

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

RSA No.4505 of 2001

Date of Decision-11.07.2016

Lal Chand

... Appellant

Versus

Ram Kishan and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Verma, Advocate for the appellant.

Mr. G.P. Singh, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant has filed this regular second appeal against the judgment and decree dated 10.08.2001 passed by Additional District Judge, Sirsa whereby judgment and decree dated 03.12.1998 passed by Civil Judge, (Senior Division), Sirsa was modified holding the plaintiff to be entitled to recover the principal amount of Rs.12,000/- as earnest money along with interest @ 12 % per annum and cost of the suit. The interest was ordered to be calculated from 10.09.1988 till final realisation of the amount.

[2]. Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 10.09.1988 in respect of 17 kanals 12 marlas of land on payment of Rs.8000/- and for setting aside the sale deed dated 11.11.1988 in respect of 8 kanals 16 marlas being half share of the suit land and also

collusive judgment and decree dated 07.02.1989 passed by Additional Sub Judge, Sirsa to be null and void. Consequential relief for restraining the defendants from alienating the suit property was also claimed.

[3]. Plaintiff alleged that defendants No.1 and 2 for themselves as well as on behalf of defendants No.3 to 6 as guardian were owners in possession of the suit land measuring 17 kanals 12 marlas. An agreement to sell was executed between the plaintiff and defendants No.1 to 6 as mentioned above in respect of 17 kanals 12 marlas of land for a total sale consideration of Rs.20,000/-. Agreement was executed on 10.09.1988 and defendants No.1 and 2 received an amount of Rs.10,000/- as earnest money. The target date for registration of sale deed was fixed as 28.12.1988.

[4]. It was also alleged that defendant No.2 also took an amount of Rs.1000/- from the plaintiff on 23.09.1988 and further an amount of Rs.1000/- was also taken. In this way, total amount of Rs.12,000/- was paid to defendants No.1 and 2 before registration of the sale deed. Plaintiff further alleged that defendants No.1 to 6 were greedy persons. Defendants No.1 to 3 after execution of agreement to sell dated 10.09.1988 with the plaintiff, executed a sale deed dated 11.11.1988 in respect of 8 kanals 16 marlas of land in favour of defendant No.7. Plaintiff

claimed that the aforesaid sale deed was not binding upon his rights and was liable to be set aside.

[5]. Plaintiff also alleged that after the sale deed dated 11.11.1988 in favour of defendant No.7, he further transferred the said land to his maternal uncle Ram Kishan vide a collusive civil court decree dated 07.02.1989 in order to curtail the rights of the plaintiff. Plaintiff claimed that the said civil court decree was also not binding upon him and was also liable to be set aside.

[6]. Plaintiff further pleaded that he was always ready and willing to get the sale deed executed and registered in his favour as per terms and conditions of the agreement to sell. Plaintiff went to the office of Sub Registrar on the target date i.e. 28.12.1988 along with remaining sale consideration and other incidental charges for getting the sale deed executed and registered in his favour, but the defendants No.1 to 6 did not come present. Plaintiff moved an application to the Sub Registrar for getting his presence marked, but as Sub Registrar was not present on the day, the plaintiff was directed by the Clerk to come present on 30.12.1988 and the Sub Registrar passed an order on that application.

[7]. It was also alleged by the plaintiff that on 29.01.1991, plaintiff served a notice upon the defendants for getting the sale deed executed and registered in his favour and also to deliver the possession of the suit land as per terms and conditions of the

agreement to sell, but the defendants gave a very evasive reply. Plaintiff was always ready and willing to perform his part of obligation, but the defendants failed to perform their part of contract.

[8]. With this background, suit for specific performance came to be filed on 07.09.1991 regarding the suit land on payment of Rs.8000/-. Sale deed dated 11.11.1988 executed by defendants No.1 to 3 in favour of defendant No.7 in respect of 8 kanals 16 marlas of land and the collusive decree dated 07.02.1989 by defendant No.7 in favour of his uncle Ram Kishan were also challenged.

[9]. Suit was contested by the defendants. Defendants No.1 to 3 admitted that defendants No.1 to 6 were owners in possession of the suit land measuring 17 kanals 12 marlas of land on the basis of inheritance from Roshan Singh, husband of defendant No.2 and father of defendants No.1, 3 to 6, but they pleaded that the agreement to sell was a procured document and was the result of fraud, coercion and mis-representation. They alleged that defendant No.1 was made to drink by the plaintiff and under the influence of liquor, he got the agreement signed from defendant No.1. Defendant No.2 was told that the document was made for arranging the 'Warabandi' and therefore, defendant No.2 being illiterate lady also put her thumb impressions under the

threat of her son, although, they never agreed to sell the land in question for themselves as well as on behalf of their minor sons.

