

Regular Second Appeal No.3666 of 2010 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3666 of 2010 (O&M)
Date of Decision: August 02, 2016

Amar Singh

...Appellant

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.R.P.Singh Ahluwalia, Advocate,
for the appellant.

Mr.Arinder Arora, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the judgment and decree, whereby the Lower Appellate Court modified the judgment and decree of the trial Court by exercising the discretion under Section 20 of Specific Relief Act, 1996 (for short "1996 Act") Act by ordering for refund of the earnest money.

Mr.R.P.Singh Ahluwalia, learned counsel for the appellant-defendant submits that the respondent-plaintiff, in the suit had not asked for alternative relief, therefore, in view of the embargo under Section 22

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(2) of the Specific Relief Act, 1963, the relief of refund could not have been granted. In support of his contention, he has relied upon the judgment rendered in **Adcon Electronics Pvt.Ltd. Versus Daulat**, AIR 2001 (SC) 3712 to contend that in the absence of the amendment of the plaint, relief under Section 20 cannot be granted and, thus, urges this Court for setting-aside of the judgment and decree of the trial Court.

Mr.Arvinnder Arora, learned counsel for the respondent-plaintiff has relied upon the judgment rendered by the Hon'ble Supreme Court in **Babu Lal Versus M/s Hazari Lal Kishori Lal and others**, AIR 1982 SC 818 to contend that as per the provisions of Section 28 of 1963 Act, the Court can always order for other relief and as per the provisions of sub-section (4) of Section 28, no separate suit for any other relief shall lie at the instance of the vendor or purchaser. He has also relied upon the judgment rendered by this Court in **Gurjant Singh Versus Harbans Kaur and others**, Civil Revision No.5255 of 2014, decided on 7.4.2016 to submit that in the absence of the amendment in the plaint, the relief granted by the Lower Appellate Court is liable to be upheld.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the

submission of Mr.Ahluwalia.

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It would be apt to reproduce Section 22 and 28 of the Specific Relief Act.

“Section 22 in The Specific Relief Act, 1963

22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section

(1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint

on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such

conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

On conjoint reading of proviso to Section 22(2) and as well as sub Section 3 of Section 28, it is manifest that the court can at any stage of the proceedings grant relief of amendment of plaint, in the absence of relief sought in the main suit and thus, the respondent-plaintiff need not to seek amendment of the plaint by resorting to the provisions of Section 22 (2) instead moved an application to the court for granting such relief. As noticed above the sale deed through the intervention of the court has already been executed.

This view has been reiterated by the judgment of Hon'ble Supreme Court in Babul Lal's case (supra) . For the sake of brevity para 26 to 29 of the judgment is extracted hereinbelow.

“Sub-section (3) of Section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the court may on application made in the same suit, award the

purchaser or lessee such further relief as he may be entitled to Sub-cl (b) of sub-sec.(3) of S.28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub sect.(4) of S.28 bars the filing of a separate suit for any relief which may be claimed under this section.

27. In Hungerford Investment Trust Ltd.V.Haridas Mundhra (AIR 1972 SC 1826) dealing with S.28 (1) of the Specific Relief Act, 1963 this Court observed (at p.1832)

“The Specific Relief Act, 1963 is not an exhaustive enactment and under the law relating to specific relief a Court which passes a decree for specific performance retains control over the decree even after the decree had been passed. Therefore the Court, in the present case, retained control over the matter despite the decree and it was open to the Court, when it was alleged that the party moved against had positively refused to complete the contract, to entertain the application and order rescission of the decree if the allegation was proved.”

The reasoning given by this Court with regard to the applicability of sub-sec(1) of S.28 will equally apply to the

applicability of sub-sec.(3) of S.28.

28. This is an additional reason why this Court should not interfere with the eminently just order of the High Court. The High Court had amended the decree passed by the first appellate Court and passed a decree for possession not only against the transferors but also against their transferee, that is, the petitioner.

29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections. In the circumstances narrated above, we do not find any fault with the order passed by the High Court.”

There is another aspect of the matter. In case the parties had not litigated before the court below, in essence, had actually acted and performed their part of agreement by appearing before the Registrar, even then vendee, was/is entitled to possession. The matter regarding interpretation of Section 23 of the Specific Relief Act, 1963, reached the Hon’ble Supreme Court as to whether agreement to sell containing liquidated damages, as double the amount of earnest money in the

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absence of any clause seeking execution and registration of the sale deed, much less specific performance, through competent court of law, can one party be precluded from claiming such relief or not. The Hon'ble Supreme Court though earlier held in the absence of any clause of specific performance the vendee is entitled to double the amount but the said view has been held per incuriam in the judgment rendered in P.D'Souza Vs. Shondriilo Naidu (2004) 6 SCC 649, therefore keeping in view the law enunciated by the Hon'ble Supreme Court in Babu Lal's case (supra) and P. D'Souza's case (supra), I am of the view that inherent relief of possession in a suit for specific performance in the decree where the party omitted to claim relief of possession.

The Lower Appellate Court found that the agreement was for money transaction and not for the purpose of selling the suit property. It is in the background of the matter, the refund was ordered.

Mr.Ahluwalia has also submitted that the Lower Appellate Court has given a finding that the blank signed stamp papers were used, therefore, there was no intention to sell the land, but the Court below ordered for refund, which should not have happened. The aforementioned plea of Mr.Ahluwalia is not able to cut ice, for, the appellant has failed to belie his signatures on the stamp papers, much less the circumstances how the signatures have been obtained. In this

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background, the Lower Appellate Court has rendered a finding that it was a loan transaction, for, also refers to a particular amount.

In my view, the judgment and decree of the Lower Appellate Court is liable to be upheld as no ground for interference is made out.

Appeal stands dismissed

August 02, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No