

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

Regular Second Appeal No.1050 of 2015 (O&M)

Date of decision: 08.09.2015

Malkiat Singh

... Appellant

versus

Darshan Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Karambir Dhaliwal, Advocate,
for the appellant.

Mr. S.S. Sidhu, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J.(Oral)

CM Nos.3136-37-C of 2015

For the reasons stated in the applications, delay in
refiling and filing the appeal is condoned.

Applications stand disposed of.

Regular Second Appeal No.1050 of 2015

1. The plaintiff is the appellant before this court. The suit for specific performance was decreed and the appellate court modified the decree as one for recovery of the amount paid as advance. While so doing, the court took note of the particular

circumstance that the appellant's father was a Commission Agent and the transaction with the defendant had been in such a relationship. The agreement was said to have been made on 13.05.2002 for a consideration of ₹1,43,000/- in respect of a land possessed by the defendant of 1 acre and on that date, an advance of ₹1,33,000/- has already been paid and the balance payable was only ₹10,000/-. The time for purchasing the property was fixed to a period of nearly 1 year, namely, upto 10.05.2003. The court reasoned that when the previous transaction between parties was in the matter of sale of grains to the plaintiff and his father as Commission Agents and when the substantial portion of consideration had also been paid, if the intent of parties were to effectuate the transaction as a sale, it should have been made then and there even in the year 2002 when the agreement was written. If a period of 1 year was fixed only for paying an insignificant portion of sale consideration, namely, of ₹10,000/-, it evidenced the transaction as a security for the loan advanced and granted a decree only for recovery of money.

2. Section 20 of the Specific Relief Act enacts a sound rule of judicial principle that the relief of specific performance will not be granted merely because it is lawful to do so where the conduct of parties is such that the relief is not efficacious or when the defendant will be put to substantial prejudice if such a relief were to be

granted. The court will relieve the vendor of the obligation and provide only for the relief of money. In this case, the court has found that the relationship between parties in the particular avocation which the respective parties stood was only as a creditor and debtor and not as a vendor and vendee. I do not think that there was any error in the judgment of the appellate court which allowed for only the decree for recovery of money.

3. The learned counsel for the appellant refers me to a judgment of the Supreme Court in **K. Prakash Versus B.R. Sampath Kumar-(2015) 1 Supreme Court Cases 597** that held that the discretionary nature of the relief will be exercised in such a way that it should be sound, reasonable and must conform to the judicial principles. Though in terms of Section 20 of the Specific Relief Act, a party was not entitled to get a decree for specific performance merely because it is lawful to do so, once an agreement was legal and validly proved, the court has to exercise its discretion in favour of the party seeking for the relief for specific performance only. The court was dealing with the situation where there had been an agreement to sell the property by all brothers and sisters in the name of vendee-plaintiff through the agreement executed on 15.12.2003 for a total consideration of ₹16,10,000/-. An amount of ₹3,75,000/- was to be paid to a person occupying the outhouse portion and the vendee had to pay ₹1,65,000/- to discharge a mortgage over the

property. These two amounts were said to be treated as advance. The balance payable was ₹7,65,000/- and the agreement provided for a period of 1 year. The recitals clearly showed the intent of a purchaser who was paying money to a person in possession to vacate and paid yet another amount to a creditor to free the encumbrance. The intent of purchase could not have been thwarted by an arbitrary exercise of discretion denying specific performance, since even under Section 10, the relief for specific performance is the only appropriate remedy for enforcement of a contract for immovable property. The principle of law is well taken but it has no application to the fact at hand where nearly the entire amount had been paid on the date of agreement and that which was payable as balance was so paltry that if parties provided for still a long period for completion of sale, it made possible an inference that there had been never an intent to sell the property. The decision taken by the courts below was, therefore, justified and there is no scope for interference in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

08.09.2015
sanjeev