[10]. It was also alleged by the defendants that defendants No.4 to 6 were minors and no permission for sale on their behalf was obtained from the competent authority and therefore, defendant No.2 was not competent to sell the land on behalf of minors. Defendants No.1 and 2 also denied having taken the earnest money from the plaintiff and they pleaded that after 2-3 months of the alleged agreement to sell, defendant No.2 came to know about the execution of alleged agreement which was fraudulently obtained by the plaintiff and thereafter, she immediately made a complaint to the Deputy Commissioner against the plaintiff, but no action was taken.

[11]. It was also pleaded by the defendants that no amount was ever taken by defendant No.2, nor the amount of Rs.1000/- was ever taken by defendant No.2 as alleged by the plaintiff. Receipt was claimed to be a bogus receipt. However, it was admitted by the defendants that land measuring 8 kanals 16 marlas being half share of the land in question was sold by the answering defendants vide registered sale deed dated 11.11.1988 in favour of defendant No.7 for a sale consideration of Rs.13,000/-. The said sale deed was claimed to be bona fide.

[12]. Defendants No.4 to 6 also contested the suit on the ground of maintainability, locus standi, estoppel, limitation and

cause of action in favour of the plaintiff. They admitted that defendants No.1 to 6 were owners of the suit land, but denied that defendants No.1 and 2 had ever entered into any agreement to sell with the plaintiff. They claimed that defendants No.1 and 2 were not competent to enter into agreement to sell on behalf of minor-defendants No.4 to 6. The land of the minor defendants could not be sold without permission of the Court and therefore, agreement to sell was claimed to be not binding upon their rights.

[13]. Defendant No.7 also contested the suit by claiming that the agreement to sell dated 10.09.1988 was a forged and fabricated document. The sale deed dated 11.11.1988 was claimed to be legal and bona fide transaction and was binding upon the plaintiff. He claimed himself to be lawful owner of the land measuring 8 kanals 16 marlas. The civil Court decree dated 07.02.1989 in favour of Ram Kishan was also claimed to be a bona fide transfer.

[14]. Defendant No.8 also contested the suit claiming the sale deed dated 11.11.1988 was legal and further transfer of land in his favour vide civil Court decree dated 07.02.1989 was also claimed to be lawful and binding upon the plaintiff. Mutations No.1267 and 1538 were also claimed to be lawful.

[15]. Plaintiff filed replication and thereafter, parties went to trial on the following issues:-

“1. Whether the plaintiff is entitled for a decree for possession through specific performance of contract dated 10.09.1988 regarding the suit land as alleged? OPP

2. Whether the agreement for sale deed dated 10.09.1988 is the result of fraud and mis-representation as alleged? OPD

3. Whether defendant No.7 is a bona fide purchaser for consideration without notice as alleged? OPD

4. Whether judgment and decree dated 07.02.1989 passed by Sh. Surinder Kumar, the then ASJ, Sirsa in case titled as Ram Kishan Vs. Ramesh Lal Civil Suit No.125 of 1989 is not binding on the rights of the plaintiff and hit by the principles of lis-pendens? OPD

5. Whether the present suit is not maintainable in the present form? OPD

6. Whether the plaintiff has no locus standi to file the present suit? OPD

7. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD

8. Whether the plaintiff is estopped by his own act and conduct? If so, its effect? OPD

9. Whether the suit is barred by limitation? OPD

10. Whether the plaintiff has no cause of action to file the present suit? OPD

11. Relief.”

[16]. Both the parties led their respective evidence to prove their case. Trial Court dealt with issues No.1 and 4 jointly and held

that the execution of agreement to sell dated 10.09.1988 was fully proved and the plaintiff was entitled for possession by way of specific performance of agreement to sell dated 10.09.1988 to the extent of half share of land measuring 17 kanals 12 marlas belonging to the shares of defendants No.1 to 3. The sale deed dated 11.11.1988 and judgment and decree dated 07.02.1989 were held to be not binding upon the rights of the plaintiff.

[17]. Trial Court also held that defendants No.1 and 2 were not competent to enter into agreement to sell in respect of shares of minor defendants No.4 to 6 and therefore, the agreement qua shares of defendants No.4 to 6 was not enforceable in law. Trial Court held that the plaintiff was entitled for execution of agreement to sell in respect of shares of defendants No.1 to 3. In the light of findings recorded under issues No.1 and 4, other issues were accordingly decided and suit of the plaintiff was partly decreed with costs. A decree for specific performance of agreement to sell dated 10.09.1988 in respect of half share of land measuring 17 kanals 12 marlas was passed. Consequently, the sale deed dated 11.11.1988 in favour of defendant No.7 in respect of 8 kanals 16 marlas of land and a civil Court decree dated 07.02.1989 suffered by defendant No.7 in favour of defendant No.8 were held to be not binding upon the rights of the plaintiff. As a consequence thereof, a decree for permanent injunction was also passed restraining the defendants from alienating the suit property. Defendants were directed to execute

and register the sale deed in favour of plaintiff within specified time vide judgment and decree dated 03.12.1988.

