

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 10.10.2017****RSA No.4700 of 2017 (O&M)**

Prem Krishan

...Appellant

Vs.

Ram Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amar Vivek, Advocate, for the appellant.

RAJIV NARAIN RAINA, J.**CM No.12463-C of 2017**

Exemption application is allowed as prayed for.

CM No.12464-C of 2017

For the reasons stated in the application, the same is allowed.

Delay of 21 days in filing the appeal is condoned.

CM No.12465-C of 2017

For the reasons stated in the application, the same is allowed.

Delay of 360 days in re-filing the appeal is condoned.

RSA No.4700 of 2017

1. The foundation of the suit was an agreement to sell dated 21.10.1988, the vendor proposing to sell plot No.262, Sector 12-A, Panchkula for ₹45,000/- and not ₹40,000/-. The difference of money is the crux of the controversy and is apparent on the face of the agreement creating justifiable doubt on the document as to what parties meant in leaving such a

vital error without steps towards correction by means of correspondence or by novation of contract to remove doubts and free the agreement from fatal errors. The plaintiff is the appellant herein. He has failed in both the Courts below to obtain an order of compelling sale in a suit for possession by way of specific performance. The Court has granted refund of money by partially allowing the suit.

2. The vendor is Ram Singh, who is alleged by plaintiff to have received the entire sale consideration of ₹40,000, a fact witnessed by production of his affidavit dated 24.10.1988. On the strength of Section 20(3) of the Specific Relief Act, 1963, the plaintiff asserts that he had done substantial acts in performing his part of the agreement by paying the price in full and final discharge of sale consideration. The amount is stated to have been paid by demand draft No.214618 dated 17.10.1988 drawn on Corporation Bank, Chandigarh.

3. Ram Singh is said to have executed a General Power of Attorney (GPA) in favour of one Jitender Salhotra, which he cancelled on 11.09.1995. The suit was brought in the year 2007 against Ram Singh, Saroj Aggarwal and the Haryana Urban Development Authority, Panchkula through its Estate Officer.

4. Ram Singh filed his written statement of defence and pleaded that the plaintiff has concealed material facts regarding the suit property. Jitender Salhotra, a relative of the plaintiff, filed a suit against the defendants, which was dismissed by the Civil Court on 04.05.2004. The civil appeal was also dismissed on 07.06.2004. 25% construction over the suit plot had been completed and that he (Ram Singh) had paid installments

of property to the HUDA as per rules. Defendant No.1 - Ram Singh cancelled the GPA of Jitender Salhotra making him no longer his agent.

5. Defendant No.2 was given up in the original suit, whereas defendant No.3 - HUDA filed reply stating that the suit property was reallocated in favour of Ram Singh vide re-allotment letter No.2689 dated 06.02.1985. Possession of residential plot was taken by Ram Singh. Conveyance deed was executed on 03.08.2007 in his favour. Building plan was approved and after raising construction, occupation certificate was issued on 23.12.2009. In the meantime, Ram Singh applied for permission to transfer the suit property in favour of defendant No.2 – Saroj Aggarwal on 26.09.2007. However, on 17.06.2008, Ram Singh requested that permission to transfer applied for by him may be treated as cancelled submitting an affidavit dated 13.06.2008 deposing that Saroj Aggarwal was no longer interested to get the property transferred in her name. The agreement to sell is not maintainable or binding on HUDA as per pleaded defence.

6. Pursuant to the issues framed from the pleadings of the parties, the parties led their evidence in support of their respective stands. Record from the Estate Office, HUDA was produced and need not be gone into in any detail in second appeal since the issues raised at the hearing lie in a narrow compass.

7. In his cross-examination, defendant No.1 – Ram Singh admitted the agreement to sell, but said it was a partial agreement and he had not been paid the balance amount of ₹5000/- and, therefore, he cancelled the GPA. He admitted that he did not serve a legal notice to the vendee regarding payment of ₹5000/-. He denied the suggestion that entry of ₹45,000/- on page No.2 as sale consideration is a typographical mistake and

the sale consideration was in fact ₹40,000/-. In addition to the execution of agreement to sell, Ram Singh admitted the receipt Ex.P17/A. He also admitted GPA Ex.P21/A executed in favour of Jitender Salhotra and so also his signatures on the Will Ex.P20/A to aid conveyance of property. Defendant did not deny in cross-examination his signatures on any of the documents.

