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

**RSA No.4895 of 2013 (O&M)
Date of decision : May 11, 2018**

Nirmal Singh and another .... Appellants

Versus

Vijay Kumar Bansal .... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Arjun Kundra and Mr. Nikhil Sabharwal, Advocates
for the appellants.

Mr. V.K. Jindal, Senior Advocate with
Ms. Janya Sirohi and Mr. Akshay Bansal, Advocates
for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? No
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J.

Having lost before the two Courts below, the unsuccessful defendants-appellants, have preferred the present regular second appeal against the judgment dated 03.07.2013 passed by learned Addl. District Judge, Ambala, affirming the judgment and decree dated 11.08.2012 passed by learned Addl. Civil Judge (Sr. Divn.), Naraingarh, vide which the suit of the plaintiff-respondent was decreed with the costs for specific performance of the agreement dated 30.12.2003 regarding land measuring 19 kanals, 2 marlas, as detailed in the decree, situated in village Ratour, H.B. No.252, Tehsil Naraingarh, District Ambala, after payment of balance sale consideration within a period of two months. The defendants-appellants were directed to execute the agreement to sell, failing which the plaintiff-respondent will be entitled to get it executed through Court of law.

The facts of the case, according to the plaintiff-respondent, are that defendants-appellants, namely, Nirmal Singh and Jaswinder Singh being the owners of the land measuring 19 kanals, 2 marlas agreed to sell the same to the plaintiff-respondent, vide agreement dated 30.12.2003 @ ₹2,33,000/- per acre, total amounting to ₹5,56,287.50/-. ₹1,00,000/- were paid as earnest money and the balance sale consideration was to be paid on or before 30.06.2004. It was stated that the plaintiff-respondent was ready and willing to perform his part of the contract on the date fixed but the defendants-appellants did not turn up to execute the sale deed.

In the written statement, the defendants-appellants took the stand that they had approached the office of Sub Registrar on 30.06.2004 and remained there from 9.00 a.m. to 5.00 p.m. but the plaintiff-respondent did not turn up to execute the sale deed. The plaintiff-respondent had been putting of the matter on one or the other pretext. The defendants-appellants also served legal notice through Advocate on 23.08.2004, which was received by opposite side but in spite of that plaintiff-respondent did not appear in the Registrar Office on 10.09.2004.

From the pleadings, following issues were framed:

> *"1. Whether defendants have entered into an agreement to sell dated 30.12.2003 with the plaintiff? OPP.*
> *2. Whether the plaintiff has always been ready and willing and is still ready and willing to perform his part of agreement if so its effect? OPP.*
> *3. Whether the plaintiff is entitled to the relief of Specific performance of the agreement as prayed for?*

OPP.

4. Whether the defendants performed their part of agreement and plaintiff failed to get the sale deed executed? OPP.

5. Whether the suit is not maintainable in the present form? OPD.

6. Whether the plaintiff has no cause of action to file the present suit? OPD.

7. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD.

8. Whether the suit is time barred? OPD.

9. Relief."

The trial Court took up issue Nos.1 to 4 together and held that the plaintiff-respondent had come present on 30.06.2004. However, defendants-appellants failed to prove any document to show that they were present on the said date in the office of Sub Registrar. Therefore, these issues were decided in favour of the plaintiff-respondent. The remaining issues were also decided in favour of the plaintiff-respondent. In appeal, learned Addl. District Judge, Ambala affirmed the said findings.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out from the pleadings that the agreement of sale between the parties is not denied.

Learned counsel for the defendants-appellants has vehemently argued that in this case, the plaintiff-respondent was not ready and willing to perform his part of the contract. It has been stated that the plaintiff-respondent did not have ready money available with him on the date fixed. Therefore, he did not turn up.

It is further stated that when the plaintiff-respondent did not turn up on 30.06.2004, the defendants-appellants issued legal notice on 23.08.2004 (Ex.DW2/A) through their counsel calling upon the plaintiff-respondent to get the sale deed executed within eight days and to pay the balance sale consideration, otherwise the earnest money of ₹1,00,000/- will be forfeited. It is also stated that on 10.09.2004, the defendants-appellants remained present in the office of Sub Registrar but the plaintiff-respondent did not turn up.

Learned counsel for the appellant has also taken this Court through the bank account statements of the plaintiff-respondent to show that he had no ready money available with him on the date fixed. He had also assail the copy of the certificate (Ex.P6) issued by the Chartered Accountant, in which a sum of ₹5,62,170/- were shown as cash in hand as on 29.06.2004.

