

RSA No.1006 of 2016 (O&M)

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

RSA No.1006 of 2016 (O&M)

Date of Decision: 10.1.2017

Mewa Singh

.....Appellant

Vs.

Paramjit Kaur

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. G.S.Sandhu Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 2752-C-2016

Applicant-appellant seeks condonation of delay of 2 days in filing the present appeal.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of 2 days in filing the present appeal is condoned.

CM stands disposed of.

RSA No. 1006 of 2016

Instant regular second appeal, at the hands of plaintiff, is directed against the judgment of reversal, whereby first appeal filed by the

RSA No.1006 of 2016 (O&M)

defendant-respondent was allowed by the learned Additional District Judge and suit for specific performance filed by the plaintiff-appellant was dismissed.

Brief facts of the case, as recorded by learned trial court in para 1 of its judgment, are as under:-

“Plaintiff’s version is that defendant is widow of Late S. Sewa Singh his brother, who was the owner of 1/10 share in the land measuring 4K-10M fully detailed in the head note. Sewa Singh was the joint owner in possession along with him and others. Sewa Singh had raised construction over his portion. On 31.07.1988 Sewa Singh executed an agreement to sell his share in the suit property in his favour in the presence of witnesses for total sale consideration of Rs.3500/- which was paid at that time of execution of agreement and possession of the same was also delivered to him by S. Sewa Singh at that time. Unfortunately Sewa Singh expired on 04.02.1989. After the death of Sewa Singh, there was a family arrangement and as per that he was put into possession of three Biswas Kachha of the suit property being approximately total area which fell to his share and Sewa Singh out of the suit land. Since then he is in possession of 1/5th share in the suit property and the share of Sewa Singh also forms part of the suit land in his possession. Plaintiff raised construction over the same by spending huge amount and is using the same as his residence. His possession over the suit property is peaceful, without any interference or interruption from any side. When he requested the defendant to execute the sale deed in his favour, she refused. Defendant being only legal heir and successor in interest of late S. Sewa Singh is bound to honour the agreement executed by Sewa Singh in his favour. In the month of May 2002, defendant came to the suit property

RSA No.1006 of 2016 (O&M)

and threatened to dispossess him from the suit property and that she shall sell the suit property after getting entered the mutation in her name to some one else. The defendant along with her henchmen tried to dispossess him from the suit property forcibly and illegally but could not succeed and while going she threatened to dispossess him from the suit property.”

Defendant-respondent was put to notice and she filed her written statement contesting the suit of the plaintiff. After completion of pleadings of the parties, learned trial court framed following issues:-

1. Whether late Sewa Singh executed agreement to sell in favour of plaintiff for a total sale consideration of Rs. 35,000/-OPP
2. Whether plaintiff is entitled for specific performance of agreement dated 31.7.1988 as detailed in the head note of plaint? OPP
3. Whether plaintiff is entitled for permanent injunction as prayed for?OPP
4. Whether present suit is not maintainable?OPD
5. Whether plaintiff has no locus standi to file the present suit? OPD
6. Whether suit is time barred?OPD
7. Whether suit is not properly valued?OPD
8. Relief?

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court decreed the suit of the plaintiff-appellant, vide judgment and

RSA No.1006 of 2016 (O&M)

decree dated 17.1.2013.

Feeling aggrieved, defendant-respondent filed an appeal which came to be allowed by learned first appellate court, vide impugned judgment dated 7.8.2015, setting aside the judgment and decree passed by the learned trial court. Hence this appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that alleged agreement to sell between the plaintiff-appellant, Mewa Singh and his own brother namely late Sh. Sewa Singh took place on 31.7.1988. Sewa Singh, brother of the plaintiff, expired on 4.2.1989. However, plaintiff-appellant kept conveniently silent in this regard for an unreasonably long period of 14 years. He filed a civil suit for specific performance of the abovesaid agreement to sell dated 31.7.1988 on 4.9.2002. Learned trial court miserably failed to record cogent findings on issue No.6. Although it was recorded in para 27 of the judgment passed by the learned trial court that onus qua issue No.6 should have been upon the plaintiff, yet it was illegally observed that once both the parties have led their evidence, question of initial onus pales into insignificance. This finding recorded by learned trial court was patently illegal and the same was rightly set aside by learned first appellate court. Having said that, this Court feels no hesitation to conclude that learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

