

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No. 199 of 2016

Date of decision: 20.4.2017

Karam Singh and another

... Appellants

versus

Joga Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Maharaj Kumar, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J.

1. This is an appeal by two of the eight defendants in a suit filed by respondent no.1 herein (the plaintiff), seeking possession of the suit property by way of specific performance of an agreement of sale dated 25.6.2004, stated to have been executed by the appellant-defendant no.1 and his mother, defendant no.3, namely Jaswant Kaur, (proforma respondent no.2 in the present appeal).

The respondent-plaintiff, Joga Singh (hereinafter referred to as the plaintiff), contended that appellant no.1, Karam Singh, and his mother, Jaswant Kaur (both hereinafter referred to by name only), entered into an agreement of sale with him on 25.6.2004, with respect to 27 bighas and 10 biswas of land comprised in Khewat/Khata no.83/114, Khasra no. 21 min (3bighas-10 biswas), 22(6 bighas-10 biswas), 25(4 bighas-14 biswas), 26(4 bighas-7 biawas), 177(5 bighas-13 biswas), 182(6 bighas-5 biswas) and 183

(6 bighas- 5 biswas), situated at Village Mandiana, Tehsil Rajpura, District Patiala, as described in the jamabandi for the year 1998-99.

Jaswant Kaur was a co-vendor with her son, appellant no.1, Karam Singh, but in the capacity of an attorney of her husband, Bachittar Singh.

The sale consideration was stated to have been settled at the rate of Rs.1,00,000/- per bigha, with Rs.6,00,000/- having been received as earnest money from the plaintiff at the time of the agreement.

It was further contended that the sale deed was to be executed on 30.10.2004 on receipt of the balance sale consideration. However, before the execution of the sale deed, the aforesaid Bachittar Singh, husband of Jaswant Kaur and father of the present appellants Karam Singh and Paramjit Singh (Paramjit Singh being defendant no.2 before the learned trial Court), died, with the present appellants succeeding to his estate and a mutation to that effect being entered in their favour.

2. Thereafter, appellant no.1, Karam Singh, received another Rs.10,00,000/- from the plaintiff and appended his signatures to that effect on the reverse of the agreement of sale, with Rs.9,92,000/- deposited by him in the Punjab and Sind Bank and the remaining Rs.8,000/- retained for domestic expenses.

However, the sale deed could not be executed and registered on 30.10.2004 as Karam Singh and Jaswant Kaur expressed their inability to do so and therefore, the date for execution and registration thereof was extended to 15.11.2004, on which date appellant Karam Singh again allegedly showed his inability to do the needful, on the ground that some

land was to be exchanged with defendants no.4 to 6 (respondents no.3 to 5 herein).

As per the plaintiff, Karam Singh further told him that he and his mother would now execute a sale deed in respect of the land that they would get in exchange from respondents no.3 to 5 herein (wrongly given as defendants no.4 to 7 as defendant no.4 is seemed to be the same person as defendant no.7, Bhupinder Singh son of Paramjit Singh @ Garib Singh). Consequently, the date for execution and registration of the sale deed was stated to have been extended to 15.12.2004.

On that date, plaintiff Joga Singh is stated to have come present in the office of the Sub Registrar, Ghanaur, and got an affidavit attested in the presence of the Sub Registrar to that effect. Appellant Karam Singh is also stated to have come there and got the date for execution of the sale deed further extended to 23.12.2004, as the stamp papers could not be purchased.

On 23.12.2004, the plaintiff further contended that he was ready and willing to get the sale deed executed but Karam Singh failed to turn up in the office of the Sub Registrar and therefore, the plaintiff executed an affidavit to prove his presence in that office, with the affidavit attested by the Sub Registrar on 23.12.2004.

3. Thus, with the sale deed never having been executed, the suit came to be instituted by respondent-plaintiff Joga Singh, on 15.1.2005.

Upon notice issued to them, the defendants appeared and filed their written statements, with defendants no.1 to 3, i.e. the present two appellants and their mother, Jaswant Kaur, having filed a joint written

statement taking preliminary objections on the maintainability of the suit and on merits admitting that an agreement of sale had been entered into on 25.6.2004, for the sale of 27 bighas and 10 biswas of land and that Rs.6,00,000/- had been received by them as earnest money. It was further admitted that the sale deed was to be registered initially on 30.10.2004 upon receipt of the balance sale consideration but after the death of Bachittar Singh, the time was extended upto 15.11.2004 and thereafter to 15.12.2004.

As per the written statement of the appellants and their mother, appellant no.1 remained present on 15.12.2004 at the Court at Rajpura because no stamp papers were available at the office of the Sub Registrar, Ghanaur, but upon coming to know that the plaintiff was present in the office of the Sub Registrar at Ghanaur, he went to the Sub Registrars' office at that place and asked the plaintiff to purchase stamp papers. However, as per the version of the first appellant, the plaintiff, in fact, requested that as he had no money on that date, the time should be extended up till 23.12.2004.

It was further contended in the reply that on the last extended date, the first appellant-defendant came to know that the plaintiff had made an endorsement of payment of Rs.10,00,000/- on the 3rd page of the agreement of sale, upon which he and his mother refused to get the sale deed executed and, in fact, demanded that the aforesaid amount of Rs.10,00,000/- be given to him.

On the aforesaid averments, dismissal of the suit was prayed for.

4. As per the judgment of the learned Civil Judge (Junior

Division), Rajpura, defendants no.4 to 7 filed a separate written statement (with defendant no.7 actually seen to be the same person as defendant no.4, as already noticed, i.e. Bhupinder Singh son of Paramjit Singh @ Garib Singh), in which it was contended that defendants no.1 and 2, i.e. the present appellants, had exchanged Khasra nos.177, 182 and 183 with defendants no.4 to 7 and a mutation to that effect in the revenue record had also been sanctioned. It was further contended that defendants no.4 to 7 are bonafide purchasers and are not bound by the agreement of sale in favour of the plaintiff.

5. Defendant no.8, Man Singh, also filed a separate written statement, taking preliminary objections with regard to maintainability of the suit etc. and further stated that he had also instituted a suit for possession by way of specific performance of an agreement dated 7.5.2004, which was also pending.

This defendant further contended that defendants no.1 and 3, i.e. Karam Singh and Jaswant Kaur, were not competent to enter into an agreement of sale with the plaintiff, because Bachittar Singh, father of appellant-defendant no.1, and husband of defendant no.3, had already sold 29 bighas and 2 biswas out of the total land measuring 61 bighas and 19 biswas, to him. However, as per this defendant, the plaintiff and defendant no.1, in connivance with each other, got prepared forged and fabricated documents only to deprive him of his rights.

Yet further, it was submitted that the total sale consideration for the 29 bighas and 2 biswas of land was Rs.20,95,200/-, of which Rs.5,00,000/- had been received as earnest money by Bachittar Singh.

Consequently, as per defendant no.8, defendants no.1 and 3 were not competent to enter into any agreement qua that land as it had already been agreed to be sold by Bachittar Singh during his life time, to defendant no.8.

6. Upon replications having been filed to the written statements of defendants no.1 to 3 and 4 to 7, the following issues were framed by the learned Civil Judge:-

- “1. Whether the defendants entered into agreement to sell dated 25.6.2004 in favour of plaintiff and received earnest money as alleged? OPP
2. Whether the plaintiff remained ready and willing and is still ready and willing to perform his part of the agreement? OPP
3. Whether the plaintiff is entitled for possession by way of specific performance of agreement? OPP
4. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
- 4A. Whether the plaintiff is entitled for alternative relief of recovery as prayed for? OPP
5. Relief.”

7. The plaintiff examined 5 witnesses, including himself as PW3, the scribe to the agreement, Gian Singh as PW1, the marginal witness thereto, Paramjit Singh as PW2, a handwriting and fingerprint expert, Navdeep Gupta as PW4, the Record Incharge of the Punjab and Sind Bank, Rajpura, Amar Singh as PW5 and one Garib Singh.

The appellants-defendants examined appellant-defendant no.1

Karam Singh as DW1, Baljinder Singh as DW2, Ram Saran as DW3, and Jai Bhagwan, Panchayat Secretary, Village Mandiana, as DW4.

8. Upon considering the pleadings and evidence, the learned Civil Judge in her judgment first narrated the entire sequence of events as given in the respective pleadings and thereafter recorded a finding that other than the payment of Rs.10,00,000/- shown to have been made on 23.12.2004, on the sale agreement (Ex.P2), the agreement itself was not denied by defendants no.1 to 3.

Thereafter, without giving any detailed reasoning, that Court recorded a finding that since there were other entries on the sale deed for extension of the date for execution and registration thereof, eventually the plaintiff was not found to be ready and willing to perform his part of the contract, as he had no ready money to pay to defendants no.1 to 3.

This conclusion is seen to be drawn by the learned Civil Judge essentially on the ground that as per the appellant-defendants, appellant no.1 remained present on 15.12.2004 at the Rajpura Courts complex and thereafter went to Ghanaur, but the plaintiff had no money to purchase the stamp papers and therefore, the date for execution of the sale deed was extended.

9. On the aforesaid reasoning, further holding that specific performance is a discretionary relief and as per Section 16(c) of the Specific Relief Act, 1963, the person seeking specific performance has to prove that he has always been ready and willing to perform his part of the agreement, which the plaintiff had failed to do, he was only entitled to the alternative relief of recovery of Rs.16,00,000/- paid by him.

Hence, a decree to that effect was passed in favour of the plaintiff.

10. The plaintiff filed an appeal against the aforesaid judgment and decree before the learned District Judge, Patiala, with none of the defendants having filed any appeal.

Of course, defendants no.4 to 8 would not have any reason to file any appeal, since possession of the suit land was not decreed in favour of the plaintiff and as regards the alternative relief of payment of Rs.16,00,000/-, naturally the said defendants not being in any way involved in the payment of that amount to the plaintiff, they were not aggrieved of that direction.

However, the present appellants and their mother, i.e. defendants no.1 to 3, also filed no appeal against that decree.

11. The learned Additional District Judge before whom the appeal came up for hearing, after noticing the pleadings, the issues framed and the evidence led before the learned lower Court, first noticed that defendant no.8, Man Singh, had, in fact, been impleaded before the lower Court on an application filed by him under Order 1 Rule 10 CPC, claiming that the suit land had also been agreed to be sold to him by the father of defendants no.1 and 2 (husband of defendant no.3).

However, thereafter Man Singh suffered a statement on 9.11.2010 before the lower Court, that he does not lay any claim to the suit land. Strangely, this fact has not been noticed in the judgment of the learned Civil Judge, though the factual position, as is contained in the judgment of the first appellate Court, was obviously not denied before this Court by

learned counsel for the appellants.

It was also recorded by that Court that defendant no.3 had already died and therefore, defendants no.1 and 2, and 4 to 6, had put in appearance as respondents before that Court, with the present appellants-defendants no.1 and 2, having succeeded to the estate of their father, Bachittar Singh, and their late mother, defendant no.3, Jaswant Kaur.

12. After appraising the entire evidence led before the learned lower Court and considering the judgment of that Court, the learned first appellate Court, first reproduced the last part of the judgment of the learned Civil Judge by which the prayer for specific relief had been declined and an alternative relief was granted, i.e. paragraph 15 of that judgment.

The lower appellate Court then recorded a finding that, as a matter of fact, the trial Court had misdirected itself and had failed to make an effort to understand the actual controversy between the parties and had actually made up its mind to grant a decree of refund of earnest money and on that count, had also framed an additional issue, i.e. issue no.4A, on 31.5.2013 itself (i.e. the date of the judgment of that Court) and had disposed it of merely on the basis of the findings on the said issue.

It was further noticed by the learned first appellate Court that, in fact, the plaintiff had not specifically claimed the relief of refund of earnest money as an alternative relief and therefore, issue no.4A should not have actually been framed in that regard and at best, the following issue should have been framed:-

“In case the plaintiff is not held entitled to the relief of specific performance of the agreement, whether any alternative relief

can be granted to him?”

Before proceeding ahead, it is considered appropriate at this stage to again reproduce issue no.4A, as was framed by the learned trial Court on 31.5.2013:-

“4A. Whether the plaintiff is entitled for alternative relief of recovery as prayed for? OPP”

13. Thereafter, the learned Additional District Judge went on to observe that as per defendants no.1 to 3, their specific plea was that though they were ready and willing to execute the sale deed on 23.12.2004, they did not do so as the plaintiff wanted to deduct Rs.10,00,000/- on the basis of the endorsement dated 16.10.2004 (Ex.P1).

Thus, as per that Court, it showed that, as a matter of fact, the plaintiff was ready and willing to get the sale deed executed in terms of the agreement but wanted to deduct Rs.10,00,000/- on basis of the aforesaid endorsement, to which defendants no.1 to 3 did not agree.

Consequently, that learned Court went on to first determine whether the plaintiff had actually been ready and willing to perform his part of the agreement and had actually paid Rs.10,00,000/- to appellant-defendant no.1 on 16.10.2004, or whether the endorsement to that effect on the instrument of agreement, i.e. Ex.P-1, was a fake/forged entry.

14. The learned lower appellate Court then went on to discuss the fact that the plaintiff had specifically alleged that after the receipt of money from him, defendant no.1 had deposited Rs.9,92,000/- in his bank account and to that effect a 'pay-in-slip' (Ex.PW5/A) was duly exhibited, as was the statement of account of appellant-defendant no.1 (Ex.PW5/B), which

showed that, in fact, the said appellant-defendant had got a new account opened on 16.10.2004, with the aforesaid amount of Rs.9,92,000/- deposited in it.

It was further noticed by the learned first appellate Court that it was not the case of defendant no.1 that some one else had got the said account opened but, in fact, in the written statement itself he had raised a plea that he had deposited the said amount by receiving the same from one Garib Singh under an agreement.

It was further seen that the pay-in-slip (Ex.PW5/A) bears the signatures of plaintiff Joga Singh and yet further, PW1 Gian Singh had proved the writing (Ex.P1), to being that of the person who had written it out as the scribe. PW1 further deposed that after receiving the amount from the plaintiff on 16.10.2004, in fact, appellant-defendant no.1 had executed a receipt to that effect in his favour, which too had been scribed by him, i.e. PW1, with the appellant-defendant, Karam Singh, having appended his signatures on it, in the presence of the scribe as also in the presence of Paramjit Singh, PW2.

Thereafter, it was further noticed that PW2 was the marginal witness on the agreement who had also testified to the same effect.

Yet further, the documents/handwriting expert, PW4 Navdeep Gupta, had also testified to the effect that the receipt bears the signatures of Karam Singh.

On the other hand, appellant-defendant no.1, as per the lower appellate Court, could not substantiate his plea that he had received Rs.10,00,000/- as earnest money from Garib Singh and, in fact, when he

stepped into the witness box, he abandoned the version given in the written statement to that effect and raised a new plea that he had received the said amount from one Palwinder Singh on account of another agreement of sale executed in his favour.

The said Palwinder Singh was, however, not examined and not even the agreement alleged to have been entered into with Palwinder Singh was produced in Court.

15. On the aforesaid reasoning, the testimony of DW3 Ram Saran, to the effect that the writing (Ex.P1) on the reverse side of the agreement of sale, was actually existent when the date of extension was written on 15.12.2004, was disbelieved, holding that the plaintiff had produced overwhelming evidence to the contrary.

Yet further, the fact that the finding of the lower Court that Rs.10,00,000/- had been paid by the plaintiff on 16.10.2004, had not been assailed by defendants no.1 and 2 by filing any appeal or cross-objections, was also held against them, to arrive at the conclusion that, as a matter of fact, the said money had been paid.

16. The learned first appellate Court thereafter went on to discuss the fact that defendants no.1 and 2 had exchanged a part of the suit land with defendants no.4 to 7 and had obtained khasra nos.754/23 (5-18), 24 (6-5) and 27 (6-9) in lieu of the land comprised in khasra nos.177 (5-13), 182 (6-5) and 183 (6-5). It was noticed by that Court that defendants no.1 and 2 (present appellants) had, in fact, obtained excess land in lieu of what they had given to defendants no.4 to 7.

It was further noticed that the plaintiff was ready and willing to

get the land to the extent of what had been agreed to be sold to him, i.e. 27 bighas and 10 biswas, from other land comprised in the larger holding of 37 bighas and 4 biswas, including the land which fell to the share of defendants no.1 and 2 after their exchange with defendants no.4 to 7.

17. An argument raised to the effect that with the extensions of time having been agreed to by defendant no.1 alone under his signatures, such extensions would not be binding on defendant no.2, was also held to be an argument without any substance, as both these defendants had inherited the estate of their father, with no evidence led to the effect that at the time when the extensions were endorsed on 30.10.2004 (till 15.11.2004), on 15.11.2004 (upto 15.12.2004) and thereafter again on 15.12.2004 up till 23.12.2004, defendant no.2 had ever expressed any objection thereto.

Further, with a joint written statement filed by defendants no.1 to 3, even in the said written statement, it had been stated that they were ready to execute the sale deed on 23.12.2004 but did not execute it only because of the writing with regard to payment of Rs.10,00,000/- having been made on 16.10.2004. Hence, it was held that defendant no.2 had also, obviously, agreed to execute the sale deed right up till 23.12.2004, which in any case, was only about 2-1/2 months after the original date fixed for execution and registration of the sale deed, i.e. 30.10.2004.

18. Next finding that the plaintiff had filed the suit promptly thereafter, i.e. within 8 days of 23.12.2004, it was held that it could not be said that he was not ready and willing to perform his part of the agreement, especially as even on 23.12.2004 he had appeared in the Court of the Sub

Registrar and got an affidavit attested to that effect by the Executive Magistrate.

19. Holding as above, the finding of the learned Civil Judge on issue no.2, pertaining to the readiness and willingness of the plaintiff to perform his part of the agreement, was reversed and it was held that there would, consequently, be no reason to decline the relief of specific performance in favour of the plaintiff.

Consequently, the findings of the learned lower Court on issues no.3, 4 and 4A were also reversed and the appeal allowed, with the suit of the plaintiff decreed in his favour, directing the present appellants-defendants no.1 and 2 to execute a sale deed for 27 bighas and 10 biswas of land comprised in Khasra nos. 21 min (3-10), 22 (6-10), 25 (4-14), 26 (4-7), 754/23 (5-18), 24 (6-5), 27 (6-9) situated in Village Mandiana, Tehsil Rajpura, District Patiala, upon payment of the balance sale consideration, within a period of 45 days. However, it was also decreed that if the balance sale consideration was not paid within the aforesaid period, then the suit of the plaintiff would be deemed to have been dismissed.

A direction was also given to appropriately apportion the remaining amount of consideration left to be paid, between defendants no.1 and 2, in view of the fact that defendant no.1 alone had received Rs.10,00,000/- on 16.10.2004.

20. This appeal has, therefore, come to be filed before this Court by defendants no.1 and 2, seeking that the judgment and decree of the learned first appellate Court be reversed and that of the learned Civil Judge, decreeing the suit of the plaintiff only to the extent of the alternative relief,

be restored.

When the appeal had first come up for hearing before this Court, it had been adjourned to enable learned counsel for the appellants to produce a copy of the plaint in the suit stated to have been filed by the other intended vendee of the same suit land, i.e. defendant no.8, Man Singh, who had contended that he had entered into an agreement of sale on 7.5.2004, about 1-1/2 months earlier to the agreement of the sale in question, i.e. 25.6.2004. At that stage, it had not been noticed by this Court that Man Singh had, in fact, withdrawn his claim to the suit land, as was noticed in the judgment of the learned lower appellate Court.

