

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

RSA-4537 of 2015 (O&M)

Date of decision: 27.05.2016

Kulvir Singh

...Appellant

Versus

Gurmej Singh thr. LRs

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.D. Bawa, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

CM-10883-C-2015

Keeping in view the averments made in the application and the accompanying affidavit, the same is allowed. The delay of 04 days in filing the present appeal is hereby condoned subject to all just exceptions.

RSA-4537-2015

The plaintiff/appellant filed a suit for possession by way of specific performance of the agreement to sell dated 25.08.2005. The trial Court vide judgment and decree dated 21.11.2011, partly decreed the suit for alternate relief of recovery of amount of earnest money of Rs.6,50,000/- along with interest.

2. Aggrieved against the findings of trial Court, both the parties filed appeals which were dismissed by the learned first Appellate Court, vide judgment and decree dated 30.03.2015.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant.

4. It is contended that the agreement to sell dated 25.08.2005 has been duly admitted by the respondent. The appellant remained ready and willing throughout to perform his part of contract. The bonafide of the appellant is duly proved from the fact that on the agreed date for execution of sale deed, he appeared and got his presence marked before the Sub Registrar along with balance sale consideration.

5. Heard, the learned counsel and perused the record.

6. The plaintiff/appellant has been rightly denied the specific performance of the agreement. This is to be noticed that though the appellant appeared before the Sub Registrar and asserted that he had withdrawn a part of the amount from the account of his father, however, keeping in view the fact that the agreement to sell was reached on 25.08.2005 and the targeted

date for execution of sale deed was 24.06.2006; the suit was filed within time but the appellant remained silent till 19.10.2007 and no notice was served upon the respondent(s) to perform his part of contract. It is also to be noticed that defendant/respondent-Gurmej Singh died in the interregnum period. The relief under Specific Performance Act being discretionary, the Courts below have rightly appreciated the facts of the case that the appellant has failed to explain as to why the notice after the agreed date had not been served for more than one year. The appellant has been adequately compensated by awarding interest on the payment made. Otherwise also, the appellant is a Non Resident Indian (NRI), whereas the respondents are poor farmers who lost their father during the interregnum period. It is settled position of law that 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; the discretion is not arbitrary but sound and judicial to be guided by judicial principles. When terms of the contract or the conduct of the parties at the time of entering into contract or other circumstances under which the contract was entered into are such that the contract gives the plaintiff an unfair advantage

over the defendant, the Court can exercise its discretion not to grant specific performance even if it is lawful. Reliance can be made to '**Parakunnan Veetil Joseph's Son Mathew Vs. Nedumbara**', AIR 1987 SC 2328. In the instant case, there is sufficient material on record to hold that the agreement to sell dated 25.08.2005 in fact gives the plaintiff/appellant an unfair advantage over the legal representatives of defendant Gurmej Singh (since deceased) and the Courts below rightly exercised their discretion not to grant specific performance of agreement to sell dated 25.08.2005.

7. Thus, keeping in view the above peculiar facts and circumstances of the case, this Court concurs with the observations of the both the Courts below. There is no illegality or perversity in the judgments and decrees passed by the Courts below. No substantial question of law arises for consideration. Hence, no interference is called for.

Dismissed.

27.05.2016
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(JITENDRA CHAUHAN)
JUDGE