

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4231 of 2014 (O&M)
Date of Decision : 27.10.2016

Col. Amarjit Singh

....Appellant

Versus

Beant Pal Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.K. Chopra, Senior Advocate with
Ms. Ashima Mor, Advocate
for the appellant.

Mr. Vijay Lath, Advocate
for the caveator-respondent.

Surinder Gupta, J.

This is appeal by Col. Amarjit Singh against concurrent judgments and decrees passed by Courts below decreeing the suit filed by plaintiff-Beant Pal Kaur, seeking specific performance of agreement to sell dated 13.09.2005 on payment of balance sale consideration.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Case of plaintiff, in brief, is that the defendant entered into an agreement for sale of Industrial Plot No. F-232, measuring 500 sq. yards in Phase VIII-B, SAS Nagar, Mohali for a consideration of ₹51,50,000/- vide agreement dated 13.09.2005 and received ₹5 lacs as earnest money out of which ₹4 lacs was paid in cash and ₹1 lac through draft no. 532003 dated 13.09.2005 drawn on Punjab National Bank, Phase VII, SAS Nagar, Mohali. He also executed receipt of earnest money on the back of first leaf of the agreement. The date for execution and registration of sale deed was

fixed as 12.12.2005.

4. On the same day i.e. 13.09.2005, the defendant came to house of plaintiff with witnesses and requested husband of plaintiff that he was in need of money due to some family problem and sought payment of ₹2 lacs, which was made to him and plaintiff executed receipt to this effect on the back of second leaf of the agreement. On 18.09.2005, the defendant again requested for payment of ₹10 lacs as he needed money immediately. Husband of plaintiff paid ₹10 lacs to the defendant on 19.09.2005, out of which ₹5 lacs was paid in cash and ₹5 lacs vide cheque no. 899201 dated 19.09.2005. On receipt of ₹10 lacs, defendant signed the receipt in the presence of witnesses. In this manner he had received ₹17 lacs towards earnest money.

5. Plaintiff requested the defendant to execute the sale deed as she was having the sale consideration ready with her but the defendant denied and insisted on execution of sale deed on 12.12.2005 as per the agreement. In October, 2005, the defendant started making different excuses to prolong the matter and ultimately refused to admit the claim/receiving the remaining sale consideration amounting to ₹34,50,000/-. He threatened that he will alienate the plot to some other person and plaintiff had to file suit seeking the relief of permanent injunction on 25.10.2005. Later on, plaintiff withdrew that suit as the same had become infructuous.

6. On 12.12.2005, plaintiff reached *tehsil* premises alongwith balance sale consideration. He got prepared a draft of ₹30 lacs bearing no. 498391 dated 12.12.2005 and remaining amount was available with her in cash to bear other expenses. The defendant did not turn up in *tehsil* premises. Plaintiff got her presence marked by getting her affidavit attested from Executive Magistrate, Mohali. Thereafter, plaintiff issued notice dated

14.12.2005 to the defendant through her counsel requesting him to execute the sale deed as per agreement dated 13.09.2005 but the defendant did not receive the notice sent by registered post and the same was returned by postal authorities on 23.12.2005. Plaintiff had always been ready and willing to perform her part of the contract but the defendant failed to honour the bargain, hence this suit.

7. Earlier the suit was decreed *ex parte* vide judgment dated 11.06.2007 passed by Civil Judge (Junior Division), SAS Nagar, Mohali. *Ex parte* judgment and decree was set aside vide order dated 13.01.2009 on the application of defendant, which was not contested by plaintiff and the defendant was required to file written statement.

8. In the written statement, the defendant took certain objections in support of his contention that he is not bound to execute the sale deed, which are enumerated as follows:-

- (i) He had never become absolute owner of the plot in dispute of which he is a lease-holder. Ownership of plot vests with Punjab Small Industries and Export Corporation Ltd. (later referred to as 'PSIEC') and plaintiff is not competent to sell the same.
- (ii) He did not execute agreement dated 13.09.2005.
- (iii) In reply to para 2 of the plaint regarding receipt of ₹5 lacs as earnest money, he remained silent in the written statement.
- (iv) Regarding the plea of plaintiff that on 13.09.2005, he received another sum of ₹2 lacs, he took the plea that plaintiff herself promised to pay ₹2 lacs more and paid

the same to defendant. Thereafter, she expressed her inability to arrange remaining amount on that day. The defendant admitted receipt of ₹10 lacs on 18.09.2005.

- (v) It was denied that plaintiff requested the defendant to execute the sale deed as she was having balance sale consideration of ₹34,50,000/- available with her. It was averred that the defendant had been requesting plaintiff number of times to submit all the necessary papers and to complete the formalities in the office of 'PSIEC' but plaintiff was not willing and did not perform her part of the contract.
- (vi) Plaintiff told the defendant that she was not interested to complete the bargain perhaps due to fall in prices of the property. Now she has filed suit due to high rise in the prices of plot.
- (vii) Earlier she had demanded double the amount paid by her which stood forfeited because the bargain had failed.
- (viii) Regarding the plea of plaintiff that she had gone to the office of Sub-Registrar on 12.12.2005, the defendant has alleged that she was not required to go to the office of Sub-Registrar as formalities required to be completed in the office of 'PSIEC' were not completed by her.

9. Plaintiff reasserted her case in replication and pleadings of parties led to framing of the issues as follows:-

- (i) Whether the defendant executed an agreement to sell dated 13.09.2005? OPP

- (ii) Whether the plaintiff was and is still ready and willing to perform her part of contract? OPD
- (iii) Whether the plaintiff is entitled to possession of suit property by way of specific performance of agreement? OPP
- (iv) Whether the plaintiff is entitled for recovery of ₹34,00,000/- as prayed for in the alternative? OPP
- (v) Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
- (vi) Whether suit of the plaintiff is not maintainable? OPD
- (vii) Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
- (viii) Whether plaintiff has got no cause of action to file the present suit? OPD
- (ix) Relief.

10. Mr. A.K. Chopra, Senior Advocate, counsel for the appellant has argued that cause of action to seek the relief of specific performance of agreement accrued to plaintiff in October, 2005 when she filed suit seeking the relief of permanent injunction to restrain the appellant from alienating the suit property. Present suit was filed in January, 2006, which shows the conduct of plaintiff. Had she been interested in getting the sale deed executed she could have filed the suit seeking the relief of specific performance of agreement immediately when cause of action accrued to her. He has relied on observations of Apex Court in cases of **G. Jayashree and others vs. Bhagwandas S. Patel and others, 2009 (3) SCC 141, K.S. Vidyanadam vs. Vairavan, 1997 (3) SCC 1, H.P. Pyarejan vs. Dasappa**

(dead) by LRs and others, 2006 (2) SCC 496 and A.K. Laksmipathy (dead) vs. Rai Saheb Pannalal H. Lahoti Charitable Trust, 2010 (1) SCC 287.

He has further argued that suit for injunction filed by plaintiff was withdrawn without seeking permission of the Court to file fresh suit thereby rendering the present suit barred under Order XXIII Rule 1 (4) CPC. This suit is also barred under Order II Rule 2 CPC. He has argued that the appellant is not competent to execute the sale deed as ownership of the plot vests with PSIEC and in such event the Courts below have committed grave error while allowing the relief of specific performance of agreement. Even if execution of the agreement is proved alternate relief of refund of earnest money could be allowed. Trial Court passed the decree beyond pleadings and issued certain directions to PSIEC, which is not a party to this suit, as such, directions given are not binding on PSIEC and consequently, the sale deed cannot be executed. Plaintiff besides seeking the relief of specific performance of agreement has also sought the alternate relief of return of earnest money with damages, as such, the same could be granted to her in this case.

