

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

**RSA-1299-2016
Date of Decision: May 23, 2018**

Gurpreet Singh

...Appellant

Versus

Jangir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. G.L. Bajaj, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the plaintiff-Jangir Singh was decreed by the Trial Court, vide judgment and decree, dated 23.04.2014, for an alternate relief to recover the principal amount of Rs.1,37,600/-, with interest @ 12% per annum, from the date of execution of the agreement till its realization. Being aggrieved by the said decree, only the plaintiff preferred an appeal. And, vide judgment, dated 16.10.2015, the first appellate Court accepted the appeal, and decreed the suit as prayed for. That is how the appellant/defendant, Gurpreet Singh, is in Regular Second Appeal before this Court. The parties to the *lis*, hereinafter shall be referred to their original positions in the suit.

In a suit filed by the plaintiff, he prayed for a decree for specific performance of the agreement to sell, dated 18.01.2010, as regards a land measuring 4 Kanals 5/8 Marlas. And in the alternate, for recovery of

Rs.2,75,200/-, i.e. Rs.1,37,600/- already paid by way of earnest money, and Rs.1,37,600/- as cost, compensation and damages suffered by the plaintiff on account of non-performance, on the part of the defendant.

On a consideration of the matter and the evidence on record, the Trial Court reached a conclusion that the plaintiff had proved the due execution of the agreement to sell, dated 18.01.2010, as also the payment of Rs. 1,37,600/- by way of earnest money. However, the plaintiff was still denied the decree for specific performance of the agreement, for, the date fixed for execution and registration of the sale deed was 17.09.2010, i.e. after almost 9 months of the execution of the agreement, therefore, it was highly improbable that such a long date was fixed, and that too merely for payment of balance consideration. Further, the plaintiff had failed to show the ownership/title of the defendant qua the suit property. And, since he had sought an alternate relief for recovery, thus, a decree for Rs.1,37,600/- alongwith interest alone could be awarded in his favour.

However, the Appellate Court on a re-analysis of the matter in issue concluded, that in the matter at hands the defendant himself never denied to be the owner of the suit property. Rather, in paragraph No. 1 of his written statement, it was conceded in no uncertain terms that he indeed was owner in possession of the suit land. That being so, the plaintiff was not required to lead any further evidence. For admission is always the best evidence. In so far as the fact that plaintiff had also prayed for an alternate relief, it was observed that could hardly be a ground to deny him the decree for specific performance, once the execution of the agreement was duly proved, and the plaintiff was found to be ready and willing to perform his

part of the contract at all material stages of the agreement. In any case, the prayer for an alternate relief was only in sync with the provisions of Section 21 of the Specific Relief Act, 1963, and, therefore, a decree for specific performance could not be denied on this score alone. As regards the period of 9 months in between execution of the agreement to sell and the date fixed for execution and registration of the sale deed; it was held that in a suit for specific performance of the agreement, as regards the sale of immovable property, time is never the essence of the contract unless so intended by the parties either specifically or by necessary implication. That being so, the suit of the plaintiff was rather required to be decreed as prayed for, thus, he was entitled to the decree for specific performance of the agreement.

On being pointedly asked, learned counsel for the appellant-defendant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the position on record or suffered from any material illegality.

No question of law, much less any substantial question of law arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

May 23, 2018
P Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO