

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

RSA No.3034 of 2012(O&M)

Date of decision:1.4.2016

Kamaljit Kaur

....Appellant

VERSUS

Major Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

Mr. Mohd. Yousaf, Advocate for the respondent.

REKHA MITTAL, J.

The appellant - Kamaljit Kaur has filed the instant appeal to express her grievance qua rejection of her claim for specific performance of the agreement as she has been allowed alternative relief by the first Appellate Court by way of modification of the judgment and decree dated 02.12.2008 passed by the learned trial Court.

The sole question that calls for determination is whether the discretion exercised by the Appellate Court in disallowing relief of specific performance is unfounded, arbitrary, whimsical and against cannons of judicial discretion.

To answer the aforesaid question, a brief reference to the facts of the case is pertinent. Kamaljit Kaur wife of Baljit Singh propounded an agreement to sell dated 26.05.1999 purported to be executed by the

respondent/defendant for sale of land measuring 3 Bighas 3 Biswas at the rate of Rs.45,000/- per Bigha, totalling Rs.1,41,750/-. An amount of Rs.1,00,000/- was paid as earnest money. The sale deed was agreed to be executed on or before 25.05.2001 on payment of remaining sale consideration. The time for execution of the sale deed was extended up to 25.07.2001. As per plea of the appellant, she was always ready and willing to perform her part of the agreement. She came present in the office of Sub Registrar Malerkotla on 25.05.2001 and 25.07.2001. As the respondent failed to perform his part of the agreement, the suit was instituted on 24.07.2004, a day before the stipulated period of limitation would expire, reckoned w.e.f. the target date i.e. 25.07.2001.

The respondent denied execution of the agreement; receipt of an amount of Rs.1,00,000/- towards earnest money and his liability under the agreement. The agreement dated 26.05.1999 and writing dated 25.05.2001 are stated to be product of forgery committed in connivance with M/s B.S. Traders, Grain Market, Malerkotla.. The husband of the plaintiff and her father-in-law are running business of commission agent under the name and style of M/s B.S. Traders, Grain Market, Malerkotla. The defendant used to sell his crops through M/s B.S. Traders which was to pay for sale of paddy and other grains, but failed to make payment despite many requests made by him. The signatures of the defendant on documents now being used as agreement of sale and extension of date were procured on the assurance that his bonus claim was to be got sanctioned from market committee. The value of the land in dispute was more than

Rs.80,000/- per Bigha in the year 1998 and the defendant would not have agreed to sell it at Rs.45,000/- per Bigha.

The plaintiff preferred replication, reiterated her stand taken in the plaint and controverted allegations raised in the written statement.

The learned trial Court, on consideration of the materials on record, in the light of submissions made by counsel for the parties upheld claim of the appellant on the material aspects with regard to execution of the agreement to sell dated 26.05.1999, writing dated 25.05.2001 in regard to extension of target date and the appellant having been successful to prove her readiness and willingness to perform her part of the agreement, thus being entitled to specific performance of the agreement.

The judgment and decree passed by the trial Court became subject matter of appeal, decided by the Court of Additional District Judge, Sangrur, wherein the Court affirmed the findings of the trial Court in regard to agreement to sell having been executed by the respondent/defendant but set aside the judgment and decree in regard to specific performance of the agreement and the appellant was allowed alternative relief for recovery of Rs.1,00,000/- along with interest at the rate of 9% per annum from 26.05.1999, the date of execution of agreement up to the date of filing of the suit with proportionate costs. The appellant was further held entitled to pendente lite interest till the date of decree and interest at the rate of 6% per annum from the date of decree till realization.

The Court in appeal, in para 17, has adverted to the issue as to whether the appellant is entitled to specific performance of the agreement or otherwise.

Counsel for the appellant would contend that the sole reason that weighed in the mind of the Court in appeal to reject claim of the appellant for specific performance of the agreement is that the suit was filed on 24.07.2004, the last date of limitation for filing the suit, which reveals intention of the plaintiff of not being interested in purchase of land, coupled with the fact that the relief sought for is the one granted by the Court primarily on equitable principles.

It is vehemently argued that once legislation has permitted a party to approach the Court up to a particular point of time by prescribing the period of limitation, the mere fact that the appellant filed the suit on the last date of limitation can neither operate against the appellant nor can enure to benefit of the respondent who failed to discharge his obligation under the agreement.

Another submission made by counsel is that as the Courts have recorded consistent findings that the agreement to sell was executed by the respondent and he had failed to discharge his obligation under the agreement, there was no option with the Court except to allow specific performance of the agreement in view of that allowing specific performance is a rule and granting alternative relief is an exception.

Counsel for the respondent, on the contrary, would urge that as the respondent has not preferred an appeal against the judgment and decree passed by the Appellate Court, therefore, it may not be open for him to assail the findings of the Appellate Court qua agreement to sell though he had preferred an appeal against the judgment and decree passed by the trial Court to assail the findings on all the issues determined by the learned

trial Court. It is further submitted that though the Appellate Court, in para 17 has taken note of the suit being instituted on the last date of limitation but as a matter of fact a cumulative view of the facts and circumstances obtaining in the case plus conduct of the appellant, in no circumstances, permits exercise of Court's discretion in favour of the appellant to accept her plea of specific performance of the agreement. It is further argued that as a matter of fact, the appellant in connivance with her husband, running business of commission agent has taken advantage of vulnerable position of the respondent being a customer at the said shop for selling his agriculture produce. Kamaljit Kaur – appellant during her cross-examination could not identify the respondent present in the Court as she identified some other person to be Major Singh. The appellant in the replication has denied the respondent to be a customer at the commission agency of M/s B.S. Traders, Grain Market, Malerkotla but the said fact was later admitted during the course of evidence.

I have heard counsel for the parties and perused the records but find that the appeal sans merit and deserves to be dismissed.

Kamaljit Kaur- appellant is the wife of Baljit Singh and Baljit Singh along with his father Harbhajan Singh is running business of commission agent in the name and style of M/s B.S. Traders, Grain Market, Malerkotla. The plea taken by the respondent in the written statement, in regard to his being a customer of the said shop was denied by the appellant in the replication but the said fact has been admitted during the course of cross-examination. This fact reflects seriously upon credibility and veracity of the appellant- Kamaljit Kaur. As has been

rightly argued by counsel for the respondent, Kamaljit Kaur- appellant could not identify the respondent present in the Court as she identified some other person to be Major Singh.

As per the agreement, the appellant has already paid an amount of Rs.1,00,000/- as earnest money out of total sale consideration of Rs.1,41,750/-. The date for execution and registration of the sale deed was fixed exactly after two years i.e. 25.05.2001. The said date was further extended for another two months. The suit for specific performance was filed on 24.07.2004, the last date of limitation prescribed. If the parties actually intended to enter into a transaction for sale of suit property, there was no reason for them to fix a period of two years for performance of the agreement particularly in the circumstances that the vendor had been paid more than 2/3rd of the total sale consideration on the date of agreement itself. There is no explanation much less satisfactory and tangible as to why the appellant waited for another three years despite failure of the respondent to execute the sale deed on 25.07.2001.

Taking into consideration business relationship between the respondent and husband of the appellant, failure of the appellant to identify the respondent in the Court despite a statement that she knew the respondent personally coupled with the period initially fixed for registration of the sale deed and the factum that the suit was instituted on the last date of the limitation, I find myself unable to differ with the findings recorded by the Court in appeal much less to say that the discretion vested in the Court, in view of the provisions of Section 20 of the Specific Relief Act, 1963, has been exercised without any foundation,

arbitrarily or contrary to settled cannons of law. As a result, the aforesaid question is answered against the appellant and in favour of the respondent.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed leaving the parties to bear their own costs.

APRIL 1, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE