

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

Regular Second Appeal No.6124 of 2014 (O&M)
Date of decision:10.09.2015

Swaran Singh

... Appellant

versus

Balwinder Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aakash Singla, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The suit for specific performance which was decreed by the courts below was with reference to an agreement alleged to have been executed by the defendant in favour of the plaintiff on 29.12.2005. The stated consideration was ₹1,12,000/- and the plaintiff claimed to have paid ₹1,02,000/- and the balance was required to be paid before 28.11.2006. The plaintiff filed a suit on 09.01.2007 contending that she was ready and willing to perform her part of the contract but the defendant was evading and sought for its enforcement. It was the contention of the plaintiff that the defendant had already entered into an agreement of sale with

reference to property which was sought to be sold with one Manpreet Kaur and it was only thanks to the plaintiff's intercession that the document got cancelled and after its cancellation, the agreement in favour of the plaintiff is written.

2. The defendant denied that there was any such agreement and that he had voluntarily executed the same. The contention was that there had been some defects with reference to the property which was subject to agreement with Manpreet Kaur and since there was a dispute with regard to the khasra numbers mentioned in the document and the title which found to be suspect, a compromise was ultimately effected when Manpreet Kaur gave up her rights under the agreement. The defendant would contend that the plaintiff in her craftiness in fabricating the agreement failed to take note of the real dispute between the defendant and Manpreet Kaur and merely repeated the mistakes which were there already in the agreement in favour of Manpreet Kaur. The court found at the time of trial that the agreement had been established and discarded the defence and decreed the suit of the plaintiff.

3. The learned counsel for the defendant projects the variance in the description of the property as contained in the plaint with the description as found in the agreement as crucial and states that the plaintiff was literally seeking for enforcement of right over a property distinct from the property that was contained in the

agreement which cannot be permitted. The counsel would state that the description of the property contained in the agreement which was a repetition of the description of the property with Manpreet Kaur was proof of the fact that the plaintiff was trying to fabricate a document by using some signatures taken from the defendant at the time when compromise was effected and a vagueness regarding the description permeates in the document that would disentitle the plaintiff to secure a decree.

4. Before much of the arguments got underway, I asked the counsel whether he was contending that the property contained in the plaint in the preamble belonged to him or whether there was any contention that the plaintiff was seeking for enforcement of right in respect of property of which he was not the owner. The counsel says that there is no such plea but he would point out to the discrepancy as found in the agreement and in the preamble of the plaint as follows:-

The description in plaint reads thus:-

“..... land measuring 0 bigha 2 biswas and 4.2/3 biswasies pukhta (335 sq. yards) i.e. 1/40 share of land measuring 4 Bighas 9 Biswas 6 Biswasies Pukhta comprised of Khewat No.966/1348, 284/441, Khatauni No.533, 534, Khasra Nos.89//9 (7-19), 12/2/1 (0-3), Khewat No.381 Khasra No.68//23 (0-9), 13 (0-2), 25 (0-

4), 3//23/2/2 (2-6), 12//4/1/2/2/1 (8-6) according to Jamabandi for the year 2000-2001, situated within the revenue estate of village Mangwal....)”

The description of the property as found in the agreement reads thus:-

“Khata (Khewat) No.966/1348, 284/441, Khasra No.68//23/0-9, 13/0-2, 25/0-4, 3//23/2/2/2-6, 12//4/1/2/2/1-8-6,” besides reference to village, etc.

There is homogeneity with reference to the extent of property as 335 square yards and with reference to khewat numbers as falling within 966/1348 and 284/441. The plaint gives a reference to khatauni which was not in the agreement and makes reference to khasra numbers, namely, 89//9, 12/2/1 and describes khasra No.68//23 as falling with the khewat No.381, while in the agreement, the sale extent had been referred as following within the khewat No.966/1348, 284/441. This distinction, according to the counsel, was too serious a flaw, for, it would demonstrate the vagueness as well as the fabricated character of the document.

5. I discard this argument as too insignificant an issue, so long as the identity of the property with reference to the extent, the location of the village and what admittedly belonged to the defendant were all not disputed. If there was any other property which the defendant owned and the plaintiff was ultimately trying to

secure a bargain for a property which was originally not agreed upon but later sought to be conveyed, I would accommodate an argument in the manner put forward by the defendant and decline to the plaintiff a right which she cannot exercise. However, if the defendant's own entitlement is only with reference to property of 335 square yards, the identity of which is very well known, then what might be possible by an independent action for rectification under Section 26 of the Specific Relief Act ought to be possible even at the time when a decree for specific performance itself is granted. I will make such a relief as competent even in a suit which describes correct references to the khewat, khatauni and khasra numbers and the decree granted on such a basis ought to be upheld.

6. The point of law relating to misdescription of property and the nature of rectification possible through a decree are loaded against the appellant and offer no scope for variation in appeal. The second appeal is consequently dismissed.

(K.KANNAN)
JUDGE

10.09.2015
sanjeev