

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.5912 of 2016 (O&M)
Date of Decision: 06.09.2017**

Hardarshan Singh

... Appellant

Versus

Khushal Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jaideep Verma, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1 This an appeal by the loosing defendant against a judgment of reversal. The suit has been decreed and the defendant called upon to execute sale deed by enforcing the agreement of sale of suit property.

2. On having appropriated the sale consideration of property agreed to be sold since 2004 from the respondent-plaintiff- the prospective vendee, the appellant-defendant cannot seek equity from this Court as it lies heavily against him in his resistance to the execution of sale deed by dishonouring the agreement of sale of the suit property.

3. Learned counsel cites on the three aspects he basis his case, that is, specific relief is discretionary jurisdiction; to permit an amendment of pleadings the relief should be within limitation and lastly the suit was barred under Section 41 (h) of the Specific Relief Act. In his support on the threefold submissions, the decisions of the Supreme Court are pressed into

service in cases reported as G.Jayashree and others v. Bhagwamdas S.Patel and others, 2009 (1) CivCC 785; Mohammedia Coop. Building Society Ltd. v. Lakshmi S.Coop. Building Society Ltd. & Ors., (2008) 7 SCC 310; T.L. Muddukrishana v. Smt. Lalitha Ramchandra Rao, 1997 (2) RCR (Civil) 154 and the decisions of this Court in Arvind Kumar Sachdev and another v. Ajay Chaturvedi and others, 2016 (1) PLR 646; Ansal Buildwell Ltd. v. Mrs. Shalini Chhabra and others, 2012 (2) PLR 637 as also the judgment of the Allahabad High Court rendered in Shyamleela Development Pvt. Ltd. v. Dr. Anil Kumar Singh, 2012 (16) RCR (Civil) 143.

4. Counsel explains from the first two judgments the grant of a decree of specific performance of contract of sale of property is discretionary. Court has to exercise discretion judiciously and not arbitrarily or capriciously. The plaintiff is expected to approach Court with clean hands and his conduct plays an important role in the matter of exercise of discretionary jurisdiction by a court of law.

5. When the plaintiff files a suit for mandatory injunction he does not choose to file a suit for specific performance of contract at the first instance which speaks volume about his conduct. He refers to para.30 of *G.Jayashree* case (Supra). In *Mohammedia Coop. Building Society Ltd. case* (Supra) while dealing with Section 20 of the Specific Relief Act, 1963 the apex court has held that generally Court refuses grant of any relief in favour of person who approaches Court with dirty hands. In *T.L. Muddukrishana* case (Supra) the Supreme Court held that limitation in a suit for specific performance starts running from the date stipulated for performance by the parties. This was a case where a suit for mandatory

injunction was filed on April 21, 1992 which was sought to be amended by way of application under Order 6 Rule 17 CPC after expiry of three years period from the date stipulated in the agreement for sale, the suit was held to be time barred. The cause of action has to be stated in the plaint and it would not change only by filing an application for amendment of pleadings and the prayer clause. Amendment, if any, has to be made within limitation for suit to be maintainable.

6. In *Arvind Kumar Sachdev* case (Supra) the learned Single Bench of this Court held the view in the same strain as in *T.L. Muddukrishana* case that where remedy of specific performance was not availed in the first instance and the application for amendment is moved beyond period of three years prescribed in Article 54 of the Limitation Act the amendment should be disallowed. Performance of contract can be sought only within three years of the stipulated time where time is the essence of contract.

7. In *Ansal Buildwell Ltd.* case (Supra) the learned Single Judge of this Court held that plaint is to be read as a whole including the reliefs claimed by the plaintiff which should clearly depict that plaintiff sought relief of possession of the suit property as well as specific performance of the agreement, besides some other relief, although the form of the suit was cleverly couched in the form of declaration and mandatory injunction, which was done to avoid payment of ad-valorem court fee. However, in essence, the relief's claimed includes the relief of possession as well as of specific performance then it cannot be said that suit is not maintainable in the present form or that the suit to claim relief of specific performance of the agreement

is now barred by limitation. This case read carefully is against the counsel citing the judgment; inasmuch as, to my mind, there were sufficient pleadings to support claim for possession by way of specific performance and the amendment would not change the character of the suit in essence be one of possession and specific relief of performance. In *Shyamleela Development Pvt. Ltd.* case (Supra) decided by the Allahabad High Court this is a case where party sought amendment of plaint which substituted case from mandatory injunction to specific performance where the relief itself sought by amendment was time barred. Then change will not be permitted. Plaint could be rejected under Order 7 Rule 11 CPC as it is barred by Section 41 (h) of the Specific Relief Act. The Allahabad High Court followed the law in *T.L. Muddukrishana* to arrive at the conclusion.

8. Mr. Verma places reliance also on Single Bench in State of Punjab and another v. Phoola Singh and others, 2011 (5) RCR (Civil) 491 to bring out the distinction between plaintiff not claiming breach of any obligation but claiming breach of contract. If plaintiff did not file suit for specific performance of the contract the suit for mandatory injunction was not maintainable. In another Single Bench of this Court in Virender Pal v. Parmod and another, 2012 (4) PLR 170 the plaintiff did not file suit for specific performance of the agreements or recovery of money. The suit for declaration and mandatory injunction, therefore, was not maintainable in view of Section 34 of the Specific Relief Act because further relief of specific performance of the agreements or recovery of money had not been claimed. The suit was liable to be dismissed.

9. Lastly, in Robust Tyre and Rubber Company (P) Ltd. v. State

Bank of India and others, 1987 (2) PLR 394 the plaintiff had filed a suit for mandatory injunction for directions to the defendant to execute lease deed which was compulsorily registrable by affixing Court fee of ₹14/- on the plaint. It was held that a suit for mandatory injunction was not competent. The only relief for specific performance of contract could not be granted. Court fee cannot be avoided by device of disguising actual relief. The Bench granted three months time to the plaintiff to make good the Court fee.

10. On merits of the application for amendment this is what has transpired in this case when the amendment was allowed by the trial court and which order is impugned in the present appeal. In the present case, the plaintiff sought mandatory injunction directing defendants to execute the sale deed as per agreement to sell dated June 21, 2004 after receiving full and final payment of ₹1,74,716/- for the suit property. The plaintiff had called upon the defendant at last to come forward on October 09, 2006 in the office of the Sub Registrar, Ropar to execute the sale deed.

11. The plaintiff remained present and marked his presence on an affidavit on the same day in the Tehsil office but the defendant backed out of the deal by not coming forward to perform his part of the contract. The plaintiff asserted that he and one Malkit Singh son of Karta Ram remained ready and willing to execute sale deed but the defendant refused to oblige. The suit was filed on April 17, 2007.

12. The learned lower Appellate Court held that the Court fee required for relief of specific performance has already been paid by the plaintiff/appellant by deeming the present suit as a suit for specific performance. The relief of specific performance was claimed as per

averments in the plaint and the trial Court fell in error in declining the relief of specific performance of contract. It appeared to the first appellate court that there was an inadvertent omission in the real relief to be claimed though there were sufficient pleadings in the original plaint to support a suit for possession by way of specific performance. I have read the plaint and find that the view of the Court *a quo* is not beside the point and the ingredients of the requirements of a suit for specific performance exist and if the proper court fee is affixed the change is eminently possible in law. After all, it is only the prayer clause which requires an amendment without the necessity of adducing any further evidence than what was led.

13. In this view of the matter, the decisions cited by Mr. Verma are of no avail being distinguishable on facts. These cases lay down binding principles which are of universal application but the ratio of the cases has to be applied to the facts on case to case basis. The facts of the present case do not appear to match any of the fact situations arising in those cases. The plaintiff who is the proposed vendee moved a suit for mandatory injunction and which after judicial scrutiny ultimately by Court order called upon him to affix ad valorem court fee on the plaint as is prescribed for a suit for possession by way of specific performance of agreement to sell. Therefore, the court fee aspect was satisfied. Once the suit had been substantially remodeled to one of possession by way of specific performance and there was no legal requirement for amending the contents of the plaint to bring it in tune with the expanded prayer for which the court fee stood upgraded/affixed then there is nothing wrong in the judgment of the learned lower appellate Court in reversing the decision of the trial Court and

decreeing the suit for specific performance when all other aspects lean in favour of the plaintiff.

14. The entire sale consideration has been paid and has remained in the pocket of the vendor/appellant since the year 2004 and, therefore, conduct of defendant in accepting and retaining sale consideration that is a more overwhelming circumstance than the conduct of the plaintiff in first filing a suit for mandatory injunction and then having to make good the appropriate court fee to maintain the suit to obtain a decree and accordingly, neither any discretion nor equity can be tilted in favour of the vendor-appellant having with open eyes entered and signed a contract of sale of suit property. Once he has accepted the sale consideration in his pocket it is not only his legal obligation but his moral duty to perform the contract which he willingly entered and which has been performed by the vendee in parting with the valuable agreed sale consideration in full and appearing in the tehsil office to execute his part of the contract towards execution of sale deed.

15. On close examination of the plaint, I find that there was sufficient pleading and the narration of relevant facts contained therein sufficient to bring home the relief but for the lacuna left in drafting, if pleaded facts when proved by evidence, even without a formal amendment to the pleadings in the main paragraphs of the plaint, would entitle the plaintiff-respondent to a decree of specific performance. Besides, the opposite party-appellant made no grievance of this when the issues were struck and the disputed facts put to proof by trial. The defendant-appellant new beforehand the case against him and how he had to meet it by

producing evidence in contradiction.

16. No ground for interference is made out against the appellate decree and neither does a question of law, nor a substantial one, arises in this appeal for the consideration or admission on the second appeal side of this Court within the meaning of Section 100 of the CPC or Section 41 of the Punjab Courts Act, 1918.

17. There is no merit in this appeal. It is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

06.09.2017

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Whether speaking/reasoned Yes

Whether reportable No