

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

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1. Regular Second Appeal No.2790 of 2015
Date of Decision: December 03, 2015

Sanjay Dhamija

...Appellant

Versus

Ram Kishan (deceased) through his LRs

...Respondents

2. Regular Second Appeal No.3968 of 2015

Sanjay Dhamija

...Appellant

Versus

Ram Kishan (deceased) through his LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Dr. Surya Parkash, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide two Regular Second Appeals
i.e. RSA Nos.2790 and 3968 of 2015 which arise out of a common
judgment passed by the Courts below on consolidation of the two suits filed
one each by the parties to the litigation qua the same suit property.

2. Counsel for the appellant has argued the appeal taking the lead
case as RSA No.2790 of 2015. Briefly the admitted facts between the
parties are that an agreement dated 03.07.1998 was entered into between
Sanjay Dhamija (appellant herein), who was the owner in possession of
ground floor portion of Shop No.141-E, Rajguru Market, Hisar, for a sum of
₹4,25,000/- with Ram Kishan and Nirmal Singh. ₹3,50,000/- was received
by appellant-Sanjay Dhamija from the respondents as earnest money at the
time of execution of the agreement to sell and the last date for registration

of sale deed was fixed as 02.06.1999. On 11.01.1999, the respondents-buyers paid another sum of ₹50,000/- to the appellant and he put his signatures as token of having received this amount. On 28.05.1999, the respondents again visited the appellant and requested him to extend the last date for registration of the sale deed from 02.06.1999 to 02.12.1999 and on this date, another agreement for extension of time was executed, where it was mentioned that the appellant had received a total amount of ₹4,00,000/- towards sale consideration of ₹4,25,000/-. A sum of ₹25,000/- was still due towards the respondents on 28.05.1999 which was payable to the appellant on or before 02.12.1999.

3. As per the plea of the respondents, they paid the appellant the remaining sale consideration amount of ₹25,000/- on 06.01.2000 on which date the registered General Power of Attorney was executed in favour of Darshan Kumar son of Ram Kishan in which authorisation was given to him that the respondents can get the sale deed registered either in their name or in the name of their nominee in any manner and the possession of the shop was handed over to the respondents. It was also undertaken by the appellant that he will not file any case at any time in this regard and he also handed over the original sale deed dated 31.08.1993 vide which he had purchased the shop in question from Smt. Ishwar Madaan. Besides this, the appellant, who was in arrears of municipal house tax from 1995-96 deposited the outstanding amount of ₹4,263/- on 10.01.2000 and handed over the receipt to the respondents. The respondents, on this basis asserted that the appellant after that was not left with any right or interest in the shop.

4. This fact is disputed by the appellant. He states that he has not received the remaining sale consideration of ₹25,000/- and the respondents

did not get the sale deed of the shop executed and registered on 02.12.1999 and as per the condition of the agreement to sell dated 03.07.1998 read with the agreement dated 28.05.1999, the same stood cancelled and the amount received by the appellant from the respondents stands forfeited. Even after 02.12.1999, the respondents did not file any suit for specific performance of the agreement to sell in question against the appellant-plaintiff and, therefore, they have lost every right in respect of shop in question and now they are trespassers in the shop since 02.12.1999 and the appellant is entitled to recover possession of the shop from the respondents-defendants on the basis of his title and also entitled to compensation and mesne profits at the rate of ₹20,000/- per month till the delivery of vacant possession of the shop. He, however, has admitted that he had executed the registered power of attorney GPA No.778 dated 06.01.2000 in respect of shop in question in favour of Darshan Kumar son of one of the buyers i.e. Ram Kishan. But as the agreement itself stood cancelled, the power of attorney dated 06.01.2000 would have no relevance and in any case, he has cancelled the said General Power of Attorney by another deed No.46 dated 28.04.2004 registered in the office of Sub Registrar, Hisar and Darshan Kumar has been informed regarding cancellation of the General Power of Attorney by registered legal notice dated 12.05.2004. In the light of the above pleadings, suit was filed by the appellant being Civil Suit No.204-C of 2004 titled as *Sanjay Dhamija Versus Ram Kishan and others* on 18.08.2004 praying for declaration to the effect that the agreement dated 03.07.1998 entered into between the appellant and the respondents in respect of ground floor of Shop No.141-E, Rajguru Market, Hisar, stands cancelled and the earnest money received by him from the respondents on

the basis of this agreement stands forfeited with a consequential relief of possession in respect of ground floor portion of the shop and for decree for compensation and mesne profits/damages at the rate of ₹20,000/- per month from the date of suit till the delivery of possession.

5. The suit which has been filed by the respondents is Civil Suit No.263-C titled as *Ram Kishan and others Versus Sanjay Dhamija* dated 16.10.2004 praying for a decree for symbolic possession by way of specific performance of an agreement qua the above-mentioned ground floor of the shop.

6. The Civil Judge (Senior Division), Hisar, decided the two suits together dismissing the suit filed by the appellant and decreeing the suit of the respondents directing the appellant to execute and register the sale deed in favour of the respondents within a period of one month from the date of decree failing which the respondents shall be entitled to get the sale deed executed through the Court. Appeals i.e. Civil Appeal Nos.131 and 132 filed by the appellant were dismissed by the Additional District Judge, Hisar, on 15.01.2015.

7. It is the contention of learned counsel for the appellant that the judgments and decree passed by the Courts below are not based on proper appreciation of the pleadings and the evidence brought on record. He contends that the respondents have not been able to prove the payment of remaining amount of sale consideration of ₹25,000/- which they were required to as per the mutual agreement dated 03.07.1998 read with the agreement dated 28.05.1999 entered into between the parties extending the time for executing the sale deed on or before 02.12.1999. He, thus, contends that the suit of the appellant deserves to be decreed as the respondents have

failed to comply with their part of the contract within the stipulated time period. He has further asserted that the respondents have not challenged the cancellation of the agreement and have merely filed a suit for specific performance. A prayer seeking declaration of the termination of the agreement to be bad in law having not been preferred, suit for specific performance is not maintainable. In support of this contention, he places reliance upon the judgment of the Supreme Court passed in case titled as ***I.S. Sikandar (Dead) By LRS. Versus K. Subramani and others 2013(15) SCC 27.***

8. He submits further, that on 06.01.2000 only a General Power of Attorney was got executed in favour of Darshan Kumar son of respondent No.1-Ram Kishan and since the sale deed has not been got executed by the respondents, the same has been got cancelled on 28.04.2004 and an intimation to this effect was sent to Darshan Kumar. He further contends that the suit filed by the respondents for specific performance is barred by limitation and, therefore, the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

9. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but find myself not in a position to accept his contentions.

10. Taking first the plea of the counsel with regard to the suit being barred by limitation for specific performance, suffice it to say that the factum of the agreement to sell dated 03.07.1998 fixing the date as 02.06.1999 for execution of the sale deed therein, extension of time by mutual consent on 28.05.1999 to 02.12.1999 and receipt of payment of ₹4,00,000/- out of the total consideration of ₹4,25,000/- upto 28.05.1999, is

not disputed. It is also not in dispute that the appellant had handed over the vacant possession of the premises in question to the respondents on 06.01.2000 and they are in possession thereof and depositing the water, electricity and house tax bill amount thereafter. It is also not in dispute that the registered General Power of Attorney in favour of Darshan Kumar son of respondent-Ram Kishan was executed on 06.01.2000 authorising that the respondents can get the sale deed registered either in their name or in the name of their nominee in any manner and that he will not file any case in this regard at any time and that the appellant had handed over the original sale deed dated 31.08.1993 by which he purchased the shop in question from Smt. Ishwar Madaan to the respondents. Neither is it in dispute that the appellant was in arrears of the municipal house tax from 1995-96 which he deposited on 10.01.2000 and handed over the receipt to the respondents. The fact, that in the registered General Power of Attorney executed on 06.01.2000 in favour of Darshan Kumar neither any specific date nor the time limit has been mentioned within which the sale deed could be executed is not denied by the counsel. The appellant remained silent and only cancelled the registered General Power of Attorney on 28.04.2004 and issued notice to the respondents-purchasers on 12.05.2004 Exhibit P-8 i.e. after more than four years. In these circumstances, the limitation would start as after the expiry of the period fixed in the agreement dated 03.07.1998 read with the agreement dated 28.05.1999, where 02.12.1999 was the date fixed for execution and after that the registered General Power of Attorney was executed on 06.01.2000 which did not specify any date within which the said sale deed was to be executed or that the attorney would lapse, the actual physical possession was also admittedly given on 06.01.2000 and,

therefore, it is natural for the purchaser when no date is fixed for execution of the sale deed in the General Power of Attorney to use it at their discretion. The moment they came to know about the cancellation of the General Power of Attorney in favour of Darshan Kumar, steps have been taken to file the suit for specific performance and filed on 16.10.2004. So the suit cannot be said to be beyond the limitation prescribed, rather it is well within limitation.