During the course of hearing, when confronted as to how an inordinate delay of 14 long years was sought to be explained by the plaintiff-appellant, learned counsel for the appellant had no answer and rightly so, it being a matter of record. The argument raised by learned counsel for the

RSA No.1006 of 2016 (O&M)

appellant that provision of Section 16 of the Specific Relief Act, 1963 ('the Act' for short), will not be attracted in the present case, has been found wholly misplaced and not worth acceptance. It is so said, because provision of Section 16 (c) read with explanation (ii) thereto, would certainly be attracted. In view of the pleadings of the parties and the evidence brought on record, it can be safely concluded that appellant, being plaintiff, failed to discharge his onus, as per the provisions contained in Section 16 (c) read with explanation (ii) thereto.

It is pertinent to refer to the relevant provisions of Section 16 (c) read with explanation (ii) thereto and the same read as under:-

“16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

(a) xx xx xx

(b) xx xx xx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) xx xx xx

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

When the abovesaid provisions of law are considered, keeping in view the legislative intent and object sought to be achieved, coupled with the conduct of the appellant-plaintiff, which is also one of the relevant considerations, it becomes crystal clear that appellant had no case either on

RSA No.1006 of 2016 (O&M)

facts or in law as well as in equity. Appellant has not been found to be a bonafide litigant. In fact, appellant wants to grab the property of his brother and that too, after his death. Had the appellant been a bonafide litigant, he would have never waited for a period of 14 long years in approaching the court and for no good reasons.

When the plaintiff filed the suit for specific performance, he failed to comply with the mandatory provisions of law contained in Section 16 (c) read with explanation (ii) thereto, because the appellant did not take appropriate averments that he was, as a matter of fact, ready and willing to perform his part of the contract, throughout this long period of 14 years. In such a situation, learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld, for this reason also.

The impugned judgment and decree passed by learned first appellate court have also been found in consonance with the law laid down by the Hon'ble Supreme Court as well as this Court. Before arriving at a just conclusion, learned first appellate court recorded cogent findings, rightly following the abovesaid provisions of law contained in Section 16 of the Act.

The relevant observations made by learned Additional District Judge, which deserve to be noticed here, read as under:-

“It is clear that the provision is very specific. It lays down a rule limiting enforcement of specific performance of contract In two situations. Firstly, it states that specific performance of contract cannot be enforced In favour of a person who fails to aver and

prove that he has performed his part of the contract as regards essential terms thereof Secondly it also prohibits enforcement. of the .specific performance In a situation where the plaintiff fails to aver and prove that he has been always ready and willing to perform the essential terms of the contract which are' to be performed by him. This provision' also makes it clear that these averments must be made according to true construction of the contract. It has been held to be mandatory in nature. In the, absence of any pleadings made on these lines and proved by the plaintiff, no specific performance of contract can be awarded.

14. In *Raj Kishore (dead) by L.Rs. vs. Prem Singh and others, AIR 2011 SC 382 and Bal Krishna & Anr. vs. Bhagwan Das (dead) by L.Rs. & Ors., reported in AIR 2008 SC 1786*, Hon'ble Apex Court has held that in a suit for specific performance, averment as to readiness and willingness is mandatory. In *Aniglase Yohannan Vs. Ramlatha & ors 2006(1) Apex Court Judgments 15 (SC)*, it has been held by Hon'ble Apex Court that provisions of section 16(C) mandates the plaintiff to aver in plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of contract. It has been further held by Hon'ble Apex Court that basic principle behind the provision of section 16(C) read with Explanation (ii) is that any person

*seeking benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to specific relief. In **Umabai & anr Vs. Nilkanth Dhondiba Chavan 2005 (1) Apex Court Judgments 681 (SC)**, it has been held by Hon'ble Apex Court that a bare averment in plaint or a statement in examination-in-chief is not sufficient and the conduct of the plaintiff must be judged having regard to the entirety of the pleadings as also the evidence on record. In **Swaran Singh (dead) through Lrs Vs. Dalip Kaur and others, 2005 (2) Civil Court Cases 762 (P&H)**, it has been held by Hon'ble Punjab and Haryana High Court that in absence of the pleadings, ready and willingness not to be seen from the surrounding circumstances, and when there is no pleading to this effect then relief of specific performance cannot be granted.*

