

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.659 of 1992 (O&M)

Date of Decision:06.03.2018

Madan Lal

...Appellant

Versus

Rupa Ram

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Harkesh Manuja, Advocate for the appellant.
Mr.R.S.Bains, Advocate for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the judgment and decree passed by learned first appellate court reversing the discretion exercised by the learned trial Court under Section 20 of the Specific Relief Act, 1963.

Following substantial question of law arises in the present case:-

“Whether discretion exercised by the learned trial Court under Section 20 of the Specific Relief Act, 1963 can be interfered with by the learned First Appellate Court unless the Court finds that the exercise of discretion was arbitrary or not based upon sound and reasonable judicial principles?”

Facts

Undisputed facts are that the defendant-appellant was owner of the agricultural land situated in a village. He entered into an agreement to sell with Iqbal Singh and Rupa Ram (plaintiff in the present case) on 08.01.1983, 9/10th share of total land measuring 41 bighas and 0 biswas was agreed to be sold at the rate of Rs.9,000/- per acre. Iqbal Singh contributed Rs.3,000/- as

earnest money whereas Rupa Ram contributed Rs.2,000/- as earnest money. As per agreement to sell, sale deed with respect to half share of the land was agreed to be sold was to be executed on 30.06.1983 whereas remaining half share was to be executed on 31.12.1983. It is not in dispute that Iqbal Singh in the meantime died and the defendant-appellant executed the sale deeds with respect to the share of Iqbal Singh on 21.06.1983 and 16.01.1984. However, with respect to Rupa Ram, the plaintiff, a new agreement to sell was executed on 16.01.1984 with respect to land measuring 18 bighas and 9 biswas at the rate of Rs.9,000/- per acre as earlier agreed. It is specifically recorded in the agreement dated 16.01.1984 that earnest money paid under the previous agreement to sell dated 8.1.1983 by Rupa Ram stands forfeited. A new agreement is being executed only as a goodwill gesture due to the pressure exerted by the respectables. The target date for execution and registration of sale deed has been fixed as 30.06.1984 and in no case it will be extended. It was further provided that Rupa Ram cannot get the sale deed executed in the name of anyone else except himself or his sons.

The facts which are in dispute are that the defendant-appellant asserts on 30.06.1984 that Rupa Ram again had no money to get the sale deed executed. Whereas it is the case of Rupa Ram that he had money and he had visited the office of the Sub Registrar along with the balance sale consideration and got his affidavit attested from an Oath Commissioner. Rupa Ram after the target date i.e. 30.06.1984 filed a suit for permanent injunction on 28.08.1984 praying for restraining the defendant-appellant from alienating the property. Suit was withdrawn on 04.01.1985 and the present suit came to be filed on 05.01.1985. It is further the case of Rupa Ram-plaintiff/respondent that he got a notice issued to the defendant-appellant dated 26.07.1985 calling upon him to

come and execute the sale deed. It was alleged in the notice that Madan Lal has become dishonest due to increase in the price of the land.

Now, the stage is set for examining the following question of law.

“Whether discretion exercised by the learned trial Court under Section 20 of the Specific Relief Act, 1963 can be interfered with by the learned First Appellate Court unless the Court finds that the exercise of discretion was arbitrary or not based upon sound and reasonable judicial principles?”

Learned First Appellate Court has chosen to reverse the finding the discretion exercised by the learned trial Court without giving any reason for the same. In the considered opinion of this Court, if the learned First Appellate Court feels that the discretion exercised by the learned trial Court is erroneous, the court must deal with the reasons given by the learned trial court and after analyzing those reasons, the learned First Appellate Court is required to give its own reasons for not agreeing with the discretion exercised by the learned trial Court. Section 20 of the Act enables the Court to exercise discretion after recording sound and reasonable reasons guided by judicial principles. No doubt, the discretion exercised by a Court is capable of correction by a Court of appeal, however, such reversal/correction has to be after analyzing the reasons given by the learned trial Court.

In the present case, neither the learned trial Court nor the learned First Appellate Court have dealt with the reasons for exercising discretion in a particular manner.

After appreciating the evidence available on the file, this Court finds that the discretion exercised by the learned Court, although without giving any reasons was correct. This Court records the reasons as under:-

1. A careful reading of the agreement to sell dated 16.01.1984

proves that it was the plaintiff-Rupa Ram, who had failed to arrange for the funds for execution and the registration of the sale deed. The earnest money paid under agreement to sell dated 08.01.1983 was forfeited. It was clearly stipulated that the target date for execution and registration of sale deed shall not be extended beyond 30.06.1984 and no fresh earnest money was paid and the fresh agreement was executed only as a measure of goodwill gesture. No sale deed was executed on 30.06.1984.

2. Still further, the plaintiff in order to prove that he was ready and willing has placed on file an affidavit attested from the Oath Commissioner dated 30.06.1984 while trying to prove that Rupa Ram had come to the office of the Sub Registrar for execution of the sale deed along with balance sale consideration. The aforesaid affidavit has not been got attested from the Sub Registrar or Registrar, who was to get the sale deed registered. Normally, the affidavit is got attested from the Sub Registrar. Oath Commissioner has not produced on record his register showing that such affidavit was actually got attested on 30.06.1984. Attestation by an Oath Commissioner does not inspire the confidence of the Court.

3. Plaintiff-appellant is alleged to have sent a notice dated 26.07.1985 to the defendant-appellant. The notice was not served to the defendant-appellant. Defendant-appellant had executed the agreement to sell dated 08.01.1983 and 16.01.1984 through one Sh. Manmohan Singh (General Power Attorney). Although, the notice shows that it has been addressed to two persons namely Madan Lal and Manmohan Singh, however no receipt has been produced to prove that the notice sent to Madan Lal was returned as the address given on the notice was not found correct.

4. Rupa Ram rather than filing a suit for specific performance of the

agreement to sell immediately after serving the alleged notice dated 26.07.1985 chose to file a suit for permanent injunction only. No reason is forthcoming as to why plaintiff-Rupa Ram did not file the suit for specific performance of the agreement to sell. When the cause of action to file the suit for specific performance had arisen on 30.06.1984 and subsequently on 26.07.1985 when Rupa Ram asserts through notice that the defendant-appellant has become dishonest due to increase in the price of the land.

5. Still further, the plaintiff-respondent while appearing in the evidence has tried to justify the availability of funds with him by asserting that he had borrowed some amount from his brother-in-law Kartara of village Chandiala. He further states that his sons are employed and that is how he was having money. However, it was admitted by him that neither his sons nor he himself have any bank account. Kartara brother-in-law has not been produced in evidence.

6. The agreement to sell is dated 16.01.1984. Although litigation has remain pending, however, more than 33 years have elapsed.

In view of the various reasons discussed above, this Court does not find that the judgment passed by the learned First Appellate Court with respect to discretion exercised is sustainable. The judgment and decree passed by the learned First Appellant Court is reversed and that of the learned trial Court is restored.

In view thereof, question of law framed is answered in favour of the defendant-appellant.

However, keeping in view the fact that Rs.2,000/- received as earnest money has remained with the defendant-appellant, the amount of Rs.2,000/- shall be recoverable along with interest at the rate of 9% per annum

from the date of payment i.e. 08.01.1983 till realization. Pending application, if any, shall also stand disposed of.

The Regular Second Appeal is allowed.

06.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No