

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

Date of Decision-11.01.2017

1 RSA No.4699 of 2009(O&M)

Manjit Kumar ... Appellant

Versus

Ram Sawroop and others ... Respondents

2 RSA No.2003 of 2014(O&M)

Ram Sawrup ... Appellant

Versus

Manjit Kumar and others ... Respondents.

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Mittal, Advocate
for the appellant in RSA No.4699 of 2009 and
for respondent No.1 in RSA No.2003 of 2014.

Mr. Ashok Kumar, Advocate
for the appellant in RSA No.2003 of 2014 and
for respondent No.1 in RSA No.4699 of 2009.

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment RSA No.4699 of 2009 and RSA No.2003 of 2014 are being disposed of as both the appeals have arisen out of common cause of action. Facts are being taken from RSA No.4699 of 2009.

[2]. This is a remand case from the Hon'ble Apex Court. The Hon'ble Apex Court vide order dated 24.07.2013 remanded this appeal for fresh adjudication after framing substantial questions of law within a specified period.

[3]. Plaintiff-appellant/Manjit Kumar filed a suit for possession through specific performance of agreement. An agreement to sell dated 22.05.2000 was executed by defendant No.1 in respect of 16 kanals of land situated in the revenue estate of village Bani, Tehsil Rania, District Sirsa for a total sale consideration of Rs.1,20,000/- i.e. @ Rs.60,000/- per acre. An amount of Rs.1,00,000/- was received by defendant No.1 from the plaintiff as earnest money in the presence of the witnesses. Plaintiff was put in actual physical possession of the suit land. The date for execution and registration of sale deed was fixed on or before 21.05.2001.

[4]. Plaintiff alleged that on the date fixed he attended the office of Sub Registrar, Rania along with balance sale consideration and other miscellaneous charges and waited for defendant No.1 throughout the day, but defendant No.1 did not turn up. Plaintiff was ready and willing to perform his part of obligation and got an affidavit attested from the Sub Registrar as a token of his presence before the Registering Authority. Defendant No.1 after executing the agreement to sell in favour of the plaintiff sold away the land in favour of defendants No.2 and 3 for a consideration of Rs.90,000/- vide sale deed dated 11.05.2001. The sale deed was claimed to be illegal and not binding upon the rights of the plaintiff. With this background, suit in question came to be filed for specific performance of agreement to sell and for setting aside the sale deed dated 11.05.2001.

[5]. The suit was contested by defendant No.1 as defendants No.2 and 3 were proceeded against ex parte vide order dated 29.05.2002. Defendant No.1 contested the suit on all counts. On merits, factum of agreement to sell was denied. Defendant No.1 claimed that no agreement to sell was ever executed, nor the earnest money was ever paid. The agreement to sell was claimed to be forged and fabricated. Other averments in the plaint were also denied. Defendants No.2 and 3 were claimed to be in actual physical possession with effect from the date of registration of sale deed. Earlier to that, possession was with defendant No.1. Sale deed dated 11.05.2001 was claimed to be validly executed.

[6]. After completion of pleadings, both the parties went to trial on the following issues:-

“1. Whether defendant No.1 executed the agreement to sell in question dated 22.05.2000 in favour of the plaintiff to sell the suit land for the sale consideration of Rs.1,20,000/- and received an amount of Rs.1,00,000/- as earnest money? OPP

2. Whether the plaintiff is entitled to the decree for possession through specific performance of contract/agreement dated 22.05.2000 as prayed for? OPP

3. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has no cause of action to file the suit? OPD

6. Whether the plaintiff has no locus standi to file the suit? OPD

7. Whether the civil Court has no jurisdiction to file the present suit? OPD

8. Whether the suit of the plaintiff is not properly valued for the purpose of court fees and jurisdiction? OPD

9. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD

10. Relief.

[7]. Both the parties led their respective evidence. Trial Court vide judgment and decree dated 31.05.2007 decreed the suit of the plaintiff with costs and the plaintiff was held entitled to a decree for possession through specific performance of agreement to sell dated 22.05.2000 on payment of balance sale consideration of Rs.20,000/-. Defendants were directed to get the sale deed executed and registered in favour of the plaintiff on receipt of balance sale consideration.

[8]. Defendant No.1 filed appeal before the lower Appellate Court. Lower Appellate Court vide judgment and decree dated 26.10.2009 partly accepted the appeal without costs. Judgment and decree of the trial Court was modified to the extent that plaintiff was held entitled to recover the earnest money of Rs.1,00,000/- with costs of the suit and interest @ 12% per annum. RSA No.4699 of

2009 came to be filed at the instance of the plaintiff against the judgment and decree of the lower Appellate Court.

[9]. This Court vide judgment dated 19.05.2011 accepted the appeal thereby decreeing the suit of the plaintiff by setting aside the judgment and decree of the lower Appellate Court with costs throughout. Against the said judgment, defendant No.1 ventured to file Civil Appeal No.6102 of 2013 arising out of SLP (C) No.404 of 2012. Hon'ble Apex Court vide judgment dated 24.07.2013 held that non-framing of substantial question of law has caused prejudice to defendant No.1 herein, therefore, appeal was allowed. Judgment of this Court dated 19.05.2011 was set aside and the matter was remitted to this Court for framing substantial question of law and decision on merits within a specific period. That is how, RSA No.4699 of 2009 to be reconsidered by this Court.

[10]. According to this Court, following substantial questions of law arise for consideration:-

“1. Whether findings recorded by the lower Appellate Court while granting alternate relief of refund of earnest money along with costs and interest are the result of misreading of evidence particularly when execution of agreement to sell was proved with reference to evidence of scribe and witnesses?

2. Whether in the light of evidence of Arjun Dev, Deed Writer PW 1, Richhpal, Numberdar PW 3 and Gurdev Singh PW 4, initial onus was discharged by the plaintiff and thereafter, onus shifted upon defendant No.1 to

prove that agreement to sell was the result of fraud and fabrication?

3. Whether evidence on record was sufficient to meet out any of the exception in terms of Section 20 of the Specific Relief Act so as to warrant grant of alternate relief in favour of the plaintiff?

4. Whether Court of Appeal i.e. lower Appellate Court was justified in modifying the judgment and decree of the trial Court in terms of discretion vested in it in terms of Section 20 of the Specific Relief Act?

[11]. I have heard learned counsel for the parties and have also examined the record.

[12]. Learned counsel for the appellant vehemently contended that once execution of agreement to sell was proved with reference to evidence of scribe and witnesses, lower Appellate Court was not justified in interfering with the judgment and decree of the trial Court while granting alternate relief of recovery of earnest money with interest. No prejudice in terms of Section 20 of the Specific Relief Act was pleaded and proved on record at the instance of defendant No.1, rather the sale deed dated 11.05.2001 was proved to have been executed for a lesser amount other than the one incorporated in the agreement to sell. Defendants No.2 and 3 were not the *bona fide* purchaser, rather they were vendees *lis pendens* and were bound by the outcome of the suit. Plaintiff himself examined as PW 2 besides examining Arjun Dev, Deed Writer as PW 1, Richhpal, Numberdar attesting witness as PW 3 and Gurdev Singh as PW 4

who was present at the time of execution of agreement to sell in question. Defendant No.1 himself examined as DW 1. Defendant No.3-Mahabir was examined as DW 2 who had stated that he along with his brother Het Ram (defendant No.2) had purchased the suit land from defendant No.1 vide sale deed dated 11.05.2001 (Ex.D1). Virender Kumar, Deed Writer DW 4 scribe the sale deed and Ranbir Lamberdar DW 3 attested the same. Plaintiff led rebuttal evidence in the form of PW 5 Yaspal Chand Jain, Handwriting and Finger Print Expert who opined that the signatures of defendant No.1 on the agreement to sell duly matched with his standard signatures. Learned counsel lamented that once the execution of agreement to sell was proved, grant of decree for specific performance was a normal consequence unless and until the case falls under one of the exception carved out under Section 20 of the Specific Relief Act.

[13]. On the other hand, learned counsel for respondent No.1 contended that report of Handwriting and Finger Print Expert was not sufficient to prove execution of agreement to sell. Learned counsel relied upon **Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, AIR 1981 Supreme Court 2085** to contend that in the absence of contents of agreement having not read over and explained to defendant No.1, execution of agreement to sell cannot be proved and mere comparison of signatures on agreement to sell would be of no consequence as admissibility of a document and its probative value are distinct in character and cannot be combined in

a way to give rise to any such conviction without assessing the probative value which may some time proved to be Nil. Learned counsel also relied upon **H. Siddiqui (D) by LRs Vs. A. Ramalingam, 2011(4) SCC 240** and **Anand Sawrup Data Vs. Punjab National Bank, 1997(3) RCR (Civil) 437.** Learned counsel further contended that mere putting of signature on the agreement cannot be said to be execution of document without there being any intention on the part of a person signing the same. Execution of document has to be considered in the light of evidence led by the person seeking relief to show that document was properly executed. It was only after discharge of initial burden sufficiently, the onus would have shifted upon the defendant to show that he had not executed the document. As a proof of execution of document, identification of the signature by the expert was not sufficient unless and until other corroborative piece of evidence was brought on record.

