

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

**RSA No.4820 of 1999 (O&M)
Date of Order:26.11.2018**

Mahesh and others

..Appellants

Versus

Lekh Raj and another

..Respondents

RSA No.344 of 2000(O&M)

Dev Rattan

..Appellant

Versus

Lekh Raj and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Kartik Gupta, Advocate,
for the appellants (in RSA No.4820 of 1999)

Mr. H.S.Baidwan, Advocate,
for the appellant (in RSA No.344 of 2000)

Mr. D.S.Bali, Sr. Advocate, with
Ms. Anshika Sharma, Advocate
for respondent no.1 (in both the cases)

ANIL KSHETARPAL, J(Oral)

Two separate appeals have been preferred by different
defendants in the suit which shall stand disposed of by this judgment.

In the considered opinion of this court, following substantial
questions of law arise for determination:-

- (i) Whether before decreeing the suit for specific
performance of the agreement to sell, the court is

required to apply its mind with reference to Section 20 of the Specific Relief Act, 1963 and thereafter grant or decline the relief of specific performance?

- (ii) Whether a compromise decree can only be restricted to the suit property or it can be even beyond that?

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, decreeing the suit for specific performance of the agreement to sell dated 24.06.1987. Dev Rattan was owner of the property. He is alleged to be having bad habits including heavy drinking and had even developed physical relationship outside the marriage.

Plaintiff-respondent Lekh Raj is alleged to be his friend and partner in all these activities. Dev Rattan was married having a wife and 3 children. Relationship between Dev Rattan, his wife and 3 children are stated to be strained. Wife, namely Sarbati Devi @ Sharbati Devi and children filed a suit for grant of decree for permanent injunction on 09.01.1987 expressing their apprehension that Dev Rattan is threatening to alienate the suit land with an intention to debar the plaintiffs from their right of inheritance and maintenance. Prayer was made that defendant-Dev Rattan be restrained from alienating the property. It was claimed that parties are Jaats and property cannot be sold without legal necessity.

Written statement was filed by Dev Rattan contesting the suit and pleading that plaintiffs i.e. his wife and children have no right or locus standi to file the suit. Thereafter, parties entered into a compromise and a compromise in writing was filed in the court, signed by Dev Rattan and Sharbati Devi as guardian of children, dated 12.03.1987. He undertook not

to sell the property and even declared that he transfers the property in favour of the plaintiffs i.e. wife and children. He further appeared in the court and made a statement to that effect, resulting in a decree passed by the court on the basis of compromise on 12.03.1987.

Plaintiff-respondent herein Lekh Raj claims that he entered into an oral agreement to sell with Dev Rattan on 15.10.1986 and with respect to the suit land, paid Rs.30,000/- as earnest money. Thereafter, a written agreement to sell was executed on 24.06.1987 with additional amount of Rs.35,000/- is said to have been paid on which date agreement to sell is alleged to have been reduced into writing. It was specifically recorded in the agreement to sell that the possession has already been delivered to the plaintiff Lekh Raj, respondent herein, on 15.10.1986. The land under mortgage was also noticed. As per the agreement to sell, target date for execution and registration of the sale deed was fixed as 15.04.1988. The suit for specific performance of the agreement to sell was filed on the last day of limitation i.e. after a gap of 2 years 11 months and 29 days, on 14.06.1991.

Dev Rattan initially contested the suit and pleaded that he had a close friendship with the plaintiff and they used to take drinks together and it appears that plaintiff has obtained thumb impressions when he was under the influence of liquor. Thereafter, he files an application before the Court, Ex.PA, dated 01.02.1996 admitting the agreement to sell and submitted that he had strained relationship with his wife. He further claims that he is guardian of defendant Nos.3 to 5, the children. He submits that he has to receive Rs.1,70,000/- and hence suit be decreed.

Defendant nos.3 and 4 filed an application for permission to

file separate written statement as by that time they had attained majority. Application was allowed and the written statement was permitted to be filed, wherein they contested the suit. Smt. Sharbati Devi also being party to this litigation contested the suit and pleaded that Dev Rattan was not the owner of the property and there was no oral agreement to sell. It was also pleaded by her that the agreement to sell has been propounded only to defeat her right under the decree dated 12.03.1987.

On appreciation of the evidence, both the courts have decreed the suit by granting relief of specific performance of the agreement to sell as noticed above.

This court has heard learned senior counsels appearing for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

In the considered opinion of this court, discretion exercised by the courts granting decree for specific performance of the agreement to sell is required to be interfered with as it is not in consonance with the statutory provisions as provided under Section 20 of the Specific Relief Act. The reasons for arriving at such conclusion are as under:-

- (1) There was a decree passed in favour of the wife and the minor children on 12.03.1987. Wife and minor children have a pre-existing right of maintenance, which is first charge on the property of husband and father respectively.
- (2) There is absolutely no explanation as to why plaintiff waited for last day of limitation to file a suit for specific performance of the agreement to sell. Although, a notice

dated 14.03.1990 has come on record, served on behalf of the plaintiff to the defendants, however, the same has not been proved on file. On careful reading of the plaints and the evidence of Lekh Raj, the plaintiff, no reasons is forthcoming as to why the suit was not filed for such a long time.

- (3) Plaintiff has failed to prove any overt act on his behalf which may prove or even suggest that he was ready and willing to perform his part of the contract.
- (4) It has come in evidence that relationship between the husband and wife i.e. Dev Rattan and Sharbati Devi were strained. Dev Rattan used to reside separately from the family in the city whereas wife and minor children were residing in a village. There is a prior decree in favour of wife and children, wherein Dev Rattan has acknowledged the rights of the wife and the children.
- (5) Dev Rattan is proved to be a man of having no stability of mind. On 03.03.1987, in the suit filed by the wife and the children, he chooses to contest the suit but on 12.03.1987 i.e. after a period of 9 days he admits their right. While filing the written statement in the present suit, Dev Rattan chooses to contest the suit and pleads that his thumb impressions on the agreement to sell has been obtained under the influence of liquor as he was having close friendship with the plaintiff. However, thereafter, once again he takes a somersault and files

compromise Ex.PA, dated 01.02.1996, admitting the contents of the plaint and praying for passing of the decree. He does not even know as to how much amount further has to be received by him. He has stated that he has to receive Rs.1,70,000/-, whereas, as per the agreement to sell he was to receive Rs.1,90,000/-.

Still further, as per the oral agreement to sell, dated 15.10.1986, possession is alleged to have been delivered to the plaintiff-respondent, namely, Lekh Raj. However, this assertion and the factum of delivery of possession recorded in the agreement to sell is proved to be wrong as the revenue record does not support that. Reference in this regard can be made to the jamabandies from the years 1984 to 1995 Ex.D3 to Ex.D5 and khasra Girdwari, Ex.D6 from the years 1990 to 1995.

Although, learned counsel for the respondent while referring to the statement to Sharbati has submitted that Smt. Sharbati also admitted of having knowledge of oral agreement in cross-examination. However, the statement of Smt. Sharbati has to be read as a whole and few lines in the cross-examination cannot be read in isolation. No doubt, execution of the agreement to sell has been proved, but this court is only examining whether relief of specific performance of the agreement to sell ought to have been granted or not in the facts and circumstances of the present case?

Now let's consider the questions of law which have been framed earlier.

QUESTION NO.(i)

Whether before decreeing the suit for specific performance of the agreement to sell, the court is required to apply its mind with reference to Section 20 of the Specific Relief Act, 1963 and thereafter grant or

decline relief of specific performance?

It may be noted that Section 20 of the Specific Relief Act makes it mandatory for the court to assess the entire facts situation available on the file and thereafter grant or refuse decree for specific performance and decide to grant alternative relief. The decree for specific performance is discretionary and the court is not bound to grant such relief merely because agreement to sell is proved. In the present case, unfortunately, both the courts have mechanically passed the decrees without appreciating the facts and circumstances which had come on record.

QUESTION NO.(ii)

Whether a compromise decree can only be restricted to the prayer made in the suit or it can be even beyond that?

Learned first appellate court has clearly erred and overlooked the bare language of Order 23 Rule 3 of the Code of Civil Procedure, which provides that the compromise can also be beyond the subject matter of the suit. The learned court has further erred in recording a finding that such decree amounts to transfer of the property and having value more than Rs.100/- and therefore, required registration. The decree passed on the basis of compromise dated 12.03.1987 is between the family members and the wife and minor children had a pre-existing right of maintenance which is first charge on the property of the husband and the father. In such circumstances, such decree did not require registration. A decree acknowledging a family settlement does not require registration.

In view thereof, the decree passed by the courts below are modified instead of granting a decree of specific performance. Plaintiff-respondent is held entitled to refund of the amount of Rs.65,000/- along

with interest @ 9% per annum from the date of payment till realization.

The aforesaid amount shall be first charge on the property in dispute.

The regular second appeals are allowed.

November 26, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No