IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: SEPTEMBER 03, 2015

Ashok Kumar

.....Appellant

VERSUS

Gurcharan Singh and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Baltej Singh Sidhu, Advocate, for the appellant.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgments and decree passed by the Courts below, whereby the suit for possession by way of specific performance of the agreement to sell dated 25.03.2004 qua land measuring 32 kanals 0 marla in Village ADB Pragpur, Tehsil Balachaur, District Nawanshahr, stands decreed vide judgment dated 03.02.2011 passed by the Additional Civil Judge (Senior Division), Balachaur, which has been affirmed by the Additional District Judge, Shaheed Bhagat Singh Nagar, vide judgment dated 28.08.2012.

It is the contention of counsel for the appellant that the findings recorded by the Courts below are unsustainable as the sale consideration is inadequate. He further contends that there has been an inordinate hardship on the part of the appellant-defendant as over a period of time, now the prices have escalated and he is entitled to a higher sale consideration and in support of this contention, he places reliance upon the judgment of Hon'ble Supreme Court in K.Prakash Vs. B.R.Sampath Kumar, 2014 (4) Law Herald (SC) 3423. Assertion has also been made that he had earlier sold 56 kanals of land in favour of the respondent-plaintiff by sale deed dated 19.11.2004 on the basis of an agreement to sell dated 25.03.2004 and if the present suit is allowed to be decreed, his remaining 32 kanals of land would be put to sale, leaving him without any land and he has no other source of livelihood. He, thus, contends that the Court may exercise its powers under Section 20 of the Specific Relief Act (for short, "the Act") and pass appropriate orders.

I have considered the submissions made by learned counsel for the appellant-defendant and gone through the judgments passed by the Courts below.

First argument, which has been raised by counsel for the appellant-plaintiff, is that the sale consideration is inadequate and in support thereof he has primarily placed reliance on the statement of Sital Ram (DW3), Registration Clerk in the office of Deputy Commissioner, Balachaur, who, in his examination-in-chief, has given the nature of the land which is being sought to be sold in the suit as barani and the value thereof to be as ₹2,60,000/- per acre (collector rate) whereas if the calculations are made with regard to the rate of the land per acre as per the agreement to sell, it comes to ₹41,750/-, which is very less when compared with the collector rate. He, thus, contends that the findings recorded by the Courts to the effect that the sale consideration is not inadequate cannot be sustained.

However, this would not cut much ice for the reason that on

25.03.2014, the parties to the suit had entered into two agreements to sell qua single chunk of land measuring 88 kanals. One agreement was for 56 kanals of land for a consideration of ₹2,93,000/- and the other agreement was pertaining to remaining land of 32 kanals with sale consideration of ₹1,67,000/-, which is in dispute in the present case. As far as the first agreement to sell pertaining to 56 kanals i.e. 8 acres of land is concerned, the same has been honoured and the sale deed dated 19.11.2004 (Ex.PW4/A) has been executed by the parties. The amount of consideration per acre comes to ₹41,857/- whereas in the agreement to sell in dispute, the amount of sale consideration comes to ₹41,750/- per acre, which is almost the same as the earlier one. Having entered into two agreements to sell on the same day, that too between the same parties and for one big chunk of land, where the sale considerations have been found to be almost the same, it cannot be said that the sale consideration is inadequate. In case ultimately the authorities find that the sale consideration is not as per the collector rate, they can proceed in accordance with law under the provisions of Stamp Act, if required.

That apart, Explanation 1 to Sub-section (2) of Section 20 of the Act seals the fate of the arguments of the counsel for the appellant against him. According to explanation 1, mere inadequacy of consideration shall not be deemed to constitute an unfair advantage to the respondent-plaintiff over the appellant-defendant. Hon'ble Supreme Court in <u>Satya Jain (D) through L.Rs and others Vs. Anis Ahmed Rushdie (D) through L.Rs and others,</u> 2012 (12) JT 30, emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. This has been reiterated in Para 19 in <u>K.Parkash's</u>

<u>case</u> (supra), which has been reproduced in the later part of the judgment.

As regards the assertion of counsel for the appellant that as the period of more than 11 years have gone by when the agreement to sell was entered into and as of now the rates of the land have gone high. Thus, the sale consideration deserves to be enhanced, neither can be accepted nor can this be accepted as a principle. The judgment of Hon'ble Supreme Court in <u>K.Prakash's case</u> (supra) does not lay down a ratio that in all cases where there is a passage of time, the enhancement in the sale consideration has to be made. The Court, in the given peculiar facts and circumstances of that case, proceeded to do so. The same, therefore, cannot be treated as a precedent to be followed as this is not the principle of law which has been laid down therein. Rather, it has been held as follows in Paras 17 to 20:-

> *"**17.** The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is*

true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.

***18.** Mr. Shetty, lastly submitted that grant of decree for specific performance in favour of the appellant will cause a great hardship for the reason not only because of the lesser price shown in the agreement but also because of the rise in price which have been increased ten times the price agreed between the parties.*

***19.** Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.*

***20.** However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property. This aspect of the matter is considered by a three Judge Bench of this Court in Nirmala Anand vs. Advent Corporation (P) Ltd. and Others, (2002) 8*

SCC 146, where this Court held :-

"6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the

circumstances is required to be seen."

Therefore, this contention of counsel for the appellant also cannot be accepted.

Further assertion of counsel for the appellant is that the appellant-defendant would suffer grave hardship because he would be left with no land after he looses the remaining land of 32 kanals, which is the subject matter of present suit. Suffice it to say that once an agreement to sell has been entered into, which stands proved in accordance with law and has withstood the scrutiny of the Courts below, especially when the assertion of the appellant-defendant was that it has been obtained by forging and fabricating the same, which contention has been found to be without any basis, then it cannot be taken as a ground of hardship. Provisions of 20 (2)(b) of the Act would itself go against the claim as has been projected by the counsel as the hardship of he being left with no land if the contract is performed, is not a circumstance which the appellant-defendant could not or did not foresee. Therefore, this contention of the counsel also fails.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 03, 2015 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**