

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4975 of 2015 (O&M)
Date of Decision : 05.10.2015

Gurmail Singh

....Appellant

Versus

Nachhattar Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kanwaljit Singh, Senior Advocate
with Mr. Ajaivir Singh, Advocate
for the appellant.

Mr. S.S. Rangi, Advocate with
Mr. Jagnahar Singh, Advocate
for the caveator.

Surinder Gupta, J.

This is second appeal by Gurmail Singh against judgment dated 23.11.2012 passed by Additional Civil Judge (Senior Division), Moga decreeing the suit of plaintiff-Nachhattar Singh for joint possession by way of specific performance of agreement to sell dated 03.05.2008. Appeal against the judgment and decree passed by Additional Civil Judge (Senior Division), Moga was dismissed by Additional District Judge, Moga. (In later part of judgment parties to suit will be referred as plaintiff and defendant as per the civil suit.)

2. The plaintiff filed suit seeking relief of specific performance of agreement dated 03.05.2008 alleging therein that the defendant agreed to sell land measuring 26 *kanals* 15 *marlas* i.e. 25 *kanals* 7 *marlas* being 507/5686 share of land measuring 284 *kanals* 6 *marlas* as fully detailed in headnote (1) and 1 *kanal* 8 *marlas* i.e. 28/591 share of land measuring 29 *kanals* 11 *marlas* as fully described in headnote (2) of the plaint. The deal

was struck for ₹ 25,57,959/-. A sum of ₹ 7 lacs was paid as earnest money and the date for execution and registration of the sale deed was fixed as 22.09.2008. On that day, the plaintiff had gone to the office of Sub Registrar, Baghapurana with ready cash and other necessary charges to perform his part of contract and waited for defendant the whole day but he did not turn up to get the sale deed executed and registered. The plaintiff got his presence marked through affidavit got attested from Executive Magistrate, Baghapurana.

3. Defendant in his written statement dubbed agreement to sell dated 03.05.2008 as forged, fabricated, antedated and result of fraud played by plaintiff in connivance with scribe and witnesses. He took the plea that no such agreement was ever executed. He is addicted to liquor and usually remains under the influence of liquor round the clock. The plaintiff being a clever person might have obtained his signatures on some blank papers and later on converted the same into agreement to sell. The rate of land in the village is not less than ₹ 20 lacs per acre and no prudent man would like to sell his land at a throw away price. It was also averred that the suit land is ancestral coparcenary property of defendant and defendant being *karta* was not competent to sell the same. Minor son and daughter of defendant filed suit for injunction against the defendant to restrain him from alienating the suit land wherein a compromise was arrived and the defendant agreed not to alienate the land in any manner.

4. Pleadings of parties led to the framing of issues, as

follows:-

1. Whether defendant no. 1 entered into an agreement of sale dated 03.05.2008 with the plaintiff? OPP.
2. Whether defendant received an earnest money of ₹ 7,00,000/- from plaintiff? OPP
3. Whether plaintiff has been ready and willing to perform his part of the agreement? OPP
4. Whether plaintiff is entitled to get relief of possession by way of specific performance of the said agreement? OPP
5. Whether plaintiff is entitled to get consequential relief of permanent injunction as prayed for? OPP
6. Whether plaintiffs are entitled to get alternative relief of recovery of ₹ 14,00,000/-? OPP
7. Whether suit of plaintiff is not maintainable? OPD
8. Whether alleged agreement is forged and fabricated document? OPD
9. Whether plaintiff has concealed material facts from the court? If so, its effect? OPD.
10. Relief.

5. Learned Additional Civil Judge (Senior Division), Moga held the agreement dated 03.05.2008 duly executed by the defendant. It was not proved on file that the suit property was ancestral coparcenary property in the hands of defendant. It was also held as proved that at the time of executing the agreement to sell dated 03.05.2008, the defendant had received ₹ 7 lacs as earnest money. It was also held that the plaintiff had been able to prove that he was always ready and willing to perform his part of the contract.

6. Ist Appellate Court affirmed findings of the trial Court

on the issues.

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. Learned counsel for the defendant-appellant has argued that agreement dated 03.05.2008 is the result of fraud as the defendant is addicted to liquor and remains under the influence of liquor throughout the day. Taking benefit of this condition of the defendant, plaintiff obtained his signatures on blank papers and utilized the same to fabricate the agreement. There is statement of plaintiff himself to this effect which has not been given due weight. He has also argued that price of the land in the locality is about 20 lacs per acre. The defendant has his family to look after and there was no reason for him to agree to sell the suit land at throw away price. Allowing the relief of specific performance of agreement will result in extreme hardship to the defendant.

9. The above arguments of learned counsel for the defendant-appellant have been discarded by both the Courts below and rightly so. One of the witness examined by the defendant, namely; Jarnail Singh DW-1 had tried to attribute the disclosure of information to plaintiff-Nachhattar Singh that he had taken the defendant to a stamp vendor and got purchased from him stamp papers on the pretext of arranging pension from the Punjab State and then served him liquor in heavy quantity. No such plea was taken by the defendant in written statement. Manjit Kaur wife of the defendant neither supported nor corroborated the statement of DW-1 Jarnail Singh. Defendant

while deposing has not stated that he was taken to the seat of scribe or stamp vendor by the plaintiff.

10. On the other hand, besides his own statement, the plaintiff had also examined scribe and witness to the agreement Kulwant Singh, who have fully proved execution of the agreement by defendant-appellant. On the question of readiness and willingness to perform his part of the agreement, statement of plaintiff is un-rebutted. Even otherwise, it is nowhere the case of defendant that he was ready to perform his part of the contract and plaintiff was not willing for the same. The plaintiff has stated that while appearing before the Sub-Registrar he had ready money with him on 22.09.2008 to get the sale deed executed and registered. Both the Courts below have committed no error and rightly held as proved the readiness and willingness of plaintiff to perform his part of contract. The plaintiff had referred to the money lying in the account of his father to prove that he had enough money to pay to the defendant. This argument of learned counsel for the defendant-appellant that the money was lying in the account of father of the plaintiff and not the plaintiff, has no meaning. The plaintiff had only to prove that he had ready cash with him to pay to the defendant. While appearing and deposing in this case he had made statement on oath to this effect which has not been rebutted.

11. In view of the above facts and circumstances, I find no infirmity of law and fact in the observations of the trial Court that the execution of agreement dated 03.05.2008, payment of earnest money of ₹ 7 lacs and that the plaintiff had always been

ready to perform his part of the contract, calling for any interference.

12. The other argument of learned counsel for the defendant-appellant about the price of land prevailing at the time of agreement as ₹ 20 lacs per acre and hardship to defendant which he could not foresee at the time of agreement, are also without any substance. No evidence was produced on record to prove that price of the land at the relevant time was about ₹ 20 lacs per acre. The defendant has not set up a case of undue hardship to him in the event of execution of sale deed. The sale transaction was for ₹ 25,57,969/- out of which ₹ 7 lacs was paid as earnest money. No doubt relief of specific performance of agreement to sell is discretionary relief and the Court can consider various circumstances to decide whether such relief is to be granted. As per provisions of Section 20 (2) of the Specific Relief Act, the relief of specific performance cannot be allowed merely on the ground that it is lawful to grant this relief. However, while exercising the discretionary power conferred on Court, the same cannot be exercised in an arbitrary and unreasonable manner. In case **A.C. Arulappan vs. Smt. Ahalya Naik, 2001 (6) SCC 600**, the Apex Court while enumerating the circumstances required to be look into while allowing relief of specific performance, observed as under:-

“7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant

specific relief, the court need not grant the order for specific relief; but his discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20 (2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant the Court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.”

13. Applying ratio of judgment in the aforesaid case to the instant case, the Courts below found no such circumstances as enumerated above, attracted to this case and rightly so, as to deny the relief of specific performance of agreement to the plaintiff. There is nothing that terms of the contract give unfair advantage to the plaintiff over the defendant or it is inequitable to grant relief of specific performance. Agreement was duly executed after purchase of stamp papers by the defendant. It was scribed by regular deed writer. The suit has been filed by the plaintiff without any undue delay. The price of land has not been proved to be deficient or inadequate.

14. In view of the above discussion, this appeal has no merit. No question of law, what to talk of substantial question of law, requiring determination, arises in this appeal.

Dismissed.

October 05, 2015
jk

(SURINDER GUPTA)
JUDGE