11. Refuting the submissions of learned counsel for the appellant, Mr. Vijay Lath, Advocate, counsel for the respondent has argued that arguments by learned counsel for the appellant were beyond pleadings. The appellant has nowhere pleaded or proved that suit is barred under Order II Rule 2 CPC. Agreement dated 13.09.2005 is duly proved to have been executed by the appellant. Out of total sale consideration of ₹51,50,000/-, ₹17 lacs had already been paid on different occasions. The date for execution of sale deed was fixed as 12.12.2005. In October, 2005 the appellant tried to alienate the suit property to third party, which led the

respondent to file suit seeking the relief of permanent injunction. That suit was allowed to be withdrawn on her statement seeking permission to file fresh suit for specific performance of agreement. Even if the permission was not specifically allowed, the same was also not declined and inference can be drawn that permission to withdraw the suit with liberty to file fresh suit was granted impliedly. He has relied on observations of this Court in case **Shri Rai Singh vs. Dr. Hemo Prabha Saikia and others, 2012 (1) PLR 155.** The cause of action to file suit seeking the relief of specific performance of agreement accrued on 12.12.2005 and the respondent filed suit on 14.01.2006. The appellant has neither pleaded nor proved as to how this suit is barred under Order II Rule 2 CPC. Even otherwise, the suit which is filed immediately after accrual of cause of action is not barred. He has relied on observations in cases of **Bhagwan Kaur vs. Harinder Pal Singh, 1991 PLJ 681 (Punjab & Haryana High Court Division Bench)** and **Gurjit Singh vs. Bant Singh, 1995 PLJ 513.** The disputed plot has been allotted to the appellant by PSIEC under a lease agreement for 99 years. The appellant is competent to sell his rights in the disputed plot and directions given by trial Judge are only for completion of formalities which PSIEC is otherwise bound to perform even without such directions. The agreement to sell is enforceable and not contrary to public policy or provisions of Indian Contract Act. He has also relied on observations of Delhi High Court in case of **Vinod Singh vs. Smt. Phutori Devi, 2006 (2) RCR (Civil) 283.**

12. Mr. A.K. Chopra, learned Senior Advocate to make out that plaintiff-respondent should not be allowed the relief of specific performance of agreement has raised following substantial questions of law :-

- (i) Plaintiff did not file suit seeking the relief of specific performance in October, 2005 when she filed suit for relief of permanent injunction to restrain the appellant from alienating the suit property, which was withdrawn without seeking permission of the Court to file fresh suit, as such, this suit is barred under Order XXIII Rule 1 (4) CPC.
- (ii) This suit is barred under Order II Rule 2 CPC.
- (iii) The relief of specific performance of agreement cannot be allowed as ownership of the plot vests with PSIEC.

13. Admittedly, in October, 2005, plaintiff-respondent had filed suit seeking the relief of permanent injunction restraining the defendant-appellant from alienating the suit property in view of her apprehension that the defendant may alienate the same before the date fixed for execution of sale deed i.e. 12.12.2005 arrives. Vide statement dated 10.01.2006, she withdrew that suit in order to file suit for specific performance of agreement and sought permission to file fresh suit. On her statement, Civil Judge (Junior Division), Kharar passed the order as follows:-

“Ld. counsel for the plaintiff made statement withdrawing the suit. In view of the statement of the Ld. counsel for the plaintiff, the suit of the plaintiff is hereby dismissed as withdrawn. File be consigned to the record room.”