[18]. Feeling aggrieved with the aforesaid judgment and decree passed by the trial Court only defendant No.8 filed appeal before the lower Appellate Court. The lower Appellate Court modified the findings recorded by the trial Court under issue No.1 by holding that defendants No.1 and 2 had in fact entered into agreement to sell with the plaintiff on 10.09.1988 and had also received the earnest money as well as an amount of Rs.1000/- on two occasions. The execution of agreement to sell was established. It was held that defendants No.1 and 2 were not competent to enter into agreement to sell on behalf of defendant No.3-Gurdev Singh and three minor defendants No.4 to 6. It was also held that the agreement to sell was not executable in respect of shares of Gurdev Singh and defendants No.4 to 6. It was held that the suit could not be decreed to the extent of half share of total land measuring 17 kanals 12 marlas as the share of defendants No.1 and 2 was only $\frac{1}{3}^{\text{rd}}$ in total land measuring 17 kanals 12 marlas and not the half share. In this manner, the findings recorded by the trial Court under issue No.1 were modified.

[19]. With the said modification, appeal was dismissed. However, plaintiff was held entitled only for the refund of the earnest amount on the ground that part of the suit land was sold

by defendants No.1 to 3 to defendant No.7 on 11.11.1988 and defendant No.7 further transferred the land to defendant No.8 vide civil Court decree dated 07.02.1989 and the land stood lawfully vested in defendant No.7. After the lapse of substantial period, it was held that it would not be just and appropriate to decree the suit for specific performance, rather it was considered just and proper to grant decree of recovery of principal amount of Rs.12,000/- along with interest and cost. Accordingly, trial Court decree was modified in the aforesaid terms.

[20]. During the pendency of the appeal, appellant died and his legal representative namely Manjit Singh was brought on record on 11.05.2006 through CM No.3833-C of 2006. At the time of issuing notice of motion to respondents No.1 to 3, this Court recorded the contentions of the learned counsel for the appellant that part of the agreement could be enforced, leaving aside the minors qua whom no decree could be passed. The said contention was treated to be as a substantial question for determination. The substantial issue involved in the present appeal is:-

“Whether a decree for specific performance can be passed in respect of shares of defendants No.1 to 3, leaving aside the shares of minor-defendants No.4 to 6 against whom no decree was passed by the Courts below?”

[21]. I have heard learned counsel for the parties and have also perused the record.

[22]. Evidently, only defendant No.8 filed appeal against the judgment and decree of the trial Court. Defendants No.1 to 3 and 7 felt contended with the judgment and decree passed by the trial Court. No appeal was filed by the aforesaid defendants. Defendant No.8 Ram Kishan was a subsequent transferee under a civil Court decree dated 07.02.1989 from defendant No.7. The lower Appellate Court though dismissed the appeal but with modification to the extent of passing money decree of refund of earnest money.

[23]. During the course of arguments, it was transpired that the judgment and decree of the trial Court was lacking on material particulars. Before advertng to the said omission, it would be relevant to note down the legal position as emerging on record. Relief of specific performance cannot be denied on the ground of any hardship in terms of escalation in price of the land from the date of entering into the agreement to sell particularly when execution of agreement to sell was proved on record. Once the agreement to sell proved with reference to scribe, attesting witnesses and other material on record, it was equitable to enforce specific performance which was a discretionary relief. The discretion of the Court has to be exercised on sound and reasonable principles which were capable of correction by a Court of appeal.

[24]. The time gap between filing of suit and passing of decree for specific performance were wholly inconsequential. Once execution of lawful agreement was proved and the judicial conscience of the Court was satisfied that the equity would demand enforcement of agreement to sell, rather than to grant alternate relief of money decree. Right of specific performance though is not absolute right. A decree could not be passed merely because it was lawful to do so, but discretion has to be exercised by the Court based on sound and equitable consideration and guided by judicial principles which were capable of correction by a Court of appeal. Once agreement to sell was proved in accordance with law, the party acted thereupon without any delay was entitled to the specific performance.

[25]. A lawful agreement once proved and when the judicial conscience of the Court was satisfied, it was equitable for the Court to have enforced the agreement to sell, rather than to grant alternate relief of money decree. The time consumed by the Courts should not be permitted to work to the disadvantage of the plaintiff or party to the *lis* as the same cannot be construed as a waiver or abandonment of the rights of the plaintiff.

[26]. The exceptions carved out to the rules of grant of specific performance cannot be termed to be rule by itself. Inadequacy of consideration cannot be considered as an exception in terms of Section 20 of Specific Relief Act, 1963 and

cannot be construed an unfair advantage or hardship within the meaning of Clause-(a), (b) of Sub Section 2 of Section 20 of the Specific Relief Act.