8. The controversy before the trial Court was; whether the sale consideration was ₹40,000/- or ₹45,000/-, as asserted and claimed by the plaintiff and defendant No.1 to the contrary. The trial Court discovered that on a same document two different sale considerations have been written. In two paragraphs the sale consideration is recorded as ₹45,000/-, whereas in paragraph No.2 of page No.2 of agreement Ex.P16/A, the amount is ₹40,000/- in full and final payment. For non-payment of ₹5000/-, the GPA was cancelled.

9. The material that was considered against the plaintiff in the trial was the receipts Exs.D4 to D7 and other substantial payments made by defendants towards the allotment price of the property in dispute. The other strong factor against the plaintiff which brooded on the mind of the courts a quo is that defendant still remains in possession of the house since 1988 throughout till the date of suit in 2007 and thereafter till presently. The trial Court reasoned that if the stand of the plaintiff is believed that the sale consideration was ₹40,000/- which was the full and final payment made and not ₹45,000/-, then why was possession not handed over to the plaintiff since he had paid the entire sale consideration.

10. The defendant even raised partial construction to save his property from resumption during the period intervening. HUDA endorsed

the stand of the defendant Ram Singh that he was in possession and occupation certificate was in his favour. The trial Court did well in reasoning that had the entire sale consideration been paid why then would the plaintiff remain silent as long as from 1988 till 2007 to bring the suit to enforce the sale agreement. The plaintiff was a silent spectator of 25% of the construction being carried out over the plot by the defendant Ram Singh years after the agreement and cancellation of power of attorney. He never moved Court during all the material stages of the alleged relationship of vendor and vendee over the years. The silence had not been explained in the plaint. Even after cancellation of GPA, the plaintiff still remained silent and never came forward requesting for execution of the sale deed. Jitender Salhotra merely filed a case challenging the cancellation of GPA.

11. Besides, the stony silence or total absence of any correspondence by the plaintiff addressed to the defendant is indicative of fact that something was seriously amiss in the transaction. Upon refusal of seller to complete the agreement, the purchaser is expected to issue a notice and immediately file a suit for specific performance. The trial Court was right in reasoning that any delay in this regard may indicate the intention of the plaintiff that he was not ready and willing to perform the balance part of the contract whoever small it may look and, therefore, relief of specific performance does not deserve to be given or discretionary jurisdiction exercised in favour of the indolent plaintiff.

12. It was rightly observed that Court was not bound to grant relief merely because it is lawful to do so. Relief sought under Section 20 of the Specific Relief Act is not automatic as the Court is required to examine the totality of the circumstances which are to be assessed by it in a judicious

manner in the light of facts and circumstances of each case before venturing to consider relief for specific performance and delivery of possession of property in a case, the market value of which today is no longer in thousands, but in seven figures. Throughout the period, the plaintiff sat back watching while the defendant paid the installments to HUDA in substantial amounts many times more than then sale consideration of either ₹40,000/- or ₹45,000/-. This shows that the plaintiff was not willing to perform his part of the agreement and there was something deeper down there which the naked eye could not see in the conduct of the plaintiff. The trial Court quoted from the Supreme Court judgment in Parakunnan Veetill Joseph's Son Mathew Vs. Nedumbara Kuruvila's Son, 1987 Supp. SCC 340 that: *'the motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.'*

13. While dismissing the suit for specific performance by judgment and decree dated 02.05.2014, the trial Court ordered refund of ₹40,000/- and a further sum of ₹27,248/- paid by the plaintiff towards extension fee (Ex.P30) to HUDA. This amount was paid by Jitender Salhotra, GPA of plaintiff on the account of the plaintiff. Accordingly defendant No.1 - Ram Singh received undue enrichment from the plaintiff and he is liable to refund the amount from the date of filing of the suit till realization, held the trial court.

14. Plaintiff's appeal to the Court of the learned Additional District Judge, Panchkula has failed by recording an elaborate judgment traversing the entire evidence and returning appropriate findings on the issues at stake. The lower Appellate Court carefully read Clause 4 of the agreement pressed

by the plaintiff in defence in appeal that he had become absolute owner of the plot and Ram Singh, respondent No.1 in first appeal, had no right to deny the rights of the plaintiff. Clause 4 recited that the seller/transferor had delivered actual and physical possession of the plot to the purchaser/transferee and also handed over all the papers and documents concerning the plot and the purchaser has thus become absolute owner of the plot and Ram Singh only a *benami* owner of the said plot till the ownership of the same is transferred in the name of the purchaser/transferee.

15. The lower Appellate Court accepted the stand of Ram Singh that the present suit was hit by Order 2 Rule 2 CPC. To reach this conclusion, the lower Appellate Court read the plaint in the earlier suit vide Ex.P8. Jitender Salhotra had instituted that suit against Ram Singh claiming himself to be GPA of plaintiff Prem Krishan. Plaintiff did not dispute the GPA Ex.P21/A executed by him in favour of Jitender Salhotra. Therefore, the lower Appellate Court was right in reasoning that the earlier suit was instituted by Jitender Salhotra, as attorney of plaintiff Prem Krishan and acts of attorney bind the principal. When the earlier suit was instituted by the plaintiff through Jitender Salhotra then in that suit plaintiff should have sought the relief of specific performance of the contract, but the plaintiff himself omitted to claim the relief of specific performance of the impugned agreement to sell and, therefore, the present suit is also hit by Order 2 Rule 2 CPC.

16. I have read the plaint Ex.P8 in earlier suit between Jitender Salhotra and Ram Singh. In the first paragraph itself, the averment is that Ram Singh entered into an agreement to sell with Prem Krishan (the present appellant) for sale of Plot No.262, Sector 12-A, Panchkula measuring 10

Marlas. He was obviously acting for Prem Krishan in challenge to the cancellation of GPA by the defendant owner vide deed dated 11.09.1995. That suit was filed in the year 2001. Hence, I have every reason to agree with the findings recorded by both the Courts below in all their material reasoning.

17. At this stage of the arguments, reliance is placed by counsel on the decision of the Supreme Court in Jayakantham & others Vs. Abaykumar, (2017) 5 SCC 178 to contend, firstly, that mere escalation of land prices would not be a justification to refuse the relief of specific performance; and, secondly, that since the defendant has unjustly enriched himself, as held by the trial Court, then in the alternative he should be justly compensated and not by mere refund of ₹40,000/- + ₹26,000/- with interest by imposing damages and penalty on the pattern in *Jayakantham* case.

18. I have considered this argument and find from the reading of *Jayakantham* case (supra) that the facts therein are entirely different from those obtaining in the present case. There the father of respondent, who entered into the transaction of agreement to sell, carried on money lending business, while the suggestion was not opposed, but that by itself would not disable the respondent from seeking specific performance. Moreover, in *Jayakantham's* case party voluntarily offered to pay a sum of ₹10 lakhs as against ₹60,000/- earnest money paid in June, 1999, which the Supreme Court, to serve the ends of justice, directed an amount of ₹15 lakhs to be paid in lieu of decree of specific performance and forcible execution of sale deed.

19. The tardy conduct of the appellant in this case would not justify measures such as handed down in *Jayakantham* case. The

plaintiff/appellant sat silently and let time pass by perhaps in the hope of a bonanza in the event of success of the suit. Granting any relief of the kind prayed for by the learned counsel on behalf of the plaintiff-appellant would amount to a undeserved windfall and the Court can always, in a case of discretionary relief, consider steep escalation of property prices in Panchkula from 1988 to 2017, rising exponentially of which judicial notice can always be taken in moulding the relief, and which is sufficient to dissuade a reward of specific performance by transfer of property in dispute.

20. In view thereof, I do not find any merit in the instant regular second appeal or a case justifying upsetting the concurrent findings, which appeal is ordered to stand dismissed in *limine* with no question of law arising for consideration.

10.10.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>