14. In ***Shri Rai Singh's case (supra)***, a coordinate Bench of this Court in somewhat similar circumstances observed that when suit is withdrawn seeking permission to file fresh suit and prayer seeking

permission to file fresh suit is deemed as impliedly granted. Observations made in paras 11 and 12 to this effect are reproduced as follows:-

11. *So far as withdrawal of second suit, which was filed for declaration only without claiming relief of possession is concerned, a bare perusal of aforementioned order passed by learned Civil Judge (Junior Division) shows that the suit was permitted to be dismissed as withdrawn in view of the grounds mentioned in application. In the application, as reproduced above, ground was taken by respondent-plaintiff to withdraw the suit for filing fresh suit for declaration and injunction. There was formal defect in the said suit, as suit for mere declaration is not maintainable without claiming relief for possession. In this case, admittedly, respondent-plaintiff was dispossessed by present petitioner even before filing of the first suit. Hence, the suit for declaration was withdrawn and thereafter the present suit was filed for declaration with a relief for possession.*

12. *In view of these facts, the only inference can be drawn is that permission to withdraw the suit for mere declaration vide order dated 4.10.2001 was deemed to be with liberty to file a fresh suit as there was formal defect in the earlier suit. Hence, there is no force in the argument of learned counsel for the petitioner that suit is barred either under Order 23 Rule 1 (4) of the Code or under Order 2 Rule 2 of the Code. On the point*

*reliance is placed upon a judgment rendered by a coordinate Bench of this Court in **Lal Singh v. Ajit Singh 2008(3) RCR (Civil) 650**, wherein under similar circumstances it was observed that permission to withdraw is deemed to be with liberty to file a fresh suit as the Court would not permit withdrawal without permission to file fresh suit. In the present case as well, Court has not passed any specific order regarding assertion of respondent-plaintiff that she intends to file fresh suit for declaration and recovery of possession. Moreover, Court could not have refused permission to file fresh suit for declaration and possession regarding the subject matter in dispute as earlier suit was defective in view of peculiar facts and circumstances of the case.”*

15. In this case, defendant has nowhere pleaded or proved that the suit is barred under Order II Rule 2 CPC, as such, this argument advanced by learned counsel for the appellant for the first time in this appeal, carries no value in the eyes of law. In the facts and circumstances of this case, this suit is not barred under Order II Rule 2 CPC. The suit for injunction was filed on 25.10.2005 and the date fixed for execution of the sale deed as per the agreement, which is not denied, was 12.12.2005. The appellant had received ₹17 lacs out of the total amount of ₹51,50,000/-. At the time of filing of suit seeking the relief of injunction, plaintiff could always expect that the defendant may take plea that he is ready and willing to execute the sale deed and the relief sought by plaintiff-respondent in October, 2005 was pre-mature. In somewhat similar circumstances, a Bench of this Court in

Gurjit Singh's case (supra), observed as follows:-

- “11. Mr. Chhibber submitted that the respondent having instituted a suit for the issue of an injunction without claiming the relief of specific performance, the second suit was barred by the provisions of Order II Rule 2 (2) of the Civil Procedure Code.
12. The provision in Order II Rule 2 is based on the principle that a party should not be vexed twice for the same cause. It is directed against the splitting of claims and remedies. It, however, does not require that separate and distinct causes of action should be combined in one suit. Not only the commonality of parties but even that of the causes of action is an essential pre-requisite for invoking the provisions of Order II Rule 2.
13. In the present case, the cause of action for instituting a suit for specific performance had not accrued on April 7, 1988 when the respondent had filed a suit for an injunction to restrain the appellant from alienating the land in dispute to any one else. The cause of action for initiating the present proceedings had arisen after June 15, 1988 when there was failure to execute the sale deed. Since the causes of action were different, the provisions of Order II Rule 2 are not attracted. Still further, a bare perusal of the provision shows that a plaintiff must omit or intentionally relinquish a portion

of his claim before he can be debarred from suing in respect thereof. In the present case, there was no omission on the part of the respondent to sue in respect of the claim for specific performance of the agreement. There is no waiver of the rights under the contract. Consequently, the plea raised by the learned counsel, cannot be sustained”