After considering the submissions of the parties, I am of the view that both the Courts below have recorded the concurrent findings of facts that on the date fixed for the execution of the sale deed i.e. 30.06.2004, the plaintiff-respondent was present before the Sub Registrar but there is no documentary proof produced by the defendants-appellants to show that they were also present in the office of Sub Registrar. The copy of the agreement shows that as per term of the agreement, Mangal son of Dalla and Kallu Pissar Taru were recorded as tenants. The defendants-appellants were to get the girdawari corrected. The plaintiff-respondent had produced the copy of khasra girdawari (Ex.P5), which shows that the girdawari was corrected only from March 2005, which means that on 30.06.2004, the khasra girdawari was not got corrected, showing the vendors to be in self continuation. Regarding the availability of cash, it is not the law that the vendee should show the cash on the date fixed. It is sufficient if the Court finds that he is in a position to arrange the cash. In this case, the total sale consideration was of ₹5,56,287.50/- and ₹1,00,000/- were paid as earnest money and the balance sale consideration was of ₹4,56,287.50/-. If the cost of registration is also included, one can say that approximately a sum of ₹5,00,000/- was sufficient for the plaintiff-respondent to perform his part.

The plaintiff-respondent had produce the certificate of the Chartered Accountant, who after inspecting the record, came to the conclusion that a sum of ₹5,62,170/- was cash in hand with the plaintiff-respondent. He was subjected to cross-examination, in which he stated that he had verified the accounts books and then given the said certificate on 15.05.2007. Even the bank accounts also show the withdrawal and deposit around ₹1,00,000/- on several occasions. Therefore, it cannot be said that no money was available with the plaintiff-respondent on the date fixed of the execution of the sale deed and the defendants-appellants were ready and willing to execute the sale deed on 30.06.2004 and the plaintiff-respondent was not willing.

Learned counsel for the defendants-appellants has placed reliance upon the authorities of Hon'ble the Supreme Court of India, delivered in case of ***"N.P. Thirugnanam (Dead) by LRs. vs Dr. R. Jagan Mohan Rao", 1996 AIR (SC) 116 and "Bal Krishan and Anr. vs Bhagwan Das (Dead) & Ors.", 2008(2) R.C.R. (Civil) 732.***

Learned counsel for the defendants-appellants has further argued that the defendants-appellants had issued legal notice on 23.08.2004 calling upon the plaintiff-respondent to get the sale deed executed within eight days, which the plaintiff-respondent did not do. The said legal notice dated 23.08.2004 (Ex.DW2/A) was not challenged by the plaintiff-respondent, despite the fact that thereafter the plaint was amended.

Learned counsel for the defendants-appellants has referred to the authority of Hon'ble the Supreme Court delivered in case of ***"I.S. Sikandar(D) By Lrs. vs K. Subramani and others", 2013(15) SCC 27***, wherein it has been held that in the said case, if an agreement is terminated by the legal notice, the same is also required to be challenged.

I am of the view that the facts of the said case are different from the facts of the present case. In ***I.S. Sikandar's case (supra)***, an agreement was executed on 25.12.1983 for a total sale consideration of ₹45,000/-. A sum of ₹5,000/- were paid as earnest money and ₹40,000/- were to be paid at the time of registration of the sale deed within five months after securing necessary permission from the Urban Land Ceiling Authority and also to get change of khata of the suit schedule property in their names. The plaintiff had an obligation to pay the layout and conversion charges to the BBMP. The time of completion of sale of the suit property was agreed to be extended by two months, in case of delay. The plaintiff on being put in possession of the suit property, he erected cattle shed to tether cattle and paid betterment charges to the authorities. He also paid property tax to BBMP for the period 1977 to 1983-84 and thereafter, he also paid property tax to the BBMP for future years. Defendant Nos.1 to 4 issued legal notice on 06.03.1985 for paying the balance sale consideration on or before 18.03.1985, failing which legal action will follow. The plaintiff sent a reply on 16.03.1985 calling upon the defendants to execute the conveyance deed and received the balance sale consideration on 23.05.1985 by securing the draft sale deed five days prior thereto. Thereafter, by another letter dated 04.05.1985, vendees requested the vendors to go to Sub Registrar's office on 23.05.1985 and execute the conveyance deed in his favour. The vendors by a telegram dated 18.05.1985 declined the accede to his request and stated that the agreement of sale was rescinded by them, vide letter dated 23.08.1985. It was in these circumstances, it was held by the Apex Court that the notice of registration should have been challenged.

In the present case, the defendants-appellants did not come present on the date of execution of sale deed i.e. on 30.06.2004 and thereby committed the default. They remained silent for nearly two months when on 23.08.2004, they issued legal notice through several modes i.e. UPC, registered letter and ordinary process, giving eight days time after the receipt of the notice to come present for executing the sale deed. Thereafter, they appeared to get the sale deed executed before the office of Sub Registrar on 10.09.2004.

This Court failed to understand as to how eight days period after receipt of notice will expire on 10.09.2004. It was mentioned in the letter that the registered notice was received by the plaintiff-respondent on 26.08.2004. If it is so, eight days will expire on 03.09.2004 and not on 10.09.2004. Therefore, there is no valid termination of notice and it was merely an excuse not to execute the sale deed.

It is proved that the defendants-appellants were not ready and willing to execute the sale deed on the date fixed. Both the Courts below have recorded concurrent findings of facts, which can not be interfered in the regular second appeal.

Learned counsel for the defendants-appellants has further argued that in this case, specific performance of the agreement should be refused. It has also been argued that in the agreement itself, there was a condition that in case, the sale deed is not executed, the vendee will be entitled to ₹1,00,000/- in addition to the earnest money. Therefore, it has been argued that since the penalty was specified, specific performance should be refused.

I am of the view that in the agreement, usually, a condition is imposed that in case of breach of the agreement by the vendee, the earnest money will be forfeited and in case of breach by the vendor, he will be liable to pay the penalty.

I am also of the view that mere mention of the penalty clause will not take away the right of the plaintiff-respondent to enforce specific performance of agreement.

Learned counsel for the defendants-appellants has also argued that in this case, in the suit, the prayer was only for specific performance of the agreement. The possession was not prayed for. Therefore, the suit for specific performance cannot be decreed. In this regard, reliance has been placed upon the authorities of this Court delivered in case of ***"Jeet Singh vs Gursewak Singh and others", 2015 AIR CC 3432*** and in case of ***"Kesar Singh vs Megh Singh",*** passed in RSA No.3620 of 2012, decided on

15.02.2016.

I am of the view that when the plaintiff-respondent is praying that the defendants-appellants should execute the sale deed in his favour, it impliedly include the prayer to deliver the possession of the land, so sold to him. One cannot understand the position, where the plaintiff-respondent wants a sale deed in his favour without getting the possession of the land.

A perusal of the plaint shows that though, no specific prayer has been made for delivery of possession but a prayer has been made that *'any such additional, further or alternative relief to which the plaintiff-respondent is found entitled to may also be granted'*. The relief of possession is consequential to the decree for specific performance of agreement. Therefore, such prayer is deemed to have been made in the plaint. Even though, both the Courts below have not specifically granted the decree for possession in addition to specific performance, this Court can always pass appropriate order, which is only a consequential order and can order that as a consequence of the specific performance of the agreement, the possession of the suit land be also delivered to the plaintiff. The suit cannot be allowed to fail on technical grounds. Once, it is found that an adequate prayer has been made in the plaint and this Court exercises the powers to grant decree for possession, the said authorities are not applicable to the present case.

Learned counsel for the defendants-appellants has further argued that under Section 22(2) of the Specific Relief Act, 1963, no relief for possession, partition, separate possession shall be granted unless, it has been specifically claimed. Reliance has also been placed upon the authority of Hon'ble the Supreme Court delivered in case of ***"Jagdish Singh vs Natthu Singh", 1992 AIR (SC) 1604.***

On the other hand, learned counsel for the plaintiff-respondent has relied upon Sub Section (3) of Section 28 of the Specific Relief Act, 1963 to claim that even in case, the decree for specific performance is passed, even in the execution, the decree holder can requests for delivery of possession.

Sub Section (3) of Section 28 of the Specific Relief Act, 1963 is reproduced as under:

> *"(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the Court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-*
> *(a) the execution of a proper conveyance or lease by the vendor or lessor;*
> *(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease."*

Reliance has also been placed by the learned counsel for the plaintiff-respondent upon the authority of Hon'ble the Supreme Court delivered in cases of ***"Babu Lal vs M/s. Hazari Lal Kishori Lal and others", 1982 AIR (SC) 818 and "Manzoor Ahmed Magray vs Gulam Hassan Aram", 1999(4) R.C.R.(Civil) 597,*** wherein Section 28 of the Specific Relief Act, 1963 has been discussed.

I am of the view that since this Court has already taken the view that there was an adequate prayer in the plaint, therefore, the plaintiff-respondent is also entitled to a decree for possession. Therefore, the question of omission in the decree becomes irrelevant.

Learned counsel for the defendants-appellants has argued that in case of joint khata, decree for specific performance cannot be passed.

I am of the view that by way of decree of specific performance, the plaintiff-respondent will merely stepped into shoes of defendants-appellants. Therefore, the mere fact that in some part of the suit land, the khata is joint, is no ground to the decline the relief of specific performance.

Learned counsel for the defendants-appellants has further argued that in this case, the decree was passed on 11.08.2012 and the money was deposited on 14.10.2015. Therefore, the plaintiff-respondent was not ready and willing to perform his part of the contract.

I am of the view that in this case, after passing of the decree, the appeal was filed on 30.08.2012 itself, which was decided on 03.07.2013. Therefore, on account of pendency of the appeal that thereafter the present regular second appeal was filed, the money was not deposited. It does not show that the plaintiff-respondent was not willing to perform his part of contract.

It being so, there is no illegality or infirmity in the findings of facts recorded by both the Courts below. Therefore, the findings on all the issues are affirmed. Hence, the present appeal is found to be without any force and is dismissed, with the modification that in addition to relief granted by two Courts below, the plaintiff-respondent shall also be entitled to the decree for possession of the suit land. The balance sale consideration, if not deposited earlier, be now deposited within two months from today.

Since the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

May 11, 2018
sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes