

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.2484 of 2015 (O&M)  
Date of Decision.21.09.2015

Lakha Singh

.....Appellant

Versus

Rattan Kaur and others

.....Respondents

Present: Mr. Harsh Aggarwal, Advocate  
for the appellant.

**CORAM:HON'BLE MR. JUSTICE K. KANNAN**

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

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**K. KANNAN J. (ORAL)**

1. The appeal is filed by the plaintiff whose suit for specific performance was decreed at the trial Court and reversed in appeal by the Appellate Court on finding that the plaintiff who was trying to seek for enforcement of an agreement on plea that whole of consideration had been paid but the documentary evidence did not allow for such an inference and the manner of enforcement would cause grave hardship to the defendant and hence, the plaintiff cannot have the remedy other than the amount of ₹ 4.90 lacs which was admitted under the document to have been paid, to be returned to the plaintiff.

2. The plaintiff is in appeal against the judgment to contend that the Courts have not properly considered of the documentary evidence and has taken up a plea of grave hardship to the defendant even without such a plea therefor. Better particulars of the case would require to be set out for understanding the dispute between parties.

3. The plaintiff held an agreement of sale from the defendant through an instrument dated 21.11.1998 for sale of 24 kanals 17 marals of land that was agreed to be sold at ₹3 lacs per acre. The amount of ₹2.87 lacs had been paid as earnest and the date for completion of the sale transaction was fixed as 7.6.1999. It would appear that the sale deed was drawn up on 1.6.1999 for 24 kanals 17 marals in relation to the same property but the consideration had been stated as ₹4.90 lacs including ₹2.87 lacs paid as earnest and the defendants were reported to have accepted that the entire sale consideration had been received. Admittedly, the document had not been presented for registration by the plaintiff having obtained himself a sale deed although they were written on stamp paper but took the unregistered sale deed as evidence of agreement of sale and filed the suit for specific performance. The plaintiff was contending that although ₹4.90 lacs had been recited as consideration, actually the consideration was ₹9,31,875/- and the recital found in the unregistered sale deed as the entire sale consideration as having been paid must be understood as the entire consideration of ₹9,31,875/- has already been paid.

4. The defendant was contending that the consideration as agreed to had not been paid and the plaintiff had committed a fraud and he had given a criminal complaint for the deception practiced by the plaintiff and at the time of trial, the criminal case was also said to be under investigation and progress. The trial Court admitted the plaintiff's claim on the recital of the unregistered sale deed that consideration was taken as paid must have been not merely ₹4.90 lacs as recited in the unregistered sale deed but the amount of ₹9,31,875/- which was to be

worked out on the basis of the sale consideration as recited in the agreement of sale at ₹3 lacs per acre should be taken as having been paid.

5. The Appellate Court reversed the same and specifically pointed out to the fact that if ₹2.87 lacs had been paid as advance, balance of consideration ought to be ₹6,44,875/- and there was simply no justification for drafting a sale deed for ₹4.90 lacs. There was no explanation given as to how a lesser consideration was recited in the sale deed or how it could have recited the entire consideration as having been paid. The contention was that the proposed sale had not fructified and not put before Sub-Registrar.

6. It is rather a strange argument for a plaintiff to make because the outer limit of time for performance was kept as 7.6.1999 and the parties had made sale ready on 1.6.1999, there was nothing premature about such a sale transaction and if the vendors had also signed the document, all that had remained for the purchaser was to present the document for registration and secure the registration of the same. If the vendors had deliberately refused to admit execution of the document before the Registrar, the procedure would have been to present the document for registration, secure an endorsement of refusal and prefer an appeal in the manner contemplated in Part XII and even if that was not in favour to bring a statutory suit under Section 77 of the Registration Act.

7. There is no legal impediment for a person to treat an unregistered sale as evidence of an agreement in the manner contemplated under Section 49 of the Registration Act and could have

founded an action for specific performance. Then, the plaintiff was required to explain as to how the sale deed was less than what was agreed upon through an earlier unregistered document dated 21.11.1998. The discrepancy had not been properly explained and lower Appellate Court, therefore, found that if the plaintiff was bargaining for taking a purchase on the basis of unregistered sale deed that spelt out a consideration of ₹4.90 lacs and wanted the Court to believe that not merely ₹4.90 lacs but the entire consideration of ₹9,31,875/- had been paid. It, therefore, reasoned that it would amount to hardship to a defendant who had bargained for a high price but had been compelled to receive some amount in less. I must observe that in a situation where the Court grants a relief in every suit for specific performance, the Court will always exercise the discretion vested in it by examining whether any of the circumstances as spelt out under Section 210 operates against the plaintiff to secure the relief. It was perfectly competent in the manner in which the evidence came through at the trial that the plaintiff was striking an unfair bargain and the Appellate Court was, therefore, justified in finding that a hardship would be caused to the defendant in having to agree to lesser consideration than what was agreed upon.

8. The counsel for the appellant agreed that he would be willing willing to pay even an extra amount if the Court found that only ₹4.90 lacs was paid and that the entire sale consideration had not been paid. It is not possible to accommodate such a plea now at this stage or at any other stage when the plaintiff had adopted a stand which was untenable. A plaintiff that comes to Court to sue for specific

performance must come to Court with clean hands and that any conduct that sullied his behaviour would disentitle him to the discretionary relief. The counsel would argue that the plaintiff could have been granted the benefit of not merely ₹4.90 lacs but he should have been granted interest also. I will decline to make such a relief, for, the plaintiff had been found to be in default in pressing for a case which was not tenable and which constituted a misconduct. The agreement contemplated even a forfeiture of the earnest if the plaintiff had not been ready and willing. By pleading for a price more than what was stated in the sale deed but scaling down his own liability as per the agreement, the plaintiff was not expressing readiness in the manner contemplated under the agreement and there was even scope for forfeiture of the entire amount of ₹2.87 lacs and allowing for only the remaining amount to be refunded. If the lower Appellate Court had provided for return of the whole amount of ₹4.90 lacs, the plaintiff must thank himself for obtaining a relief more than what he was entitled to. There is no justification for grant of interest which was declined to him.

9. There is no substantial question of law involved for consideration in the second appeal in favour of the appellant. The second appeal is dismissed.

(K. KANNAN)  
JUDGE

September 21, 2015  
Pankaj\*