On the next date of hearing, learned counsel for the appellants had submitted that the suit filed by Man Singh had actually been withdrawn but he would still produce a copy of the plaint, as also of the order by which it was shown to be withdrawn.

The needful not having been done for 3 dates in succession thereafter, the matter had been yet again adjourned to enable the learned counsel to address arguments in terms of the earlier order and on other issues.

That not having been done for 3 dates yet thereafter, the appeal was dismissed for non-prosecution on 22.3.2016 but eventually upon an application moved for its restoration, the application was allowed and the arguments were heard on merits and judgment reserved.

During the long period of pendency of the judgment being reserved by this Court, another application had been filed (CRM No.15660-C of 2016), seeking that execution proceedings be stayed till the judgment

was pronounced.

Since the judgment had been reserved without issuing any notice to the respondents, this Court vide its order dated 1.12.2016, had accordingly directed that execution proceedings would remain stayed till the pronouncement of the judgment.

21. Mr. Maharaj Kumar, learned counsel for the appellants, had after essentially arguing on the fact that Rs.10,00,000/- were not proved to have been paid by the respondent-plaintiff after an initial amount of Rs.6,00,000/- as earnest money was paid, addressed argument on the fact that specific performance of a contract is a discretionary relief and with such discretion having been exercised by the learned Civil Judge in favour of the appellants, i.e. the vendors, the learned first appellate Court had wholly erred in reversing the judgment and decree passed by the learned Civil Judge and instead decreeing the suit for specific performance in toto.

In support of the aforesaid argument, he relied upon two judgments of the Supreme Court and one of a coordinate Bench of this Court, i.e. Nirmala Anand vs. Advent Corporation (P) Ltd. and another, AIR 2002 SC 3396, Ramesh Chand (dead) through LRs vs. Asruddin, JT 2015 (10) 653 and a judgment dated 21.4.2016 passed in RSA No.4225 of 2011 (Kapoor Singh vs. Nishan Singh and another).

22. Having considered the aforesaid arguments and having also considered the judgments of the learned Courts below in detail, I find no ground to interfere with the judgment and decree passed by the learned first appellate Court.

23. As regards the argument of Mr. Maharaj Kumar to the effect

that the lower appellate Court came to an erroneous finding that Rs.10,00,000/- were proved to have been paid by the respondent-plaintiff, despite the testimony of DW3, Ram Saran, to the contrary, I find no merit in that argument because other than the fact that PWs 1 and 2 had on the other hand testified to the contrary, and the writing was also proved by PW4, Navdeep Gupta, the fact that the appellants chose not to file any appeal against the decree of the trial Court, directing that Rs.16,00,000/- be refunded to the plaintiff, now even before this Court, the prayer in the grounds of appeal is only to the effect that the judgment and decree of the learned Civil Judge be restored after setting aside that of the learned first appellate Court. Hence, obviously the appellants are not aggrieved of refunding Rs.16,00,000/-, including the Rs.10,00,000/- in question.

Still further, it is seen that it is also recorded by the learned trial Court that the person from whom appellant no.1 claimed to have received Rs.9,92,000/-, i.e. Garib Singh, appeared as PW5 and testified that he never entered into any agreement to purchase the land from the defendants and therefore, did not pay any earnest money to them. Though this witness eventually was never cross-examined, as unfortunately he died, yet with firstly him having categorically stated that he had not paid any earnest money to appellant no.1 and no document having actually been produced by the appellants to controvert the examination-in-chief of Garib Singh in support of their own contention to the contrary, I find no error in the finding of the learned first appellate Court to that effect.

