defendant. Thereafter, the plaintiff requested the defendant 2/3 times in July, 2004 to get the sale deed executed. However, the sale deed was not executed. The suit was filed on 17.11.2004.

Suffice to say that in the written statement, defendant denied the execution of agreement of sale dated 1.8.2001 in favour of plaintiff and the receipts of sale consideration.

From the pleadings, following issues were framed :-

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1. Whether the plaintiff's entitled to specific performance of agreement to sell dated 1.8.2000 as prayed for ? OPP
2. Whether the present suit is not maintainable in the present form ? OPD
3. Relief.

After hearing both the parties and after going through the evidence, the suit was decreed, as stated above. The judgment and decree was upheld in appeal.

I have heard the learned counsel for the parties and have also carefully gone through the file.

The substantial questions of law arise for consideration are as to:-

- (i) whether both the Courts below were justified in passing the decree for specific performance without any prayer being made for delivery of possession ?
- (ii) whether the lower Court was justified in passing the decree for specific performance after the entire payment was made three years before the institution of the suit ?

After going through the evidence, I am of the view that the agreement has been proved and it has been consistently held so by both the Courts below. The plea of the defendant that he did not execute the agreement was rightly discarded. The perusal of receipt (Ex.P3) shows that when before the date of execution of sale

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deed i.e. 31.7.2001, the plaintiff made the balance sale consideration of Rs. 10,000/- i.e. on 25.7.2001, the entire sale consideration stood paid. However, in the receipt (Ex.P1), the original terms of the agreement were amended and the date of execution of sale deed was kept open. According to the plaintiff, it was only in July, 2004, that he asked the defendant to execute the sale deed. In the normal course of human behaviour when the entire sale consideration is paid and the date of sale is yet to arrive, the plaintiff should have insisted on the execution of the sale deed on the date fixed or sooner thereafter. However, the fact that even after the payment of entire sale consideration, the date of sale was kept open and even the possession was not insisted upon goes to show that most probably it is a case of advancement of loan and not a genuine case of agreement of sale. It being so, in the given circumstances, when the plaintiff did not pray for decree for possession and did not insist on the execution of sale deed after payment of entire sale consideration and filed a suit after three years of payment of the entire sale consideration, both the Courts below erred in granting the decree for specific performance. I am of the view that in these circumstances, only the refund of money can be ordered with appropriate rate of interest.

So far as the point as to whether the decree for possession can be passed even when no prayer for the same is

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made in a suit for specific performance, the learned counsel for respondent has relied upon the authority of the Hon'ble Supreme Court in Babu Lal Versus M/s Hazari Lal Kishori Lal and others, 1982 AIR (SC) 818, wherein it was observed as under :-

“13. The expression in-sub-section (1) of Section 22 'in an appropriate case' is very significant. The plaintiff may ask for the relief of possession or partition or separate possession 'in an appropriate case'. As pointed out earlier, in view of Order 2, Rule 2 of the Code of Civil Procedure, some doubt was entertained whether the relief for specific performance and partition and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only after he acquired title to the property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, as a case may be visualized where after the contract between the plaintiff and the defendant the property passed in possession of a third person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff obtain possession as against the party in actual possession of the property. As against him, a decree for possession must be specifically claimed for such a person is not bound by the contract sought to be enforced. In a case where exclusive possession is with the contracting party, a decree for

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specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he, is bound not only to execute the sale-deed but also to put the property in possession of the decree-holder. This is in consonance with the provision of Section 55 (1) of the T.P. Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.”

However, the learned counsel for the appellant has relied upon the authority of the Hon'ble Supreme Court of India in Adcon Electronics Pvt. Ltd. Versus Daulat, 2001 (RCR) Civil 806, wherein following observations were made :-

“17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the

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immovable property is specifically prayed for.”

The learned counsel for respondent has further relied upon the authority of the Apex Court in P.C. Varghese Versus Devaki Amma Balambika Devi and others, 2005 (4) RCR (Civil) 469, wherein the earlier authority of the Apex Court in Babu Lal's case (supra) was relied upon by it and it was observed as under :-

“26. The submission of Mr. Reddy to the effect that the learned Trial Judge committed a serious error in granting a decree for partition along with a decree for specific performance of contract need not detain us long as in view of Section 22(1)(a) of the Act a decree for partition and separate possession of the property can be granted in addition to a decree for specific performance of contract. As in this case, the Appellant herein in view of amended prayer 'C' relinquished his claim in respect of the property belonging to the minor - Respondent No. 4, he also prayed for a decree for partition and such a prayer having been allowed, no exception thereto can be taken. In any event, the said question has not been raised by the Respondents before the High Court at all. Section 22 enacts a rule of pleading that in order to avoid multiplicity of proceedings, the plaintiff may claim a decree for possession and/or partition in a suit for specific performance. Even though strictly speaking, the right to possession accrues only when a suit for specific performance is decreed, indisputably such a decree for possession and/ or partition is prayed for in anticipation of the grant of prayer for specific performance of contract. [See Babu Lal Vs. M/s. Hazari Lal Kishori Lal and Others (1982) 1 SCC 525].”

The learned counsel for respondent has further argued that the authorities of the Apex Court in Babu Lal's case (supra) and P.C. Varghese's case (supra) were in issue before the Delhi High Court in Pantaloon Retail India Ltd. Versus DLF Limited and Ors.

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2008 (9) AD (Delhi) 606 and it was held that in a suit for specific performance, the decree for possession can also be passed.

I am of the view that if a suit for specific performance is filed that would mean that the plaintiff is praying that the agreement should be performed. Therefore, the Court is not powerless to grant the decree for possession in case it finds that such relief is necessary in the given circumstances. However, in the present case, the question of specific performance of the agreement has become meaningless, in view of the findings recorded above.

In view of the foregoing discussion, the impugned judgments and decrees of both the Courts below are modified and in place of specific performance of the agreement of sale, a decree for recovery of Rs. 1,85,000/- alongwith interest at the rate of 12% per annum from 1.8.2000 till the realization is passed in favour of plaintiff and against defendant. The present appeal is accordingly partly allowed.

(KULDIP SINGH)
JUDGE

23.9.2015
sjks