

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

**RSA NO. 1983 OF 2013 (O&M)
DECIDED ON : 03.07.2015**

Amarjit Kaur

...Appellant

versus

Kuldip Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE K.C .PURI

Present : Mr. Parveen Kumar, Advocate.

K. C. PURI, J.

The unsuccessful plaintiff has filed this regular second appeal against the judgment and decree dated 08.01.2013 passed by Shri G. S. Dhillon, Additional District Judge, Hoshiarpur, vide which the appeal preferred by the plaintiff/appellant against the judgment and decree dated 03.08.2010 passed by Ms. Preeti Sahni, Civil Judge (Senior Division), Hoshiarpur, was dismissed.

Brief facts of the case as gathered from the record are that plaintiff filed a suit for specific performance to the effect that the defendants were owner of the suit property. They entered into an agreement to sell in favour of the plaintiff vide agreement to sell dated 14.11.2003 for total sale consideration of ₹2,20,000/-. The entire sale consideration was received at the time of execution of agreement to sell. The stipulated date of agreement and

registration of sale deed was 09.09.2004. It was further agreed between the parties that in case the defendants fail to execute the agreement to sell on or before 09.09.2004, the plaintiff will have the right to get the sale deed executed and registered through court. It was further alleged that on 09.09.2004, plaintiff was very much present in the office of Tehsildar and remained there for full day but the defendants did not turn up. The plaintiff marked his presence by getting an affidavit attested from Sub Registrar, Hoshiarpur. It was further alleged that the plaintiff was always ready and willing to perform his part of the contract. Hence, the suit was filed.

On put to notice, the defendants appeared and filed written statement taking preliminary objections that the suit is not maintainable; the plaintiff has not come to the court with clean hands. On merits, it was admitted that the defendants were owner of the suit property. The other facts were denied.

Replication was not filed. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is entitled to joint possession by way of specific performance of the agreement to sell dated 14.11.2003 executed by the defendants in favour of the plaintiff for consideration of ₹2,20,000/- in respect of land measuring 14 kanals 5 marlas as detailed in the head note of plaint ?
OPP
- 2) Whether the plaintiff has been ready and willing to perform his part of the contract ?
OPP

- 3) Whether in the alternative plaintiff is entitled to recover the suit amount of ₹2,20,000/- along with interest @ 12% per annum ? OPP
- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 6) Relief.

In order to prove his case, plaintiff himself stepped into the witness box as PW2 and examined Suraj Mohan, Clerk as PW1, Kiranjit Kaur, one of the attesting witness of the agreement to sell as PW3 and closed the evidence.

On the other hand, the defendants did not examine even a single witness and their evidence was closed by order.

The learned trial court, after adjudication, decreed the suit of plaintiff for recovery of ₹2,20,000/- along with interest @ 6% per annum.

Feeling dissatisfied with the above said judgment and decree dated 03.08.2010 passed by Civil Judge (Senior Division), Hoshiarpur, the plaintiff preferred first appeal. The said appeal was dismissed vide judgment and decree dated 08.01.2013 passed by Additional District Judge, Hoshiarpur.

Still feeling aggrieved by the judgments and decrees dated 03.08.2010 passed by Civil Judge (Senior Division),

Hoshiarpur and judgment and decree dated 08.01.2013 passed by

Additional District Judge, Hoshiarpur, the plaintiff/appellant has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no. 9 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal ?

- 1) Whether the impugned judgment and decree passed by both the courts below is liable to be modified in view of the fact that the entire sale consideration has already been held to be proved by both the courts below ?
- 2) Whether both the courts below were justified in relying upon the letter issued by the Sub Divisional Magistrate which has not been proved in accordance with law ?
- 3) Whether both the courts below have committed an error of law in not granting the relief of specific performance to the appellant in the absence of sale certificate in respect of the land in dispute ?

I have heard learned counsel for the appellant and have gone through the records of the case carefully.

Learned counsel for the appellant has submitted that both the courts below have given a concurrent finding that the defendants have entered into an agreement to sell with the plaintiff. The plaintiff has been ready and willing to perform his part of the contract. The sale during the pendency of the suit does not disentitle the plaintiff from getting the decree of specific performance. It is further submitted that in case of agreement to

sell in respect of movable property, the adequate relief is specific performance and not the recovery of amount. Both the courts below have not adhere to the said principle of law.

The main stress laid down by learned counsel for the appellant is in respect of grant of decree of specific performance and in the alternative decree for recovery of the amount in question. It is settled law that grant of decree of specific performance is the discretion of court and the court can refuse it in appropriate cases by exercising its discretion. In the present case, both the courts below have exercised their discretion in not allowing the relief of specific performance on the facts of the case in hand. It is proved on file that the suit property has been sold in execution of the order of District Consumer Forum.

Learned counsel for the appellant has submitted that since the letter bearing No. 3540 dated 19.04.2005 is not proved in accordance with law and as such, the same be ignored.

I have considered the said submission but do not find any force in the same.

It is proved on the file that property has been sold. Moreover, it is a civil case and the appellant could have proved the fact that no said letter is in existence. Section 20 of the Specific Relief Act, 1963 (in short "the Act"), envisages that jurisdiction to grant decree for specific performance is discretionary and the court is not bound to grant said relief merely because it is liable to do so. However, there is proviso that discretion of court should not be exercised arbitrary. In the present case, both the courts below have

exercised their jurisdiction by not granting relief as the property has already been sold in auction.

So, in view of the above discussion, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. The discretion exercised by both the courts below in not granting the specific performance cannot be said to be arbitrary. Consequently, the appeal is without any merit and the same stands dismissed.

JULY 03, 2015
shalini

(K. C. PURI)
JUDGE