16. Filing of suit for injunction and then appearing before Sub-Registrar for executing the sale deed with draft of ₹30 lacs and balance sale consideration shows that plaintiff was always ready and willing to perform her part of the contract. She has filed suit within a month from the date fixed for execution of sale deed, which is sufficient indicator of her willingness and readiness to perform her part of the agreement. In case of **Ram Singh vs. Satbir and others, 2009 (3) PLR 287**, a coordinate Bench of this Court observed as follows:-

10. *Consequently, the question of law which has been raised by the learned counsel for the appellant has to be answered in the given set of circumstances to hold that where a suit has been filed promptly, then it is the manifestation of the willingness and readiness of a plaintiff to perform his part of agreement. In the instant case, it has been established that the respondents were present in the office of the Sub Registrar on 20.11.2001 along with balance sale consideration and other expenses as agreed upon between the parties and this is a sufficient indicator of their willingness and readiness*

to perform their part of agreement.”

17. To similar effect were the observations in **Santa Singh vs. Binder Singh and others, 2007 (1) PLR 589.**

18. The conduct of plaintiff-respondent clearly depicts that she committed no default in performance of her part of the agreement. From evidence on record, it is proved that she was not only ready and willing but also curious and eager to get the sale deed executed as per terms of the agreement dated 13.09.2005.

19. Learned counsel for the appellant has relied on observations in ***G. Jayashree's case (supra)***, which are not applicable to facts of the present case. In that case, there were various terms which were to be performed by the vendor and vendees including payment of lay out permit fee and development charges. Part of the contract had stood rescinded in that case. The vendee had not chosen to file the suit for specific performance of agreement at the first instance, rather filed suit for mandatory injunction. Keeping in view these facts and circumstances, Apex Court had upheld the judgment of Andhra Pradesh High Court, declining the relief of specific performance of agreement.

20. In case of ***H.P. Pyarejan (supra)***, Apex Court discussed the principle behind Section 16 (c) of the Specific Relief Act, 1963 and observed as follows:-

“14. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal

bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

15. *Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. The principles were recently elaborated in **Aniglase Yohannan v. Ramlatha and Ors. (2005 (7) SCC 534.***”

21. To similar effect were the observations in case of **A.K. Laksmipathy (supra)**.

22. In **K.S. Vidyanadan's case (supra)**, Apex Court observed that when time is not essence of the contract plaintiff must perform his part of the contract within a reasonable time which has to be determined from all surrounding circumstances. Applying the ratio of judgment in **K.S. Vidyanadam's case (supra)** to the present case, plaintiff has performed her part of the contract within a reasonable time. On the date fixed for execution of the sale deed i.e. 12.12.2005, she was present in the office of Sub-Registrar with balance sale consideration and then filed this suit loosing no further time. This shows that plaintiff has always been ready and willing to perform her part of the contract and the moment she apprehended that the defendant-appellant may not alienate the suit property to third party, she invoked the jurisdiction of the Court to restrain him from doing so. The Courts below on appraisal of pleadings and evidence on record have rightly

observed that plaintiff has been able to prove that she has always been ready and willing to perform her part of the agreement.

23. I find no legal or factual infirmity in the above finding recorded by Courts below calling for any interference.

24. Now I examine the submission of learned counsel for the appellant that relief of specific performance of agreement cannot be allowed as ownership of the plot vests with PSIEC. In support of his contention he has relied on observation of this Court in case of **Shiv Charan vs. Siri Ram and another, 2008 (2) PLR 645**. In that case, the defendant had denied his ownership on the land in dispute in written statement and plaintiff could not discharge the onus placed on him by the trial Court by producing any evidence that the defendant was owner of the suit land. However, in this case there is no dispute regarding title over the suit property. It is admitted that PSIEC has allotted this plot to the defendant-appellant by creating a lease of 99 years in his favour, which is renewable for another 99 years. Ownership of the plot certainly remains with PSIEC. However, there is no bar against the defendant to sell this plot and this argument is not available with learned counsel for the appellant that the defendant is not competent to execute the sale deed of this plot. Ram Dutt, Assistant, PSIEC appeared as DW-1 and stated that lease of the plot in dispute in favour of the appellant was finalized and he had paid all the installments of lease money. He described procedure of transfer of plot given on lease by PSIEC and stated that plot is transferred on completion of formalities by leaseholder and transferee. He deposed as follows:-

