

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

RSA No.401 of 2016 (O&M)

Date of decision: 14.11.2018

Arjan Singh

..... Appellant

Versus

Sukhdev Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Satbir Rathore, Advocate
for the appellant.

Mr. Harinder Sharma, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell. The limited issue on which submission has been made by learned counsel for the parties is whether learned trial Court was correct in granting relief of possession by way of specific performance of the agreement to sell or not. The execution of the agreement to sell and payment of earnest money has not been disputed. However, learned counsel for the appellant has submitted that in the facts and circumstances of the present case, the decree for possession by way of specific performance should not have been granted.

Section 20 of the Specific Relief Act provide that the Court has discretion to the Court to grant a decree for specific performance of the agreement to sell or to grant alternative relief. It is not mandatory that in

every case where agreement to sell and payment of the earnest money is proved, the decree for specific performance of the agreement to sell is necessarily to be granted. Section 20 of the Specific Relief Act is extracted as under:-

“20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation I.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation II.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances

existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

It is undisputed that both the Courts below have failed to refer to the discretionary power and mechanically passed the decree only on the ground that the agreement to sell and payment of earnest money stands established. It is the duty of the Court while deciding a suit for specific performance of the agreement to sell to evaluate the evidence and thereafter, exercise the discretion as provided under Section 20 of the Specific Relief Act. In the present case, certain facts, which are not being disputed, prove that the Courts were not correct in granting a decree for specific performance of the agreement to sell. The facts are as under:-

1. The defendant-appellant is a farmer whereas the plaintiff-respondent is a commission agent commonly known as Ahrtiyas. It is also admitted fact that the defendant used to sell his crop/agriculture produce through the shop of the plaintiff-respondent.

2. As per the agreement to sell dated 12.08.2005, the sale deed was to be executed and registered on 15.01.2006. It is the case of the plaintiff that since 15.01.2006 was a holiday, therefore, he went to the office of Sub-Registrar and marked his presence on 16.01.2006. Thereafter, the plaintiff did not take any action for a period of 2 years and 9 months. Notice was got sent by the plaintiff to the defendant/appellant on 08.10.2008 and filed this suit on 15.11.2008. Learned counsel for the

respondent on being asked the reason for delay of 2 years and 9 months in filing the suit, replied that since the plaintiff and the defendant were having regular dealings as also having good relationship, therefore, no steps were taken.

In view of the aforesaid, in the considered view of this Court, the discretion ought to be exercised in favour of the defendant and the plaintiff should be made entitled to the refund of the earnest money along with appropriate rate of interest.

Learned counsel has relied upon judgments in the case of Dinesh Kumar and others Vs. Vinod Kumar Sharma and others, 2016(4) PLR 172, Amit Arya Vs. Kamlesh Kumari, 2017(1) RCR (Civil) 108 and Subhash Chand (deceased) through LRs Vs. Surjit Singh, 2017(2) Law Herald 1404 to contend that merely because the suit was filed on the last day of limitation, this Court should not exercise the discretion against the plaintiff and set aside the decree for specific performance of the agreement to sell. However, learned counsel admitted that none of the judgments relied upon is pertaining to the commission agent who normally also extent credit facilities to the farmers.

In view of the reasons assigned, the decree for specific performance of the agreement to sell is substituted by a decree for refund of the earnest money along with interest @ 9% from the date of payment i.e. 12.08.2005 till realization.

Regular Second Appeal is allowed.

14.11.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No