

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL No. 633 of 2003

1. Ramlal S/o Agyandas Satnami, aged about 70 years, R/o Village Barchha, Post – Sildaha, Tahsil Mungeli, District Bilaspur (C.G.)
---- **Appellant / Defendant No. 1**

Versus

1. Trilochan S/o Peela Das, aged about 50 years, R/o Village Barchha, Tahsil Mungelki, District Bilaspur (C.G.).....[Plaintiff]
2. Sana @ Fagani Bai, W/o Komal, R/o Village – Pendri (Tikait). Tahsil Mungeli District Bilaspur (C.G.)
3. Nageshwari W/o Manrakhan, aged about 50 years, R/o Village Sodi (Nijami), Tahsil Mungeli, District Bilaspur (C.G.)
4. Chaitibai W/o Mansharam, R/o Village Padiyaen, Tahsil Mungeli, District Bilaspur (C.G.)
5. State of Chhattisgarh, through Collector, Bilaspur (C.G.)
---- **Respondents / Defendants**

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondent No. 1	:	None, though served.
For Respondent No. 5	:	Shri Arun Sao, Dy. A . G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/10/18

1. The substantial question of law involved, formulated and to be answered by this Court in this defendant No. 1's second appeal is as under :-

“Whether the plaintiff's suit for permanent injunction in relation to the lands possessed under the agreement to sell

was not maintainable in view of the provisions of Section 41(h) of the Specific Relief Act, 1963 ?”

2. The imperative facts required for determination of above—stated substantial question of law are as under :-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court]

(2.1) Plaintiff Trilochan filed a bare suit for permanent injunction stating *inter-alia* that the original defendant No. 2 Bakshi has entered into agreement to sell the suit land bearing Khasra No. 304, area 1.04 acre and Khasra Nos. 478/2 and 481, area 0.10 acre of land and house situated therein on 25.03.1988 for cash consideration of Rs.12,000/- and obtained Rs.4,000/- and delivered the peaceful possession of the land / house to the plaintiff but defendant No. 1 got his name registered in the suit land / suit house therefore, defendant No. 1 be restrained by way of permanent injunction which was opposed by defendants by filing joint written statement. During the pendency of the suit, defendant No. 2 died and his LRs were substituted on record (and they have contested the suit on merits).

(2.2) The trial Court, after appreciating the oral and documentary evidence on record, held that though plaintiff has not filed suit for specific performance of contract / agreement (Ex. P/2) but he is entitled for permanent injunction under Section 38 of the Specific Relief Act, 1963

(hereinafter referred to as 'the Act of 1963') and restrained the appellant / defendant No. 1 from interfering with the peaceful possession of the plaintiff. The appeal preferred by the appellant / defendant No. 1 was dismissed by the First Appellate Court affirming the judgment and decree of the trial Court directing the plaintiff to file a suit for specific performance of contract expeditiously.

3. Questioning the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant / defendant No. 1 in which substantial question of law has been framed and set out in the opening paragraph of the judgment.

4. Mr. Sanjay Patel, learned counsel appearing for the appellant / defendant No. 1 submits that remedy of plaintiff was to file suit for specific performance of the agreement dated 25.03.1988 under Section 19 of the Act of 1963 and as such, the bare suit for permanent injunction was barred in view of Section 41(h) of the Act of 1963 and therefore, both the Courts below are absolutely unjustified in granting permanent injunction in favour of the plaintiff ignoring the fact that instant suit is barred under Section 41(h) of the Act of 1963.

5. None appeared for the plaintiff / respondent No. 1 though duly served.

6. Mr. Arun Sao, learned Deputy Advocate General appears for the

State, which is a formal party.

7. I have heard learned counsel for the appellant / defendant No. 1, considered his submissions and went through the records with utmost circumspection.

8. It is the case of the plaintiff that he has entered into agreement to sell with defendant No. 2 for purchase of suit land / suit house vide agreement dated 25.03.1988 (Ex. P/2) in which defendant No. 1 is interfering with his peaceful possession and therefore, defendant No. 1 be restrained by granting permanent injunction against him under Section 38 of the Act of 1963.

9. The question for consideration would be whether the plaintiff is entitled only for injunction under Section 38 of the Act in view of Section 41(h) of the Act of 1963.

10. In order to consider the plea raised at the bar, it would be appropriate to notice Sections 38 and 41(h) of the Specific Relief Act, 1963 which state as under :-

“38. Perpetual injunctions when granted. - (1)

Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract,

the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the court may grant a perpetual injunction in the following cases, namely :-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

41. Injunction when refused. - An injunction cannot be granted -

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

- (d) to restrain any person from instituting or prosecuting any proceeding in criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (I) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.”

11. A careful perusal of the aforesaid provisions would show that perpetual injunction under Section 38 of the Act of 1963 cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceeding. As such, Section 38 of the Act has to be read with Section 41(h) of the Act of 1963 and both the provisions have to be read together. The purpose of this clause is to prevent multiplicity of proceedings. The word 'efficacious' means which would put the plaintiff

in the same position in which he would have been if he had not asked for a relief of injunction. It refers to the relief being capable of obtaining by another usual mode of proceedings able to produce the same result intended by the plaintiff; and based on the same set of facts and allegations as constitute the foundation of a suit for injunctions. The usual mode of proceeding where there is an agreement capable of being specifically enforced is obviously in a suit for specific performance of contract under Section 19 of the Act of 1963.

12. Wayback, in the matter of **M/s. Jawahar Theatres Private Ltd. v. Smt. Kasturi Bai and Another**¹, the Madhya Pradesh High Court has clearly held that the Court would normally refuse to grant injunction in case where plaintiff is in a position to claim specific performance of contract and observed as under :-

“8. There is another aspect which persuades me to adopt this course. Section 56(f) of the Specific Relief Act, 1977 lays down that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. However, Section 57 of the Specific Relief Act, which is as follows is an exception to Section 56 of the Specific Relief Act :

“Notwithstanding Section 56, clause(f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the

1 AIR 1961 MADHYA PRADESH 102

circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement :

Provided that the applicant has not failed to perform the contract so far as it is binding on him.” Therefore, unless a plaintiff brings his claim within the ambit of Section 57 of the Specific Relief Act, the court would ordinarily refuse to grant a mere negative injunction in cases where a plaintiff is in a position to claim a mandatory injunction or the specific performance of the contract. If the Court were to permit that, it might result in multiplicity of suits and also might amount to abuse of the process of the Court, if the other side were prevented from raising legal pleas, which would ordinarily be available to it.

It is true that where a party may not be able to claim a specific performance of the contract of lease, or where a party is not in a position to claim a mandatory injunction, such as cases, where it is a matter of personal skill or personal service, the Court might grant mere negative injunction. But in other cases the Court should be cautious about granting mere negative injunction in cases where a plaintiff, being able to claim positive injunction, or being able to claim specific performance, avoid to do the same and wants to reserve it for some later occasion. I do not mean to say that in no case should the Court grant such liberty to reserve for a later occasion. But the discretion has to be exercised judicially and if it results in depriving the other side of some of its legal pleas, the Court

would not be inclined to exercise its discretion in favour of the plaintiff.

10. If the plaintiff is also required to sue for mandatory injunction by way of claiming specific performance of the contract of lease in his favour, it is clear, that the trial Court, where the suit is pending, would not have jurisdiction to try the suit. As such, the order of the trial Judge ordering the plaint to be returned for presentation to proper Court would be justifiable. However, that direction was not given in the order, which is impugned before me.”

13. Likewise, the Supreme Court in the matter of **The Municipal Corporation of Delhi v. Suresh Chandra Jaipuria and Another**², has held that Section 41(h) of the Act lays down that injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceeding and held in para-10 as under :-

“Further, section 41(h) of Specific Relief Act which lays down that an injunction, which is a discretionary equitable relief cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding except in cases of breach of trust was also relevant on this point. Thus the remedy under Section 169 of the Delhi Municipal Corporation Act 1957 was available to the plaintiff. This consideration had a bearing upon the question whether a prima facie case existed for the grant of an interim injunction.”

2 AIR 1976 SC 2621

14. Likewise, in the case of **Satish Bahadur v. Hans Raj and others**³, in the identical fact situation, Punjab and Haryana High Court has held that since plaintiff was entitled to equally efficacious relief of specific performance of contract by filing suit, the bare suit for permanent injunction could not proceed and held as under :-

“Since the plaintiffs are entitled to another equally efficacious relief, the present suit for permanent injunction cannot proceed, because an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings. In the present suit the Court is not concerned with the limitation of three years for filing the suit for specific performance of the contract. The sole question to be decided is whether the present suit for permanent injunction can continue when an equally efficacious relief has become available to the plaintiffs during the pendency of the suit. It cannot be disputed that the subsequent events after the institution of the suit can always be taken into consideration while deciding the matter in controversy. Reference in this respect can be made to *Pasupuleti Venkateswarlu's case*⁴.

15. Reverting to the facts of the present case in the light of the principles of law laid down by the Supreme Court and the High Courts in above quoted judgments and keeping in view Section 38 read with Section 41(h) of the Specific Relief Act, 1963, the plaintiff filed a bare suit

3 AIR 1980 PUNJAB AND HARYANA 351

4 AIR 1975 SC 1049

for permanent injunction on the basis of agreement to sell (Ex. P/2), in which trial Court granted injunction in favour of the plaintiff which was erroneously upheld by first Appellate Court ignoring and overlooking the statutory provisions contained in Section 41(h) of the Act which provides that when equally efficacious relief can be granted by another mode of proceeding, permanent injunction cannot be granted. Obviously, in the instant case, in the suit for specific performance of contract under Section 19 of the Act, necessary relief of specific performance of contract can be obtained through such suit and in this view of the matter, in the instant suit for bare perpetual injunction, simpliciter both the Courts below have committed gross illegality in granting permanent injunction to the plaintiff by decreeing the suit, which was clearly barred by Section 41(h) of the Specific Relief Act, 1963.

16. As a fall out and consequence of the aforesaid discussion, the judgment and decree passed by the trial Court and as affirmed by the First Appellate Court is hereby set aside and the plaintiff's suit for permanent injunction stands dismissed. Accordingly, the second appeal filed by appellant / defendant No. 1 is allowed leaving the parties to bare their own cost(s).

17. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB : Hon'ble Shri Justice Sanjay K. Agrawal)

SECOND APPEAL No. 633 of 2003

Appellant

Ramlal

Versus

Respondents

Trilochan & Others

(Head-note)

(English)

Section 41(h) of the Specific Relief Act, 1963 bars grant of permanent injunction under Section 38 of the Act, when equally efficacious relief can be obtained in another mode of proceeding.

(हिन्दी)

विर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 41 (h), अधिनियम की धारा 38 के अंतर्गत शाश्वत व्यादेश के अनुदान का वर्जन करती है जब कार्यवाही की अन्य रीति से समान तौर पर प्रभावकारी अनुतोष हासिल किया जा सकता है ।