Yet further, with the first appellant having wholly changed his stand from that taken in his written statement, that it was not Garib Singh

but Palwinder Singh who had paid Rs.9,92,000/- on 16.10.2004, obviously, neither of the two contentions can be accepted and therefore, in the light of the evidence led by the plaintiff to the effect that the said amount had actually been paid by him to appellant no.1, with an endorsement to that effect on the reverse of the agreement of sale having been proved, I do not see any ground to even entertain that argument, especially as even before this Court the prayer made actually is that the appellants are willing to return Rs.16,00,000/- in terms of the decree of the learned Civil Judge.

24. Coming therefore, to the argument raised by learned counsel for the appellants as regards specific performance of a contract being a discretionary relief.

That basic principle, of course, is even contained in Section 20 of the Specific Relief Act, 1963, which reads as follows:-

“20. Discretion as to decreeing specific performance.—

(1) The 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; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was

entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

- (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or
- (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1. Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2. The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

- (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has

done substantial acts or suffered losses in consequence of a contract capable of specific performance.

- (4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

It is seen from the aforesaid provision that though discretionary powers have been conferred on the Court seized of a suit of specific performance, the statute itself limits such powers to either specific ones, or further mandating that discretion of the Court (naturally), would not be arbitrary but sound and reasonable, guided by judicial principles.

25. In the present case, it is first to be noticed that the learned Civil Judge based her finding on the non-willingness of the plaintiff to execute the contract on the reasoning that appellant-defendant no.1 had stated that on 15.12.2004 he had first gone to the Courts at Rajpura to obtain stamp papers, with the plaintiff not present there and thereafter when he came to know that the plaintiff was at Ghanaur, he had gone to the Sub Registrars' office there, where the stamp papers were not available. It is possible that on 15.12.2004 the plaintiff was not in possession of the requisite funds to execute the sale deed, though no specific evidence is seen to be led by either side on that issue. However, it is not denied that the date of agreement was extended and even on 15.12.2004 it was extended till 23.12.2004, which fact had been admitted even in the written statement of defendants no.1 to 3, as specifically noticed by the learned lower appellate Court. Thus, firstly without any specific proof that the plaintiff was not in a position to execute the sale deed on 15.12.2004, but in any case, that date having been

admittedly extended to 23.12.2004, the contention to the effect that by that date the appellants-defendants had discovered that an entry had been interpolated on the reverse of the agreement to the effect that Rs.10,00,000/- were paid on 16.10.2004, is not an acceptable contention in view of what has already been discussed on that issue, to the effect that the payment of Rs.9,92,000/- on 16.10.2004 into the bank account of appellant no.1 by the plaintiff was duly proved and further, the appellants have even till now accepted the alternative relief of refund of Rs.16,00,000/-, i.e. Rs.6,00,000/- paid as earnest money and Rs.10,00,000/- shown to have been paid on 16.10.2004.

26. Coming then to the general principle on whether the discretion of this Court should be exercised in favour of defendants no.1 to 3.

Firstly, there is no plea taken of any hardship to the appellants due to performance of the contract admittedly entered into by them with the plaintiff. The entire stress of the argument has been that the plaintiff was not ready and willing to perform his part of the contract and therefore, the discretion exercised by the learned trial Court should be upheld. The readiness and willingness of the plaintiff to perform his part of the contract already having been accepted by this Court for the reasons aforesaid and further seeing that there was no delay in filing the suit even after 23.12.2004, his readiness and willingness cannot be doubted, in the opinion of this Court.

(It is to be noticed that though the suit is shown to be actually instituted on 15.1.2005, i.e. about 22 days after 23.12.2004, the specific finding of the learned lower appellate Court is that it was filed 8 days

thereafter, i.e. obviously by 31.12.2004). Thus the date of actual filing seems to have been earlier to the date that the suit number was allotted.

Further as regards the willingness of the plaintiff, it is further seen that even in the written statement of defendants no.1 to 3, it has not been denied, as found by the learned Courts below, that the sale deed could not be executed on the initial date fixed, i.e. 30.10.2004, because the father of the present appellants, Bachittar Singh, had expired and an issue of exchange of land had also arisen with defendants no.4 to 7/6.