In view of the provisions of specific relief act and law laid down by Hon'ble Courts, the pleadings and evidence of the respondent/plaintiff is to be evaluated for the purpose of his readiness and willingness. Perusal of the plaint in the present case and evidence led on the file by the respondent/plaintiff Mewa Singh by examining himself as PW 1 shows that the agreement is dated 31.7.1988 and no effort has been made by the respondent/plaintiff nor any willingness has been shown

*to get the sale-deed executed till the death of Sewa Singh on 4.2.1989. Further, perusal of the plaint in the present case and evidence led on the file by the respondent/plaintiff Mewa Singh by examining himself as PWI shows that no effort has been made by the respondent/plaintiff nor any readiness or willingness has been shown to get the sale deed executed from the appellant/defendant from the date of death of Sewa Singh on 4.2.1989 till the filing of the suit. Even the totality of the pleadings and evidence of the respondent I plaintiff does not disclose the readiness and willingness of the respondent-plaintiff at any point of time to get the sale-deed executed regarding the suit property. Even, no notice has been sent by the respondent/plaintiff to the appellant/defendant to execute the sale-deed in his favour. Even, there is no evidence that the respondent/plaintiff ever called the appellant-defendant to be present in the office of sub-registrar for executing and registering the sale-deed in his favour. In **Surjit Kaur Vs. Naurata Singh & Anr., 2000(2) Apex Court Judgments 280 (SC)**, it has been held by Hon'ble Apex Court that the relief of specific performance cannot be granted to a party who has not been ready and willing at all stages to perform the contract.*

In view of the above detailed facts and evidence, the Ld. Lower Court has erred in holding that the ready

and willingness of the plaintiff in the present case is self apparent and the respondent/plaintiff was entitled to specific performance of the agreement.

*Moreover, in the present case, the agreement is alleged to have been executed on 31.7.1988 and the suit for specific performance of the said agreement has been filed on 5.9.2002, i.e. after a period of 14 years. There is no evidence on the record led by the respondent/plaintiff that he has ever asked the appellant-defendant for execution of the sale deed. The pleadings and evidence led by the respondent/plaintiff qua this fact is vague. In para no.11 of the plaint, it has been simply stated by the plaintiff that cause of action arose when the defendant refused to execute the sale-deed in favour of plaintiff and no date has been specified by the plaintiff as to when he had asked the appellant-defendant for execution of the sale-deed and the refusal by her. Under these circumstances also, the respondent/plaintiff was not entitled to specific performance and the Ld. Lower Court has erred in granting the relief of specific performance. On this point, I am fortified with the decision of Hon'ble Apex Court held in **Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and others, 2003 (1) Apex Court Judgments 520 (SC)**, wherein it has been held by Hon'ble Apex Court that where the suit for specific performance was filed after six years of*

agreement to sell and no material to prove that the plaintiff asked execution of sale-deed, the plaintiff is not entitled to discretionary relief of specific performance.”

The view that has been taken by this Court also finds support from the judgment of the Hon’ble Supreme Court in **Saradmani Kandappan Vs. S. Rajalakshmi and others, 2011 (12) SCC 18**. Reiterating the law laid down in **K.S.Vidyanadam and others VS. Vairavan, (1997) 3 SCC 1**, Hon’ble Supreme Court in para 28 of its judgment in Saradamani Kandappan’s case (supra), held as under:-

“28..... :

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was ‘ready and willing’ to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also ‘frown’ upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific

RSA No.1006 of 2016 (O&M)

performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”

As rightly noticed by learned first appellate court, the Hon’ble Supreme Court in **Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and others, 2003 AIR (SC) 1391**, held that suit for specific performance filed after six years of agreement to sell, without any material to prove that plaintiff asked for execution of sale deed, plaintiff was not entitled to the discretionary relief of specific performance.

As noticed in the foregoing paragraphs, appellant-plaintiff miserably failed to explain the delay of inordinate period of 14 long years in filing the suit for specific performance. Learned trial court proceeded on a wholly misconceived approach, while altogether ignoring the delay of 14 long years in filing the suit for specific performance and decreeing the suit of the plaintiff. In such a situation, learned first appellate court was well justified in setting aside judgment and decree passed by learned trial court.

Under the abovesaid circumstances, the impugned judgment and decree have not been found suffering from any patent illegality or perversity, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. No substantial question of law which is sine qua non for entertaining second appeal, has been found involved in the present case and

RSA No.1006 of 2016 (O&M)

the impugned judgment and decree deserve to be upheld, for this reason as well. Reference can be made to the judgment of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

10.1.2017
Ak Sharma

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