11. It may be added here that the plea which has been taken by the appellant in the present case for cancellation of the General Power of Attorney and the agreement to sell is that he has not received the remaining sale consideration of ₹25,000/- out of the total sale consideration of ₹4,25,000/-, whereas the stand of the respondents is that the remaining amount of ₹25,000/- had been handed over to the appellant on 06.01.2000 which is apparent from the agreement dated 06.01.2000 Exhibit D-1, where receipt of ₹25,000/- finds mention which has been duly signed by the appellant which document has been admitted by him to have signed and he has also stated that he signed only typed papers and never signed any blank paper on 06.01.2000. That apart, the respondents have produced Shri J.R. Verma, Advocate as PW-1, who is witness to both the document i.e. the agreement dated 06.01.2000 Exhibit D-1 and the registered General Power of Attorney in favour of Darshan Kumar Exhibit P-1. PW-2 Darshan Kumar in whose favour the registered General Power of Attorney was executed, has appeared and admitted the fact that the appellant had executed the documents on 06.01.2000. The appellant has even admitted that he had purchased the stamp papers on which the agreement and the General Power of Attorney were typed. This amply

proves that the remaining amount of ₹25,000/- of the total sale consideration of ₹4,25,000/- of which ₹4,00,000/- was duly received by the appellant upto 28.05.1999, has been paid to the appellant. Hence, the plea of the appellant is false.

12. In view of the above, it cannot be said that the appellant has not received the total consideration amount and, therefore, it is established that the appellant has not come to the Court with clean hands, rather he has tried to overreach the Court. The findings, thus, recorded by the Courts below being based upon proper appreciation of the pleadings and the evidence brought on record, cannot be faulted with.

13. The judgment of the Supreme Court on which reliance has been placed by learned counsel for the appellant i.e. *I.S. Sikandar's case (supra)* would not be applicable to the facts and circumstances of the present case as the facts are clearly distinguishable. In the said case, none of the conditions, as has been specified in the clause in the agreement which had fixed five months' period for execution and completion of sale transaction and providing for extension of two months in case of delay in obtaining permission from the competent authorities and the consequent delay in payment of layout charge by the vendee and a clause in the agreement providing for payment of specific sum by defendants-vendors to the vendee in case of failure of the vendors to comply with the terms of the agreement, forfeiture of the advance amount of consideration, especially when the purpose for execution of the sale agreement stated to be dire need of money due to death of earning member of the family when he was not able to pay the total consideration amount within the extended stipulated period of seven months resulting in termination of the agreement, shows the

distinction as far as the present case is concerned, where in those circumstances, the Hon'ble Supreme Court had proceeded to hold that the stipulation regarding time within which the agreement had to be executed was of essence and non-compliance on the part of the vendors, would entitle the termination of the agreement which had not been challenged and under those circumstances, the said suit for specific performance without challenge to the termination of agreement was held to be not maintainable. The Supreme Court in that judgment had further detailed that for reaching the conclusion with regard to the time as essence of contract would depend upon the terms of the agreement, conduct of the parties and surrounding circumstances which has to be examined by the Court prior to determination to this effect.

14. In the present case, the facts as has been discussed above, leaves no manner of doubt that the appellant having received the full consideration amount and having handed over the original sale deeds in his favour, the party with the receipt after deposit of municipal house tax, arrears as also the possession of the shop and executing a General Power of Attorney giving all powers with regard to the shop, has with a *mala fide* intention not only approached the Court with unclean hands but he has been found to be a person, who is not truthful and trustworthy and, therefore, is not entitled to the claim as prayed for in his Suit No.204-C dated 18.03.2004 titled as *Sanjay Dhamija Versus Ram Kishan and others*. The Courts have, thus, rightly dismissed his suit and have decreed Suit No.263-C titled as *Ram Kishan and others Versus Sanjay Dhamija* dated 16.10.2004 for symbolic possession by way of specific performance.

15. Both the Courts below have returned concurrent findings after

properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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

December 03, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**