

RSA No. 5407 of 2016 (O&M)
RSA No. 5406 of 2016 (O&M)

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

RSA No. 5407 of 2016 (O&M)
Date of Decision: 1.8.2017

Harcharan Singh

.....Appellant

Vs.

Gurdev Singh

.....Respondent

RSA No. 5406 of 2016 (O&M)

Harcharan Singh

.....Appellant

Vs.

Baldev Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Parampreet Singh Brar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

These two regular second appeals, at the hands of plaintiff, are directed against the similar and concurrent findings of facts recorded by both the learned courts below, whereby his two separate but identical civil suits for possession by way of specific performance of two agreements to sell of even date, i.e. 19.8.2008, were dismissed by the learned trial court but his first appeals were partly allowed, granting alternative relief of recovery of

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

earnest money along with interest. However, for the facility of reference, facts are being culled out from RSA No. 5407 of 2016.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that defendant-respondent was owner and in possession of land measuring 30 kanals 6 marlas. On 19.8.2008, he entered into an agreement to sell the land with the plaintiff-appellant and executed an agreement to sell dated 19.8.2008 in his favour at the rate of ₹6,10,000/- per acre and received a sum of ₹2,35,000/- as earnest money from him and further agreed to receive ₹3,50,000/- more towards earnest money on 27.8.2008. Accordingly on 28.8.2008, he again received further amount of ₹3,50,000/- and thus received a sum of ₹5,85,000/- as earnest money in total. Sale deed was to be executed and registered on 15.11.2008 and it was agreed that if the stipulated date happened to be holiday, then sale deed was to be executed on the next day. It was further submitted by the plaintiff-appellant that he always remained ready and willing and was still ready and willing to perform his part of contract and had requested the defendant-respondent many a times to execute and register the sale deed in his favour and to hand over its actual and physical possession to him, but the defendant was committing breach of the terms and conditions of agreement.

Plaintiff further alleged that on 15.11.2008, it was Saturday and 16.11.2008 was holiday being Sunday and as such on the next day, i.e. on 17.11.2008, he along with balance sale consideration and other charges came present in the office of Sub-Registrar Sadiq to perform his part of contract, but the defendant-respondent did not turn up and ultimately he got typed and

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

attested an affidavit from the Notary regarding his presence in the office aforesaid and again requested the defendant to perform his part of contract, but he flatly refused to admit his claim and was threatening to further alienate/transfer the suit land to some other person.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether defendant agreed to sell suit land in favour of the plaintiff and executed agreement to sell dated 19.8.2008 and received earnest money?OPP
2. Whether plaintiff remained ready and willing to perform his part of contract?OPP
3. Whether plaintiff is entitled to decree for possession of suit land by specific performance of agreement to sell dated 19.8.2008 or in the alternative for recovery of Rs. 23,10,690/-?OPP
4. Whether the plaintiff is guilty of breach of contract?OPD
5. Relief.

With a view to prove their respective pleaded case, both the parties produced documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff failed to prove his case. Accordingly, suit of the plaintiff for possession by way of specific performance of the agreement to sell dated 19.8.2008 was dismissed by the learned trial court, vide its impugned judgment and decree dated 18.3.2013. In the second case, learned trial court partly decreed the suit of the plaintiff,

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

granting him alternative relief of recovery of earnest money alongwith interest, vide its impugned judgment and decree dated 22.3.2014.

Against both the abovesaid judgments and decrees passed by the learned trial court, it was only plaintiff who filed his two identical first appeals before the learned first appellate court. First appeal filed against Baldev Singh and Gurmail Singh was dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 13.7.2015, upholding the judgment and decree dated 22.3.2014, whereby suit of the plaintiff was partly decreed, granting him alternative relief of recovery of earnest money along with interest.

First appeal of the plaintiff against Gurdev Singh was partly allowed by the learned first appellate court, granting him alternative relief of recovery of earnest money alongwith interest, modifying the judgment and decree dated 18.3.2013 of the learned trial court, whereby suit of the plaintiff was dismissed. Appeal of the plaintiff against Gurdev Singh was decided by the learned first appellate court vide similar but separate impugned judgment and decree dated 13.7.2015. Hence these two regular second appeals at the hands of unsatisfied plaintiff.

Heard learned counsel for the appellant.

So far as two agreements to sell between the parties were concerned, there was hardly any dispute in this regard. Payment of earnest money was also proved by the plaintiff in both the cases. However, plaintiff-appellant failed to prove that he was ready with the balance sale consideration, which was a huge amount of ₹1 crore in the case of Baldev Singh. Similarly, he failed to prove his readiness and willingness with the

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

balance sale consideration in his case against Gurdev Singh. Further, since the learned trial court, in both the cases, came to a definite finding that plaintiff failed to perform his part of contract, for want of balance sale consideration, the learned first appellate court rightly brought him at par in both the cases, by passing the impugned judgments and decrees.

In one case, where his suit was partly decreed by the learned trial court, granting him alternative relief of recovery of earnest money, first appeal of the plaintiff was dismissed by the learned first appellate court. In second case, where suit of the plaintiff was dismissed by the learned trial court, his first appeal was partly allowed by the learned first appellate court, granting him the alternative relief of recovery of earnest money along with interest. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

So far as attempt on behalf of the defendants to forfeit the earnest money paid by the plaintiff was concerned, learned first appellate court rightly came to the conclusion, while placing reliance on the judgment of the Hon'ble Supreme Court in **Satish Batra Vs. Sudhir Rawal, 2013 (1) SCC 345**, that defendants were not entitled to forfeit the amount of earnest money, because it would amount to unfair advantage to the defendants. Thus, rightly striking a balance between the parties, learned first appellate court partly allowed the first appeal of the plaintiff, granting him alternative relief of recovery of earnest money along with interest in the case wherein it was so denied by learned trial court. Since the learned first appellate court

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

rightly followed the law laid down by the Hon'ble Supreme Court in **Satish Batra's case** (supra), no fault can be found with the impugned judgments and decrees passed by the learned first appellate court and the same deserves to be upheld, for this reason also.

So far as grant of primary relief of specific performance is concerned, it goes without saying that it is a discretionary relief. Even if plaintiff has proved the agreements to sell and his readiness as well as willingness to perform his part of contract, court is not always bound to grant the relief of specific performance merely because it is lawful to do so. Jurisdiction to grant a decree of specific performance is discretionary. No doubt, said discretion cannot be exercised in an arbitrary manner.

Further, exceptions specified in Section 20 of the Specific Relief Act, 1963, ('the Act' for short) are only illustrative and not exhaustive. Whenever, after considering peculiar facts and circumstances, court comes to the conclusion that the case falls in one of the exceptions provided under Section 20 of the Act, the court will do well, while denying the relief of specific performance.

In fact, granting of relief of specific performance is founded on the principle of equity, good conscience and fairness. It is not based only on the concepts introduced by the judicial pronouncements but explicitly enacted by the legislature in Section 20 of the Act. Object sought to be achieved by the provisions contained under Section 20 of the Act is to avoid resultant undue hardship to one party, while avoiding undue gain to the other. It is also true that courts must exercise their jurisdiction in consonance with settled principles of law. The court has to strike a balance

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

between the parties as per the peculiar fact situation in a given case.

Conduct of the parties is also one of the relevant considerations for arriving at a judicious conclusion. No straightjacket formula can be laid down which would govern each and every case, irrespective of its different fact situations. Each case will be considered and decided as per its own peculiar facts and circumstances. So far as both the cases in hand are concerned, plaintiff-appellant was rightly not found entitled for the primary relief of specific performance, because it was not lawful to do so. The learned courts below were well within their jurisdiction in granting alternative relief of recovery of earnest money along with interest and the impugned judgments and decrees deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Damacherla Anjaneyulu and another Vs. Damacherla Venkata Sessaiah and another, 1987 AIR (SC) 1641 (SC)

Sardar Singh Vs. Krishna Devi, 1995 AIR (SC) 491 (SC)

A.C. Arulappan Vs. Smt. Ahalya Naik, 2001 (6) SCC 600 (SC)

Nirmala Anand Vs. Advent Corporation (P) Ltd., and another, 2002 (8) SCC 146 (SC)

Ram Dass Vs. Ram Lubhaya, 1998 (2) RCR (civil) 642 (P&H)

Mohinder Singh and others Vs. Guljit Singh, 2000 (2) RCR (civil) 403 (P&H)

Dalbir Singh alias Vir Singh Vs. Dalbir Singh, 2001 (2) RCR (civil) 307 (P&H)

Sukhmander Singh and another Vs. Mandeep Singh and others, 2015 (2) RCR (civil) 781 (P&H)

Before arriving at a judicious conclusion, learned first appellate

RSA No. 5407 of 2016 (O&M)
RSA No. 5406 of 2016 (O&M)

court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant and cogent findings recorded by learned first appellate court in para 10 and 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“Upon hearing the contentions and rival contentions of learned counsel for the appellant-plaintiff and respondent-defendant and going through the record on file, I find that it is admitted case of the parties that an agreement to sell dated 19.8.2008 was entered into between them regarding suit property as fully detailed in the headnote of the plaint of civil suit. It is also admitted that an amount of Rs. 2,35,000/- as earnest money was received at the time of execution of agreement to sell and later on another amount of Rs. 3,50,000/- was received on 28.8.2008 and the date of execution of sale deed was 15.11.2008 and if the same was holiday, then on the next working day. As per the admitted version, next working day as on 17.11.2008. Only dispute between the parties was whether the plaintiff remained ready and willing to perform his part of contract entitling him to specific performance of the agreement to sell.

Learned lower court has rightly observed that the plaintiff has filed to prove on record that he was ready with balance sale consideration. Further, it has been rightly observed by learned lower court that presence of plaintiff-appellant in the office of Sub-Registrar has also become

RSA No. 5407 of 2016 (O&M)

RSA No. 5406 of 2016 (O&M)

doubtful as apart from placing on record affidavit Ex.P3, he has failed to bring on record any other witness, In fact, even Notary who had attested the same was not examined by the plaintiff-appellant. Further, although plaintiff-appellant has examined Bagga Singh and Ranjit Singh regarding his readiness and willingness, but said witnesses in their cross-examination have demolished the case of plaintiff-appellant regarding his readiness and willingness. It has further been rightly observed by learned court that the defendant-respondent has duly marked his presence in the office of Sub Registrar and proved his application Ex.D2 to mark his presence before Sub-Registrar and also examined witnesses to the effect. Hence, it has been rightly observed by learned lower court that the plaintiff-appellant is not entitled for specific performance of the agreement.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

RSA No. 5407 of 2016 (O&M)
RSA No. 5406 of 2016 (O&M)

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 both these appeals are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

1.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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