27. In fact, that is the other reason taken in the grounds of appeal due to which the suit for specific performance should not be decreed. It is stated that part of the land originally agreed to be sold to the plaintiff, having been exchanged with defendants no.4 to 7, the agreement cannot be executed, as defendants no.4 to 7/6 were bona fide purchasers of the exchanged land.

In this context, it is to be noticed that any exchange of land by the plaintiff with the said defendants would not affect his right unless he himself was a party to such a contract of exchange, giving up his right to the part of the land exchanged. Thus, whether the agreement for exchange of land with defendants no.4 to 7/6 had been entered into by defendants no.1 to 3 prior to the date of agreement with the plaintiff, or thereafter, the plaintiff cannot be held bound to such an agreement, with him willing to purchase even the exchanged land in lieu of part of the land which he had agreed to purchase originally. The appellants herein therefore cannot be allowed to take advantage of having entered into such an exchange despite their agreement with the plaintiff. In fact, they would be bound to make good

their promise to him by selling him alternative land other than that qua which they had entered into an agreement with him.

In this context, as regards the judgments cited by learned counsel for the appellants, it is seen that in Ramesh Chands' case (supra), the suit land was already subject matter of an agreement with another person prior to the agreement entered into between the plaintiff and defendant in the lis before their Lordships and learned counsel for the appellants herein has tried to draw parity between the two situations. Such parity actually does not exist because it is not a case where a bona fide purchaser of the same land is the plaintiff, or a respondent is contending that if a decree of specific performance is passed for alternative land, it would affect his rights because even such alternative land is subject matter of another agreement.

The only other person who originally raised that objection was defendant no.8, Man Singh, who subsequently suffered a statement to the effect that he has no interest in the suit land. Hence, with no other bona fide purchaser suffering from the purchase of alternative land by the plaintiff, the appellants-defendants cannot be allowed to take advantage of the fact that they had agreed to sell land which they eventually exchanged with some other person. It is to be specifically noticed here that the agreement of sale entered into by the appellants with the plaintiff was signed by appellant no.1 and his mother, the late defendant no.3, Jaswant Kaur, who was acting as an attorney of her husband, Bachittar Singh, who was admittedly alive at the time of the agreement, thereby also binding his legal heirs, including appellant-defendant no.2, Paramjit Singh.

28. As regards the judgment in Nirmala Anands' case (supra), it is seen that the agreement in that case was dated 8.9.1966, with the suit property, i.e. a flat, to be delivered by 30.6.1969 by a builder/promoter. The plaintiff was one of several purchasers of flats in the project which could not be honoured, because the building remained incomplete and in fact, even at the time of hearing before the Supreme Court in the year 2002, i.e. 33 years later, it still remained incomplete. In the meanwhile, all other purchasers had entered into settlement agreements with the defendant Corporation, with only two plaintiffs not willing to settle short of a decree of specific performance. Thus, in that case, even at the time when the matter was before the Bombay High Court, the learned Single Judge had exercised discretion by granting the alternative relief of refund of the original amount and interest thereupon, which was upheld by the Supreme Court, but with a direction that a much higher amount would be paid by the builder. It was specifically noticed by their Lordships that in a situation where buildings or flats etc. are in issue, various factors come into play and therefore, even if the plaintiff was always willing to perform his part of the agreement, it would be inequitable to actually decree a suit for specific performance (The essence of the judgment would seem to be to that effect). In any case, no parity of situation is seen between that lis and this.

29. In fact, I do not see how that situation even vaguely is pari materia with the present one, when even the extended date for completion of the contract for sale of land between two sets of individuals was within 2-1/2 months of the original date fixed (in the present case) and no special situations have been shown due to which the appellants-defendants no.1 and

2 cannot fulfill their part of the contract. The only situation is the exchange of land by them with defendants no.4 to 7/6, which this Court has already held to be not a valid reason for the appellants to take advantage of a situation which they themselves are responsible for.

30. Consequently, finding no merit in this appeal, it is dismissed, but with no order as to costs.

20.04.2017
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No