

In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 2749 of 2012 (O&M)
Date of Decision: February 11, 2016**

Gurcharan Singh and others

... Appellants

Versus

Karnail Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

**Present: Mr. M.L. Sharma, Advocate,
for the appellants.**

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellants/defendants against the judgment and decree dated 14.01.2012 passed by learned Additional District Judge, S.A.S. Nagar whereby judgment and decree dated 19.07.2010 passed by learned Addl. Civil Judge (Senior Division), Kharar, has been modified and suit for specific performance of agreement to sell dated 30.04.2001 has been decreed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief

facts relevant for disposal of this second appeal are that plaintiff filed a suit for specific performance of agreement to sell dated 30.04.2001 and in the alternative for recovery of Rs. 4 lacs and for injunction on the ground that on 30.04.2001, defendant no.1 entered into an agreement to sell the property in question to the plaintiff for Rs. 4 lacs and Rs. 2 lacs were received as earnest money. It was agreed between the parties that sale deed would be executed by defendant no.1 in favour of the plaintiff on 10.08.2001. However, on 31.07.2001, defendant no.1 received the amount of Rs. 1 lac from the plaintiff and had executed a receipt in this regard. He had also agreed to deliver the possession of the property in question to the plaintiff, but the same was not delivered to him. On 31.07.2001, the plaintiff had requested the defendant that he should execute the sale deed in his favour, but defendant no.1 expressed his inability to execute the same due to certain circumstances beyond his control. On his request, the plaintiff had given him advance of Rs. 1 lac with an understanding that he would execute the sale deed in favour of the plaintiff on 10.08.2001. On 10.08.2001, plaintiff remained present in the office of Sub Registrar, Majri along with necessary funds for getting the sale deed executed, but defendant no.1 did not turn up and ultimately, the plaintiff duly sworn an affidavit in this regard and got the same attested from Oath Commissioner, Kharar. It was further alleged in the plaint that defendants no.2 to 6 have filed a suit against defendant no.1 in collusion with each other for the grant of maintenance. Defendant no.1 has been threatened to sell the property in question to anybody else. Hence, suit was filed.

Upon notice, defendants appeared. Defendant no.1 filed

written statement denying the execution of the agreement in question and receipt of the earnest money. It was alleged that the property in question was inherited by defendant no.1 from his father. The alleged agreement is a result of fraud and misrepresentation. The defendant became addicted to liquor and used to remain under the influence of liquor throughout the day. After coming to know about the weaknesses of defendant no.1 for the addiction of liquor the plaintiff inducted the defendant to execute the power of attorney with the assurance that he would find out the suitable buyer for his Barani land situated away from the village. The plaintiff took the defendant to some office and there he obtained his signatures/thumb impressions on some papers for execution of the general power of attorney. The defendant never executed any agreement to sell.

Defendants no.2 to 6 filed separate written statement wherein they alleged that the land in dispute is the ancestral and coparcenary property in the hands of defendant no.1. They have got a right in the suit property and defendant no.1 is having no right to alienate the same.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. Whether plaintiff is entitled to specific performance of agreement dated 30.4.2001 executed by defendant no.1 of the suit property after receiving Rs. 3,00,000/- as advance consideration? OPP
2. Whether plaintiff is entitled to permanent injunction restraining defendant no.1 from alienating the suit property? OPD
3. Whether plaintiff was ready and willing to perform his part of contract and still ready and willing to perform his part of

the contract? OPP

4. *Whether the alleged contract is the result of fraud and misrepresentation played by plaintiff? OPD*
5. *Whether the suit is not maintainable in the present form? OPD*
- 5-A. *Whether the suit property is ancestral coparcenary property of defendants, in which defendants no.2 to 6 have subsisting right, if so its effect? OPD 2-6*
6. *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, declined the relief of specific performance of the agreement to sell executed by defendant no.1 and instead thereof a decree for recovery of earnest money with interest has been passed vide judgment and decree dated 19.07.2010. Against that, plaintiff preferred an appeal, which has been allowed and suit for possession by way of specific performance of agreement to sell dated 30.04.2001 has been decreed by the learned lower appellate Court vide judgment and decree dated 14.01.2012. Hence, this second appeal.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 32 of grounds of appeal, arise for consideration in this second appeal:-

- “a) *Whether the suit for specific performance of the respondent/plaintiff is maintainable when in the agreement to sell, it is specifically written that in case of a failure, the purchaser is entitled for double of the amount with interest?*
- b) *Whether the findings recorded by the learned lower appellate Court is in accordance with Section 20 of the Specific Relief*

Act, 1963, if it is not whether the suit of the respondent is maintainable?

- c) Whether the findings of the learned lower appellate Court are erroneous on the ground of hardship, which has been defined in Section 20 of the Specific Relief Act, 1963?*
- d) Whether the agreement to sell/sale deed is a result of fraud committed by the plaintiff upon the appellants in view of the fact that the plaintiff is a property dealer?"*

Learned counsel for the appellants contended that the learned lower appellate Court has erred in appreciating the evidence on record as well as learned lower appellate court committed a grave error while giving findings on readiness and willingness. Learned counsel further contended that the execution of agreement is shrouded by suspicious circumstances.

I have considered the contentions raised by learned counsel for the appellants and perused the record.

There is categorical finding recorded by the learned lower appellate Court that the defendants have not challenged the findings recorded by the learned Court of first instance with regard to the execution of the agreement and readiness and willingness on the part of the plaintiff. Therefore, the lower appellate Court came to the conclusion that the evidence produced by the defendants was beyond their pleadings. The learned lower appellate court has recorded finding of fact which reads as under:-

"17. Now, it has to be seen as to if the learned trial Court was justified in declining the relief of specific performance to the plaintiff, when the execution of the agreement by defendant no.1 and the readiness and willingness of the

plaintiff to perform his part of the agreement had been proved. Section 20 of the Specific Relief Act provides as under:-

“20. Discretion as to decreeing specific performance –

(1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:-

(a) Where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable gives the plaintiff an unfair advantage over the defendant; or

(b) Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.”