[14]. Learned counsel further submitted that the agreement in question did not bear the signature of plaintiff and therefore, bilateral obligation between the parties could not be enforced. Learned counsel also contended that according to agreement and version of the plaintiff, the possession was duly delivered to the plaintiff at the time of execution of agreement to sell, but in the plaint, he sought relief of possession.

[15]. I have considered the submissions made by learned counsel for the parties.

[16]. Plaintiff has led evidence of scribe and attesting witness of the agreement. In addition to the aforesaid evidence, plaintiff also got examined his father Gurdev Singh who was present at the time of execution of agreement. The scribe and attesting witness and testimony of father could not be impeached despite adequate cross examination by defendant No.1. The witnesses have categorically deposed with regard to signature of defendant No.1 on the agreement and also the contents of the agreement. The factum of receiving earnest money was also corroborated. Further material particulars of agreement were also pleaded by the witnesses and their testimonies could not be shattered by defendant No.1. The examination of expert was a corroborative piece of evidence. The report of expert also corroborated the factum that signatures of defendant No.1 were on matching configuration with that of his standard signatures. Once the execution of agreement to sell was proved, initial onus was discharged by the plaintiff. Thereafter, onus shifted upon the defendant to prove that agreement to sell was the result of any fraud or fabrication.

[17]. In ***Atma Ram Mittal v. Ishwar Singh Punia, 1988 (2) RCR (Rent) 423***, the Apex Court held that once execution of lawful agreement is proved and the judicial conscience of the Court is

satisfied, then the equity demands that the agreement should be enforced rather than to grant alternate relief of damages to the plaintiff. It needs to be reiterated that equity must give relief where equity demands. 'equitas nuquam liti ancillatur ubi remedium protest clare'.

[18]. An erring person who violates the terms and conditions of the agreement cannot be permitted to seek advantage over the other party in equity. In ***M.L. Devender Singh and others Vs. Syed Khaja, AIR 1973 SC 2447***, the Apex Court held that the jurisdiction of the Court to decree specific relief is discretionary and must be exercised on sound and reasonable grounds. "Guided by judicial principles and capable of correction by a court of appeal". The jurisdiction cannot be curtailed or taken away by merely fixing a sum even as liquidated damage.

[19]. The provision in terms of Section 20 of the Act is an exception to the rule of grant of relief of specific performance but the same in itself cannot be construed as a rule. The Courts are obligated to exercise this equitable jurisdiction in consonance with the settled principle of law and the discretion has to be exercised in judicious manner. Even the alternate prayer made by the plaintiff in a suit cannot be construed to be a waiver or abandonment of his main claim. The object of the provisions is to avoid resultant undue hardship to one party while avoiding undue gain to other.

[20]. Once the execution of agreement is proved, equity demands its enforcement rather than to grant alternate relief of

refund of earnest amount and payment of damages. Equity has to be balanced.

[21]. In ***Ram Dass v. Ram Lubaya, 1998(2) RCR (Civil) 642*** this Court considered the past precedents including ***Atma Ram Mittal's*** case (supra) and ***M.L. Devender Singh's case*** (supra) and ultimately held that a lawful agreement if proved and satisfies the judicial conscience of the Court, then equity demands its enforcement rather than to grant alternate relief of damages to the plaintiff.

[22]. In a specific performance of a contract, the discretion of the Court is not to be exercised merely because it is lawful to do so. The Court is not obligated and bound to grant such relief but the discretion has to be exercised on sound and reasonable grounds guided by judicial principles which are capable of being corrected by court of appeal.

[23]. The cumulative reading of substantial questions of law No.1 and 2 would show that the plaintiff was required to prove due execution of agreement to sell in terms of discharging initial onus, thereafter, the onus shifted upon defendant No.1 to prove non-execution of agreement to sell or to show that the agreement was result of fraud or fabrication. Defendant No.1 could not discharge his onus in terms of proving that the agreement was never executed by him. Surprisingly, lower Appellate Court has also not commented that the execution of agreement to sell was not proved, rather ordered for refund of earnest money on the premise that

execution of agreement to sell was proved. The judgment and decree passed by the lower Appellate Court cannot sustain on this self contractual note. Once the execution of agreement to sell was proved, the sale deed dated 11.05.2001 on lesser sale consideration was to go automatically as defendants No.2 and 3 are not proved to be *bona fide* purchaser. In view of aforesaid, substantial questions of law No.1 and 2 are to be answered in favour of the plaintiff-appellant. Signature of defendant No.1 was affixed in the form of endorsement on receipt of Rs.1,00,000/- as earnest money and the same was found as a matter of fact by the report of the expert. No evidence was led by the defendant to rebut this evidence. The use of words earnest money in the said endorsement would show that the agreement to sell was duly executed by defendant No.1 and he signed in Hindi as a token of acceptance of the amount of earnest money.

[24]. In view of aforesaid, arguments raised by learned counsel for defendant No.1 cannot be accepted that the contents of document were not read over to defendant No.1 and therefore, distinction has to be culled out from the admissibility of document and probative value attached to it. Once the execution was proved with reference to testimonies of scribe and witnesses, the statement of father of the plaintiff was a corroborative piece of evidence that fully explained the bona fide of the agreement in question and the said evidence was further supplemented by the report of expert. In the absence of any cogent rebuttal by defendant

No.1, evidence of the plaintiff went un rebutted, therefore, findings recorded by lower Appellate Court on the aforesaid aspect were the result of perversity and illegality and the same were on account of misreading of evidence. Consequently, substantial questions of law No.1 and 2 are answered in favour of the plaintiffs and it is held that the impugned judgment and decree passed by the lower Appellate Court are the result of misreading of evidence and thus the same is unsustainable on account of illegality and perversity.

[25]. Substantial questions of law No.3 and 4 can be appreciated and answered collectively. It is a settled principle of law that relief of specific performance is a discretionary relief and can be denied in appropriate cases. The Court is not bound to grant relief of specific performance merely because it is lawful to do so. The discretion of the Court has to be exercised on some sound and reasonable judicial principles and this discretion is capable of correction by the Court of Appeal. Even in certain cases, discretion can be exercised not to grant specific performance in case it falls under any of the exception carved out under Section 20 of Specific Relief Act. Defendant No.1 having denied the execution of agreement to sell cannot question readiness and willingness on the part of the plaintiff. Defendant No.1 in the absence of any pleading of hardship in the written statement cannot be permitted to allege any hardship in terms of Section 20 of the Specific Relief Act. There was no pleading on the aforesaid premise, nor any evidence was led. In the absence of any such plea of invalidation of

agreement to sell, the lower Appellate Court was not justified in diluting the relief of specific performance to the alternate relief of refund of earnest money.

[26]. The omission on the part of plaintiff in not signing the agreement did not invalidate the agreement inasmuch as that the execution of agreement was proved by the evidence of scribe and witnesses. Father of the plaintiff also endorsed the factum of agreement to sell and the signatures of defendant No.1 were found to be duly executed on the agreement to sell. Defendant No.1 cannot be permitted to resile on this ground particularly when the plaintiff has not disowned the agreement in question. The recital of plea of possession and plea of the defendant that plaintiff was never in possession can be appreciated in the light of recital of the agreement to sell which was not rebutted by means of any evidence. The plaintiff has sought the relief of possession because he has to be delivered lawful possession of execution of sale deed in pursuance of agreement to sell. The transaction of sale deed in favour of defendants No.2 and 3 by all means cannot be said to be *bona fide* transaction. Defendants No.2 and 3 were proceeded against ex parte. No encounter was offered by them. In view of aforesaid, substantial questions of law No.3 and 4 have to be answered in favour of the plaintiff-appellant.

[27]. In view of aforesaid, I have no hesitation in accepting RSA No.4699 of 2009. Consequently, RSA No.4699 of 2009 is

allowed, decreeing the suit of the plaintiff with costs throughout and RSA No.2003 of 2014 is accordingly dismissed. Resultantly, impugned judgment and decree dated 26.10.2009 passed by the lower Appellate Court is set aside and judgment and decree dated 31.05.2007 passed by the trial Court is restored.

(RAJ MOHAN SINGH)
JUDGE

11.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No