

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

**RSA No.4451 of 2015(O&M)
Date of Order: 16.02.2018**

Dr. Des Raj Arora

..Appellant

Versus

Iqbal Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bahl, Sr. Advocate, with
Mr. Deepak Sabharwal, Advocate,
Mr. Parvinder Singh, Advocate, and
Mr. Nikhil Sabharwal, Advocate,
for the appellant.

Mr. Akshay Jindal, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

The arguments were heard in detail and the order was pronounced. Detailed reasons are being recorded.

Plaintiff-appellant is in regular second appeal against the judgment passed by the learned first appellate court reversing the judgment and decree passed by the learned trial court, in a suit for specific performance of the agreement to sell dated 30.03.1997 with respect to exercise of discretion under Section 20 of the Specific Relief Act, 1963.

Three brothers, namely, Dalip Singh Suri, Mohan Singh Suri and Jaswant Singh Suri were co-owners in equal share in the land measuring 17 bighas and 6 biswas. Dalip Singh Suri, defendant no.1, entered into an agreement to sell with the plaintiff for himself and on behalf of his two other brothers claiming to be authorized by a General Power of Attorney.

As per written agreement to sell, out of total sale consideration of Rs.9,00,000/-, Dalip Singh Suri, defendant no.1, received a sum of Rs.1,50,000/- as earnest money. It was agreed that with regard to $\frac{1}{2}$ share of the total land agreed to be sold, i.e. 8 bighas and 13 biswas, the sale deed would be executed on 15.07.1997 on payment of $\frac{1}{2}$ of the remaining sale consideration, whereas sale deed for remaining $\frac{1}{2}$ share shall be executed on 15.01.1998 on payment of balance sale consideration.

Since, the sale deeds were not executed, as agreed upon, therefore, the plaintiff filed a suit for specific performance of the agreement to sell on 13.04.1998. Plaintiff asserted that he was always ready and willing to perform his part of the contract. Plaintiff also asserted that he went to the office of Sub-Registrar along with draft of Rs.3,75,000/-, along with Rs.70,000/- as registration charges on 15.07.1997 but the defendants did not come forward. Plaintiff also asserts that the defendant Dalip Singh Suri sent him a telegram on 14.07.1997, for extending the date for execution of the sale deed to 05.08.1997. Plaintiff again visited the office of Sub-Registrar on 05.08.1997. He further asserts that once again he visited the office of Sub-Registrar on 15.07.1997 along with 3 drafts i.e. Rs.7,50,000/- i.e. the balance sale consideration and Rs.1,70,000/- as stamp and registration charges but the defendants did not come forward to perform their part of the contract. Plaintiff has also asserted that the possession of the land was with one Sh. Mastan Singh who had handed over the possession to him and his son Aman Arora. Mastan Singh has given two affidavits in this regard. Plaintiff has also asserted that he also served a notice calling upon defendant no.1 to execute the sale deed. The agreement to sell is also signed by Sh. P.S.Suri son of Mohan Singh Suri (the son of

other brother).

Dalip Singh, defendant no.1, filed a written statement. Defendant no.1 admitted the execution of the agreement to sell and has shown his willingness to sell the land qua his share. However, he denied that he had entered into an agreement on behalf of his brothers. Paragraph 4 of the written statement filed by defendant no.1 is extracted as under:-

“4. That para no.4 of the plaint is wrong and hence denied. The answering defendant along with his brothers defendants no.2 and 3 never informed the plaintiff regarding their land. In fact the defendant no.1 was willing to sell his share of the land to the plaintiff. The said agreement is to sell the share of the answering defendant alone at the sum of Rs.9,00,000/-(Rs. Nine lacs). The answering defendant never entered into agreement on behalf of other defendants.”

Separate written statement was filed by Parvinder Singh i.e. P.S.Suri. He asserted that Mohan Singh Suri and Jaswant Singh Suri have already expired, therefore, claimed that the agreement to sell cannot specifically be enforced. However, defendant no.2-Parvinder Singh Suri admitted that he had signed the agreement to sell to identify Dalip Singh Suri.

On appreciation of evidence, learned trial court decreed the suit filed by the plaintiff to the extent of 1/3rd share owned by Dalip Singh Suri. It may be significant to note that share of 3rd brother, namely, Jaswant Singh Suri was purchased by the plaintiff and this fact was pleaded by defendant no.2 in the written statement. Learned trial court further noticed that some

part of the land during the pendency of the suit for specific performance had been compulsorily acquired by the Government, however, plaintiff shall be entitled to compensation of the acquired land with respect to share of defendant no.1 i.e. Dalip Singh Suri. Decree for permanent injunction was also passed in favour of the plaintiff restraining defendant no.1 not to alienate the property in any manner.