The reading of the aforesaid provisions show that the discretion in the matter of grant or refusal of the relief of specific performance cannot be arbitrary, but the same should be sound and reasonable guided by the judicial principles. In case the trial Court commits error in exercise of the said discretion, the said error can be rectified by the

*Appellate Court. In the instant case, the learned trial Court has declined the relief of specific performance on the ground that the house in dispute is the only residential house with the family of the defendant no.1 and that the value of the property must be more than Rs. 4 lacs even when the agreement was executed. The learned trial Court has observed that the grant of relief of specific performance to the plaintiff would create hardship to the defendant no.1 which could not have been foreseen at the time of the execution of agreement and it would also give unfair advantage to the plaintiff. However in my opinion, the observations made by learned trial Court in this regard are not proper and the same are against the facts on record. First of all the defendant no.1 did not raise any plea making out the case for refusal of specific performance of the contract on the ground mentioned in sub Section 2 of Section 20 of the Act. Secondly, once the execution of the agreement by defendant no.1 is proved, it cannot be conceived as to how the defendant could not foresee the difficulty likely to be faced by him by sale of his residential house. Therefore, the observations made by the learned trial Court that the grant of relief of specific performance would cause hardship to the defendant, which could not have been foreseen by him at the time of the execution of the agreement are misconceived. Moreover, the relief of specific performance cannot be declined on such like grounds. In this view, I find support from the judgment of Hon'ble Supreme Court in **Kammana Sambamurthy(D) by LRs vs. Kalipatnapu Atchutamma (D) & Ors, 2011(1) Civil Court Cases, 236**, wherein it has been held as under:-*

“The other point argued by Mr. A.T.M. Sampath is that the decree granted by the High Court would result in hardship since the vendor and vendor's wife are dead

and other 10 daughters are residing in the property. We are afraid these facts hardly constitute hardship justifying denial of decree for specific performance to the extent of vendor's half share in the property.”

Similarly in Jarnail Singh and others vs. Sukhwinder Singh, 2009(2) Civil Court Cases, 147, the Hon'ble Punjab and Haryana High Court observed as under:-

“There is also no force in the contention of the learned counsel for the appellants that the suit property is a residential house and no decree for specific performance can be passed. A perusal of the agreement Ex.P3 shows that the appellants had agreed to sell the house in question. The execution of this agreement has been fully proved. Therefore, now, it does not lie in the mouth of the appellants to say that it will not be equitable to grant specific performance against them for a residential house in which they are living. Explanation I appended to Section 20 clearly stipulates that merely inadequacy of consideration in its nature would not constitute an unfair advantage within the meaning of Section 20(2) of the Specific Relief Act. The contention of the appellants to the effect that the courts below should not have exercised its discretionary jurisdiction in view of the hardship which would be visited by the appellants in liable to be rejected. The appellants were the owner of the house. They accepted the part payment from the plaintiff. Moreover, this plea of hardship is also not proved from the evidence on record of the case. It is not a case where the appellants did not foresee the hardship.”

In Sarita Rani Vs. Deepak Raj and others, Volume CXXVII (2001-1), Punjab Law Reporter, 213, the Hon'ble Supreme Court observed that when plea of hardship had not been raised by the party concerned, the same could not be

examined.

18. So far as the judgments relied upon by the learned counsel for the respondents is concerned in Laxman Tatyaba Kankate and another vs. Smt. Taramati Harishchandra Dhatrak, 2010(3) Civil court Cases, 828, even the Hon'ble Supreme Court granted the relief of specific performance to the plaintiff. The facts of the instant case are entirely distinguishable from the facts in Bal Krishna and another vs. Bhagwan Das (dead) and others, 2008(2) RCR (Civil) 732 before the Hon'ble Supreme Court. It would be proper to mention here that there is no evidence on the file that the value of the property in question was more than Rs. 4 lacs at the time of the execution of agreement and therefore the observations made by the learned trial court in this regard are without any basis.

19. Keeping in view the above discussion, I am of the view that the learned trial Court has committed serious mistake by declining the relief of specific performance of the agreement particularly when it has been proved that the even after the execution of the agreement, the defendant no.1 received additional amount of Rs.1 lac on 31.7.2001. The plaintiff is entitled to the specific performance of the agreement in question and accordingly, the findings of the learned trial court on issue no.1 are modified and it is held that the plaintiff is entitled to the specific performance of the agreement in question.

20. As a result of the above discussion, the instant appeal is allowed and the impugned decree and judgment are modified and the decree for possession of the property in question by way of specific performance of the agreement of sale dated 30.4.2001 is hereby passed in favour of the plaintiff/appellant and against respondent/defendant no.1 with costs. The plaintiff is directed to deposit the balance sale

consideration with the learned trial Court within the period of one month. Defendant no.1 is directed to execute the sale deed regarding the property in question in favour of the plaintiff in the terms of the agreement and to put him into possession of the property in question. On the deposit of the balance sale consideration, the defendant no.1 would execute the sale deed in favour of the plaintiff within two months and should put him in possession. In case of failure on the part of the plaintiff to deposit the balance sale consideration within the stipulated period, the instant appeal would be deemed to have been dismissed....”.

In view of above, learned lower appellate Court has rightly recorded findings of fact. Learned counsel for the appellants could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by the learned counsel for the appellant. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

February 11, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge