

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

**RSA-3634-2014 (O&M)
Date of decision : 15.09.2016**

Shagan Singh

... Appellant

Versus

Om Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

None for the respondent.

AMIT RAWAL, J. (ORAL)

CM No.8441-C-2014

The application is allowed as deficiency in Court fees has been
made good subject to all exceptions.

CM stands allowed.

CM-8440-C-2014

For the reasons mentioned in the application, which is duly
supported by an affidavit, the delay of 56 days in re-filing the appeal is
condoned.

CM stands disposed of.

RSA-3634-2014

The appellant-plaintiff is aggrieved of the dismissal of non-
granting of the discretionary relief under Section 20 of the Specific Relief
Act, 1963 and has been only held entitled to recovery of the suit amount i.e.

₹ 1,15,000/- along interest @ 12% per annum from 10.12.2004 till filing of the suit and *pendente lite* and further interest @ 6% per annum till its realization.

Mr. Sandeep Jasuja, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit for specific of the agreement to sell dated 10.12.2004 in respect of land measuring 10 kanals 10 marlas detailed as (a) 8 kanals 12 marlas, i.e. 1/6 share of 51 kanals 11 marlas comprised of Rect. No.8 Killa No.11/1 (3-0), 21(8-0), 22 (7-8), 23 (8-0), 24/2 (2-0), 25(6-2), rect. No.9, Killa No.23/2/2 (4-8), 17/2 (0-4), 24 (8-0), 25/1 (4-0), Khewat No.452, Khatoni No.537, and (b) 01 kanal 18 marlas i.e. 38/587 shares of 29 kanals 8 marals comprised Rect. No.8, Killa No.24/1 (6-0), Rect. No.9 Killa No.14 (7-7), 18 (8-0), Khewat No.453, Khatoni No.540 as per Jamabandi for the year 1999-2000 situated at Village Ladhuka, Tehsil Fazilka, was filed against the payment of earnest money of ₹ 1,15,000/- which was agreed to be sold @ ₹ 90,000/- per acre. The appellant-plaintiff had always been ready and willing to perform his part of the agreement to sell and appeared before the office of Sub-Registrar Fazilka on 20.05.2005. Preceding to filing of the suit, a legal notice dated 30.05.2005 was sent and accordingly, the suit was filed on 09.12.2005. The respondent-defendant was served and appeared through his counsel, but did not file written statement and his defence was struck off. Thereafter, he did not appear and was proceeded *ex parte*. The agreement to sell had been proved through the testimony of attesting witness i.e. PW-2 Kulwant Singh and the scribe, namely, Sucha Singh (PW-3). Both of them have deposed in terms of the averments in the suit, much less, the payment of earnest money of ₹ 1,15,000/-. The

service/legal notice has also been proved on record. The Courts below relied upon the entry dated 07.08.2004 in the jamabandi for the year 1999-2000 to show that the property was mortgaged with PADB Bank, Fazilka. It is, in this background of the matter, the discretionary relief has been declined. In support of his contentions, he relies upon the judgment of this Court rendered in *“Raj Singh V/s Inder Jeet”, 2005 (2) RCR (Civil) 479*, thus, urges this Court for formulation of the following substantial questions of law:-

1. Whether the appellant-plaintiff had been always ready and willing to perform his part of the agreement to sell?.
2. Whether the discretionary relief under Section 20 of the 1963 Act can be denied, if the property is mortgaged and the amount of mortgaged is less than total sale consideration?.
3. Whether the judgment and decree of both the Courts below suffers from illegality and perversity?.

In the present appeal, the notice of motion was issued on 30.09.2014. The respondent-defendant has not put in appearance despite service and accordingly, the I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

Shorn of the facts as noticed above, the agreement to sell has been proved, much less, readiness and willingness. The suit has been filed with a legal notice. No evidence, in this regard, has been brought on record by the respondent-defendant. The loan amount was ₹ 80,000/-. The Courts below ought not to have declined the discretionary relief as the outstanding

amount of the bank could have been paid off, in essence, the liability of the borrower would have been discharged. This aspect is totally escaped the notice of both the Courts below. I am in agreement to the ratio decidendi culled out by this Court in **"Raj Singh's case"** (supra). For the sake of brevity, the findings rendered in paragraph Nos.3 and 4 of the judgment cited supra read thus:-

*"3. After hearing the learned counsel I am of the considered view that this appeal deserves to be dismissed as there are concurrent findings of facts on the issue that an agreement to sell was validly executed on 7.6.1995 for valuable consideration. It has also been proved under Issue No.3 that the plaintiff-respondent had been ready and willing to perform his part of the contract and there was failure on the part of the defendant-appellant who did not appear before the Sub-Registrar where the sale deed was to be executed. The finding in this regard has been recorded under Issue No.1 also. Whenever there is proof of execution of agreement to sell and readiness and willingness on the part of the plaintiff-respondent is proved then unless the enforcement of specific performance result into unfairness the specific performance has to be ordered. In this regard, reliance may be placed on a judgment of the Supreme Court in the case of **Surya Narain Upadhaya v. Ram Roop Pandey, 1995 Supp. (4) SCC 542** and also on the observations made in **Her highness maharani Shantidevi P. Gaikwad v. Savjibhaai Haribhai Patel, 2001 (2) RCR (Civil) 536 (SC) : 2001 (5) SCC 101**. It is further appropriate to mention that non-disclosure of the mortgage of land is a circumstance which would weigh against the defendant-appellant rather than against the plaintiff-respondent. Therefore, exercise of discretion by the Id. Lower appellate Court deserves to be approved and specific*

performance of the agreement has to be ordered. Therefore, I am of the view that no substantive question of law in fact arises for the consideration of this Court because an omission to mention lien on the property would be an irrelevant consideration and inequitable benefit to the defendant-appellant.

*4. I am further of the view the reliance of the lower Appellate Court on a judgment of this Court in the case of “Mohinder Singh and others V/s Guljit Singh” 2002 (2) RCR (Civil) 403 (P&H) is also meritorious. Apart from the observation with regard to the requirement to enforce specific performance of the agreement it has also been held by this Court in Mohinder Singh's case (supra) that merely because an alternative relief for damages has been claimed it would not amount to waiver of the principal relief for enforcing specific performance of agreement. The aforementioned view is fully supported by a judgment of the Supreme Court in the case of **Moti Lal Jain v. Ramdasi Devi, 2000 (3) RCR (Civil) 545 (SC) : 2000 (6) SCC 420** where their Lordships observed as under:-*

“Merely because the plaintiff claims damages in a suit for specific performance of contract as an alternative relief, it cannot be said that he is not entitled to the main relief of specific performance of the contract itself.”

For the foregoing reasons, the judgment and decree of both the Courts below are not sustainable and the same are set aside and the suit is decreed *in toto*. The discretionary relief is granted. The questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondent-defendant.

Since the entire sale consideration has been paid, the appellant-plaintiff shall be entitled to seek the execution of the judgment and decree of this Court in accordance with law. In case the discharge of the liability

of the bank, the appellant-plaintiff cannot be prevented from taking the leave of Court in accordance with law.

With the aforesaid observations, the appeal stands allowed.

Decree sheet be prepared

15.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No