

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

**RSA No.511 of 2017 (O&M)
Date of decision: 30.03.2017**

Rajender Singh (deceased) through LRs

... Appellant

Vs.

Bhola Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashwani Bakshi, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of unsuccessful plaintiff, is directed against the impugned judgment and decree dated 02.09.2016, whereby the learned Additional District Judge dismissed his appeal, upholding the impugned judgment and decree dated 30.01.2013 of the learned trial Court, partly decreeing the suit for possession by way of specific performance of agreement to sell, granting alternative relief of recovery of earnest money along with interest.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that the plaintiff filed the suit for possession by way of specific performance of agreement to sell dated 14.06.2005 against the defendants on the ground that Daulat Singh son of Gurmukh Singh was the owner of land measuring 8 kanals i.e. 160/3204 share of total land measuring

160 Kanal 4 Marlas comprised in Khewat No.67 situated at Village Ladhuwas, Tehsil Ratia, District Fatehabad. Daulat Singh, the predecessor-in-interest of the defendants entered into an agreement dated 14.06.2005 to sell the land measuring 8 Kanal with the plaintiff for a consideration of Rs.60,000/- and received Rs.46,500/- as earnest money in the presence of witnesses, whereas the sale deed was to be executed on 15.06.2006. As per the terms and conditions, the vendor was bound to execute the sale deed and get it registered by the date fixed, in favour of the vendee or any other person of his choice on receiving the balance sale consideration as well as getting the expenses of stamps and registration fee etc. incurred by the purchaser. In case the vendor failed to perform his part of contract, the vendee was at liberty to get the sale deed executed and registered through Court at the expenses of the vendor, whereas if the vendee failed to perform his part of contract in that eventuality, the earnest money would be forfeited in favour of the vendor. It was further submitted that on 15.06.2006, the plaintiff along with balance sale consideration and expenses of stamp etc. was present in the office of Sub Registrar, Ratia to get the sale deed executed and waited there for Daulat Singh throughout the day but he did not turn up. At this, he got his presence marked by way of executing an affidavit and getting it attested from the Executive Magistrate-cum-Sub Registrar, Ratia. Besides, the plaintiff approached several time to said Daulat Singh for execution of the sale deed, but he lingered on the matter on one pretext or the other. After that Daulat Singh, the predecessor-in-interest of the defendants was expired and plaintiff requested his legal heirs to get the sale deed executed in his favour. It was further averred that when the defendants failed to get the sale deed executed in his favour, then he sent a legal notice dated 01.06.2009

through his Advocate to the defendants to get the sale deed executed on 10.06.2009. On 10.06.2009, the plaintiff waited for the defendants in the office of Sub Registrar, Ratia along with balance sale consideration and expenses of stamps etc., but the defendants did not turn up and thereafter, the plaintiff got his presence marked by way of executing an affidavit and getting it attested from the Executive Magistrate-cum-Sub Registrar, Ratia. He was always and still ready to get the sale deed executed, but the defendants in utter violation of the terms and conditions of the agreement failed to get the sale deed executed in his favour. The defendants threatened the plaintiff to alienate/transfer the suit property in favour of some other person. The plaintiff requested the defendants several times to get the sale deed executed and registered but all in vain. In case, the Court reached to the conclusion that the plaintiff was not entitled for main relief of possession by way of specific performance, in that eventuality, the suit be treated for recovery of Rs.46,500/- as earnest money already paid and Rs.13,500/- as damages-cum-compensation for breach of contract by the defendants i.e. total Rs.60,000/- along with interest @ 18% per annum.

Having been served in the suit, defendants put appearance and filed their 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 the predecessor-in-interest of defendants namely Daulat Singh on dated 14.06.2005 entered into an agreement of sale of the disputed land with the plaintiff for a sale consideration of ₹60,000/- and received a sum of ₹46,500/- as of earnest money from the plaintiff on that date in lieu

thereof? OPP.

2. Whether plaintiff was and is still ready and willing to perform his part of contract? OPP.
3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP.
4. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.
5. Whether the suit is not maintainable? OPD.
6. Relief.

In order to prove their respective pleaded cases, both the parties produced their 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 the plaintiff was not entitled for a decree for specific performance by way of agreement to sell, but he was entitled only for the alternative relief to recover the amount of earnest money along with interest. Accordingly, suit of the plaintiff was partly decreed, vide impugned judgment and decree dated 30.01.2013. Feeling aggrieved, plaintiff filed his first appeal but the same also came to be dismissed by the learned first appellate Court, vide impugned judgment and decree dated 02.09.2016. Hence this regular second appeal at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that agreement to sell dated 14.06.2005 Ex.P1 was entered into between the parties. As per this agreement to sell, defendants allegedly agreed to sell their land measuring 08 kanals to the plaintiff for an amount of Rs.60,000/-. The land was situated in

Village Ladhuwas, Tehsil Ratia, District Fatehabad. Alleged target date was fixed as 15.06.2006 i.e. after one year. It is also not in dispute that suit was filed by the plaintiff, just one or two days before expiry of period of limitation from the target date. Suit was filed on 13.06.2009.

When confronted and asked to explain these two basic facts about the totally unrealistic sale consideration of Rs.60,000/- for one acre and filing the suit two days before expiry of period of limitation, learned counsel for the appellant had no answer and rightly so, it being a matter of record. These two basic uncontroverted facts go a long way to show that the vendors-defendants never intended to sell this much land just for Rs.60,000/-. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

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

1. ***S. Venkatappa Vs. Narayanappa, 2001 (4) SCC 705 (SC).***
2. ***Veluyudhan Sathyadas Vs. Govindan Dakshyani, 2003 (1) RCR (Civil) 28 (SC).***
3. ***Most. Etwari Devi and others Vs. Most. Parvati Devi, 2006 (2) SCC 327 (SC).***
4. ***State of Madhya Pradesh Vs. Nomi Singh and another, 2015 (4) RCR (Civil) 594 (SC).***
5. ***K. Prakash Vs. B.R. Sampath Kumar, 2015 (1) SCC 597 (SC).***
6. ***Sujan Kaur Vs. Chand Singh, 2003 (3) RCR (Civil) 660 (P&H).***
7. ***Sant Ram Vs. Brij Mohan Kaura and another, 2006 (2) RCR***

(Civil) 769 (P&H).

Coming to the judgment relied upon by learned counsel for the appellant in **Motilal Jain Vs. Ramdasi Devi, 2000 (3) RCR (Civil) 545**, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgment, it has not been found of any help to the appellant, being clearly distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Before arriving at a judicious conclusion, the learned first appellate Court rightly re-considered and appreciated true facts of the case as well as evidence brought on record, in correct perspective. The cogent findings recorded by learned Additional District Judge in para 17 of his impugned judgment, which deserve to be noticed here, read as under: -

“Now coming on the point of giving relief of specific performance to the appellant/plaintiff. Admittedly, it is a discretionary relief and court may decline the same while considering the circumstances of the case, conduct of the parties and also giving thoughtful consideration that if the decree of specific performance is allowed, whether it will give any fair advantage to the plaintiff and involve

hardship on the defendant which he could not foresee. In the case in hand, admittedly, the vendor Daulat Singh expired in the year 2007 and agreement Ex.P1 was written in the year 2005 and the date fixed for registration of sale deed was 15.6.2006 and when in the year 2006, sale deed was not registered, a prompt legal notice was not served upon the defendant calling him to explain that why a suit for specific performance should not be filed for enforcement of the agreement to sell or calling upon him to get the sale deed executed as per his promise. In the present case, there is evidence of the plaintiff that when the vendor Daulat Singh did not appear for execution of sale deed, then plaintiff went to Daulat Singh and also got a panchayat convened that was presided over by Mahender Singh Sarpanch and even the son of Mahender Singh namely, Satpal was present at the time of panchayat. Admittedly, the vendor and vendee belonged to the same village. In this scenario, the Sarpanch was the best witness for the plaintiff who could have come in the court to explain the conduct of the plaintiff, but he was not examined by the plaintiff, for the reasons best known to him. The present suit has been filed against the LR's, though there is no bar for filing the suit against LR's. But still, this was the ground which compelled the learned lower Court not to grant decree for specific performance and also the consideration amount mentioned in the agreement to sell was even less than the collector rate. Admittedly, the hike in the prices of land is no ground to disallow the relief of specific performance, but the fact

*that when less amount was mentioned in the agreement for 8 kanals land is certainly going to cause hardship to the children of the deceased who would have never thought that such a situation would come before them in future. (See:- **Veluyudhan Sathyadas Vs. Govindan Dakshyani's** case (Supra) wherein it was held by Hon'ble Apex Court that:-*

“Mere establishment of fact that agreement for sale was entered into is not sufficient to grant decree for specific performance”.”

It is the settled proposition of law that proof of agreement to sell itself will not be sufficient to grant a decree for possession by way of specific performance. It is also true that even if the agreement to sell is duly established and proved on record, it would never mean that a decree of possession by way of specific performance of agreement to sell must follow automatically. It is so said because as and when a peculiar fact situation of a given case indicates towards the exceptions provided by the legislature itself in Section 20 of the Specific Relief Act, 1963 ('the Act' for short), the Court would do well, while declining the relief of specific performance and it would be well justified to grant alternative relief of recovery of earnest money along with interest.

In the case in hand, there were more than one important factors indicating towards the exceptions provided in Section 20 of the Act, including unrealistic amount of sale consideration and unduly long period consumed by the plaintiff in filing the suit. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees

and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. Learned counsel for the appellant also could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in either of the impugned judgments, the same deserve to be upheld. The present regular second appeal having been wholly misconceived, bereft of merit and without any substance, must fail. No ground 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

30.03.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No