

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4120 of 2015 (O&M)

Date of decision:30.10.2018

Jagdish Kumar Sharma

... Appellant

Vs.

M/s Monga Realtors Pvt. Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The only grievance of the appellant-plaintiff in the present appeal despite the fact is that suit claiming specific performance of the agreement to sell-cum-receipt dated 04.10.2010, though has been decreed but the relief of possession was not granted.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-plaintiff submitted that during the pendency of the suit, both the defendants suffered the statements and the Court below decreed the suit in the following manner:-

“6. Consequently, the present suit stands decreed on the basis of the statements suffered by the defendants today in the Court. Accordingly, a decree for specific performance is passed in favour of the plaintiff and against the defendants in terms of agreement to sell dated 4.10.2010. Plaintiff is directed

to deposit the balance sale consideration in the Court on or before 31.10.2014 and thereafter, the defendants will transfer the suit property, fully detailed and described in the head note of the plaint, in favour of the plaintiff in accordance with law. The defendants are also permanently restrained from alienating the suit property to anybody else except the plaintiff. In case, the plaintiff fails to deposit the balance sale consideration within the stipulated period, the present suit shall be deemed to have been dismissed. Parties are left to bear their own costs. Decree sheet be prepared accordingly and the file be consigned to the record room.”

Since the relief of possession was not specifically mentioned, an apprehension arose in the mind of the appellant leading to filing of the appeal which has also been dismissed. The terms and conditions of the agreement to sell envisaged that defendant no.1 had to complete the formalities for the purpose of taking the possession from defendant no.2. The agreement of the plaintiff was only with defendant no.1. Despite the decree being against both the defendants, there was serious apprehension the plaintiff may not be able to get possession.

I am afraid the aforementioned argument is not sustainable in the eyes of law as the relief of possession is inherent in a suit for specific performance as per the provisions of Section 28 of Specific Relief Act. The aforementioned view of mine is derived from the ratio decidendi culled out

by this Court in **Bhupinder Singh and others Vs. Sukhdev Singh and another 2017(1) PLR 756** and by the Hon'ble Supreme Court in **Babu Lal Vs. M/s Hazari Lal Kishori Lal and others AIR 1982 SC 818**, wherein, after interpreting provisions of sub-section 3 of Section 28 of Specific Relief Act, it was held that where the statute itself envisages relief of possession, Section 22 of the Specific Relief Act cannot be read in isolation. In case, the plaintiff has complied with the part decree by depositing the entire sale consideration in the absence of any action on behalf of the defendants, the remedy was to seek execution of decree having inherent effect of possession.

In view of the aforementioned observations, while upholding the judgments and decrees of both the Courts below, the appeal stands disposed of.

(AMIT RAWAL)
JUDGE

October 30, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No