“.....Transfer fee has to be deposited as per terms and conditions between the parties. Without completing all the

formalities given in mark 'A' transfer of lessee right is not permitted by the corporation. After completing the formalities corporation allows the transfer of lessee right and the lease deed executed by allottee by lessee right automatically stands revoked and the transferee of lessee right shall have to exclude the fresh lease deed and got the same registered in the office of Sub Registrar at Mohali so far as the plot in suit is concerned. Both the parties and representative of corporation present the lease deed before Sub Registrar for the purposes of registration.”

25. It is clear from the above statement of DW-1 that there is no bar against transfer of plot by the allottee. However, he will transfer the rights he has been conferred on him by PSIEC in this plot. In somewhat similar circumstances, in case of **Vinod Singh (supra)**, a question arose before the Delhi High Court as to whether prior permission of Delhi Development Authority was required for transfer of land and this question was answered as follows:-

“12. As noted above, in the present case, the defendant has pressed into service the same restrictive clause which is dealt with in the aforesaid judgment. In view of the above authoritative pronouncement of this court, the objections taken by the defendants are devoid of any merit. It is further held therein that the permission from the office of the DDA is not a condition precedent for grant of decree of specific performance. The court can direct the vendor to apply to the office of DDA for

permission. If the DDA ultimately refuses to grant the sanction of the sale, the plaintiff may not be able to enforce the decree for specific performance of contract but that was not a bar to the court passing a decree for that relief. During the pendency of the suit the deceased defendant obtained a perpetual lease deed in her favour from the DDA. There is an implied covenant on the part of the vendor to do all things necessary to effect transfer of the property regarding which he has agreed to sell the same to the vendee. Therefore, under clause 5 (a) & (b) of perpetual lease there is no bar for a lessee to enter into agreement to sell. As per clause 5 (a) if the lessee desires to sell or transfer an unbuilt plot to any person, he is required to take the consent and writing of the lessor. Thus the agreement to sell is enforceable and is not contrary to public policy and the agreement to sell dated 2nd May, 1996 is not hit by the provisions of the Indian Contract Act.”

26. From the statement of DW-1 Ram Dutt and on perusal of terms contained in letter of intent (Ex. D-1) for allotment, it is evident that there is no bar qua transfer of plot allotted to the appellant. Arguments of learned counsel for the appellant to this effect have no merits.

27. Learned counsel for the appellant has argued that plaintiff in addition to relief of specific performance of agreement has also sought the alternate relief of recovery of earnest money with interest and this relief can be allowed to her. As per Section 20 of the Specific Relief Act, the Court is

not bound to grant decree for specific performance of agreement but the discretion of the Court is not arbitrary but guided by sound and reasonable principles. Neither any condition as mentioned in Section 20 (2) of the Specific Relief Act has been raised or pointed out by learned counsel for the appellant which disentitles plaintiff from seeking the relief of specific performance of agreement or could prompt the Court below to deny the same. The conduct of plaintiff is apparently genuine and is in accordance with the terms of agreement. She has been making payment to the appellant from time to time as demanded by him even before the date fixed for execution of sale deed. She has lost no time in approaching the Court by filing suit seeking the relief of specific performance of agreement. No reason is evident or made out to decline the relief of specific performance of agreement to plaintiff. The mere fact that alternate relief of return of earnest money was sought, is no ground to decline the main relief of specific performance of agreement sought by plaintiff.

28. As a sequel of my above discussion and on perusal of judgments of Courts below, substantial questions of law as referred in para 12 are answered against the appellant. This appeal has no merit and the same is dismissed.

October 27, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No