[27]. Once it was proved that some of the co-sharers entered into agreement to sell and execution of agreement to sell was proved, in the event of refusal by other co-sharers (like the one as that of minors in the present case) the agreement could have been enforced in respect of shares of co-sharers who entered into agreement to sell. Reference can be made on this preposition to **Kartar Singh Vs. Harjinder Singh, 1990 (2) LJR 436, Krishnan Vs. Krishnan, 1993 (3) LJR 63 (Kerala) and Shyam Sunder Chowkhani @ Chandan and others Vs. Kajal Kanti Biswas and others, 1999 (4) CivCC 46 (Gauhati).**

[28]. It needs to be reiterated that the Court must give relief, where equity demands ***“equitas nuquam liti ancillator ubi remedium protest clare”***. An erring party who violates the terms and conditions of the agreement cannot be permitted to seek advantage over the other party in equity. Though the jurisdiction of the Court to grant specific relief is a discretionary phenomenon, but the same must be exercised on sound and reasonable grounds, guided by judicial principles and capable of correction by a Court of appeal. The jurisdiction cannot be curtailed or taken away by merely fixing a sum, even as liquidated damage. Exception to the rule of grant of specific relief cannot be construed

to be a rule in itself. The Courts are obligated to exercise this equitable jurisdiction in consonance with the settled principle of law and the discretion has to be exercised in judicious manner. The alternate prayer made for refund of the amount cannot be construed to be a waiver or abandonment. The main object of the provisions is to avoid resultant undue hardship to one party while avoiding undue gain to other. Mere lapse of time or inadequacy of consideration are no ground to exercise such a discretion under Section 20 of Specific Relief Act. The principles of hardship are to be taken care of only in those cases which squarely falls under the domain of Clause (b) of sub Section 2 of Section 20 of the Specific Relief Act. In this regard, reference can be made to **Atma Ram Mittal Vs. Ishwar Singh Punia, 1988 (2) RCR (Rent) 423, M.L. Devender Singh and others Vs. Syed Khaja, AIR 1973 SC 2447, Prakash Chandra Vs. Narayan, 2012 (3) RCR (Civil) 335, Sarwan Singh Vs. Kankar Singh, 2001(1) PLJ 552, Ram Dass Vs. Ram Lubhaya, 1998 (2) PLJ 380 and Ved Ram Vs. Har Kisnan, 2007(4) RCR (Civil) 559.**

[29]. During the course of arguments it was a conceded position that the interest of respondents No.2 and 3 was common. In view of aforesaid, the grant of alternate decree by the lower Appellate Court cannot be held to be a lawful exercise while disturbing the decree passed by the trial Court. Perusal of the record reveals that defendants No.1 to 3 jointly contested the suit.

The agreement to sell executed by defendants No.1 and 2 for

themselves as well as on behalf of defendants No.3 to 6 could not have ousted defendant No.3 from acquisition because defendant No.3 joined hands with defendants No.1 and 2 for contesting the suit. It was only the shares of minor-defendants No.4 to 6 which were lawfully segregated as no permission was sought from the Court for selling their shares. Significantly, the lower Appellate Court granted money decree. It was conspicuously missing from the concluding part of the judgment and decree passed by the lower Appellate Court that from whom the refund was to be made. Defendants No.1 to 3 and 7 had accepted the judgment and decree of the trial Court. They never assailed the judgment and decree before the lower Appellate Court. Whether refund should have been made by defendant No.8 who was not party to original agreement to sell? At the most refund could have been ordered against defendants No.1 and 2, if they had challenged the judgment and decree of the trial Court and would have successfully demonstrated the merits of their contentions before the trial Court. In any case, the observations made by the lower Appellate Court granting refund of the earnest money could not have been lawfully made on merits and the observations made were totally misdirected.

[30]. In view of aforesaid, the substantial questions of law as framed by this Court needs to be answered in favour of the appellant and it has to be held that the plaintiff was entitled for the specific performance of agreement to sell dated 10.09.1988 to the

extent of shares of defendants No.1 to 3 and the sale deed dated 11.11.1988 executed by defendants No.1 to 3 in favour of defendant No.7 and civil Court decree dated 07.02.1989 suffered by defendant No.7 in favour of defendant No.8 were not binding upon the rights of the plaintiff.

[31]. With these aforesaid observations, the impugned judgment and decree dated 10.08.2001 passed by Additional District Judge, Sirsa is hereby set aside. Appeal is allowed, decreeing the suit of the plaintiff in the manner as suggested by the Civil Judge, Senior Division, Sirsa in the judgment and decree dated 03.12.1998. Parties are left to bear their own costs.

(RAJ MOHAN SINGH)
JUDGE

11.07.2016
Prince