Defendant no.1 filed the first appeal. Learned first appellate court has reversed the judgment passed by the learned trial Court and ordered refund of the double of the earnest money along with interest @ 6% per annum from 30.03.1997. In short, learned first appellate court has recorded a finding that the agreement to sell was executed by Dalip Singh Suri and execution of the agreement to sell is proved on the file and the plaintiff is proved to be ready and willing to perform his part of the contract. However, the learned first appellate court has given following reasons to refuse the decree for specific performance of the agreement to sell:-

- (i) the plaintiff entered into an agreement to sell dated 30.03.1997 without verifying whether two brothers of Dalip Singh were alive or dead. Plaintiff has not brought on record any power of attorney executed by two brothers in favour of Dalip Singh;
- (ii) Original agreement to sell has not been produced on the file;
- (iii) It appears that the plaintiff is out to grab the property in connivance with Dalip Singh, defendant no.1. Plaintiff is out to grab the property and since he got possession from

Mastan Singh, the tenant on the land, even before the execution of the sale deed;

- (iv) Plaintiff did not disclose that he has purchased the share of 3rd brother Jaswant Singh Suri @ Jaswant Ram vide registered sale deed dated 10.10.2001 in the plaint while filing the suit;
- (v) plaintiff did not come to the court with clean hands;
- (vi) the specific performance of the agreement to sell stands frustrated as some part of the land has been acquired;
- (vii) particular portion of the total land which fell to the share of Dalip Singh Suri is not identifiable.

In the considered opinion of this Court, following substantial question of law require determination:-

- (i) Whether the Court is required to exercise discretion to grant or refuse specific performance of the agreement to sell guided by judicial principles on sound and reasonable basis?

The trial court had decreed the suit only qua the share of Dalip Singh Suri who had admitted execution of the agreement to sell and had expressed his readiness and willingness to perform his part of the contract as per his written statement reproduced above in the previous part of the judgment. The binding agreement was only between the plaintiff and defendant no.1 as no power of attorney has been produced on record, hence defendant no.1 could not have executed the agreement to sell on behalf of his brothers.

Still further, defendant no.1 has two brothers. Defendant no.1

entered into an agreement to sell on 30.03.1997 representing to the plaintiff that he is General Power of Attorney holder of remaining two brothers and hence authorised to enter into agreement to sell. Son of one brother had signed the agreement i.e. Mr. P.S.Suri son of Mohan Singh Suri as a witness. In fact it is apparent that defendant no.1 in collusion with son of Mohan Singh Suri cheated the plaintiff. Any how that is not the dispute in the present appeal because learned trial court has only granted decree qua the share of defendant no.1 and the appellant did not file any appeal against the judgment passed by the trial court. Hence, the first reason given by the learned first appellate court is found to be erroneous. Defendant no.1 at least knew that his brothers are not in the world. P.S.Suri son of Mohan Singh Suri knew that his father is no more in the world but still the agreement was executed by defendant no.1 representing that defendant no.1 was attorney of two brothers.

Learned first appellate court has also noticed that original agreement to sell has not been produced. However, first appellate court has overlooked that an application for permission to lead secondary evidence was allowed and the agreement to sell was proved by leading evidence. First appellate court itself has recorded a finding that the agreement to sell is proved. In fact execution of the agreement to sell is not being disputed by defendant no.1, at least qua his share.

Next reasons assigned by the first appellate court is equally strange. The first appellate court held that the plaintiff in connivance with Dalip Singh Suri, defendant no.1, is making an attempt to grab the whole land. The decree passed by the trial court is only against defendant No1.

There is no decree against the share of remaining two brothers. It is

defendant no.1, who has filed the first appeal. In view of this, the finding of the first appellate court that there was connivance between defendant no.1 and the plaintiff is wholly wrong.

The learned court has also noticed that since Mastan Singh who was in possession of the land had delivered the possession to the plaintiff and his family by executing two affidavits, therefore, intention of the plaintiff to grab the total land is assumed. Plaintiff had entered into an agreement to sell with the owner i.e., defendant no.1 for purchase of the entire land. He had paid Rs.1,50,000/- He had also filed the suit for specific performance of the agreement to sell. The land was in possession of one Mastan Singh, a tenant. If the plaintiff was able to settle the dispute with Mastan Singh after entering into an agreement to sell, the intention of the plaintiff could not be doubted by the first appellate court.

Next reason assigned by the Court is that the plaintiff has not come to the court with clean hands as he has not disclosed the share purchased by him from legal heirs of Jaswant Singh, the 3rd brother. The suit was filed on 13.04.1998. As per the judgment of the first appellate court, sale deed by legal heirs of Jaswant Singh is Ex.PW4/A, dated 10.10.2001. Obviously, on the day the suit was filed, the sale deed had not been executed.

Still further defendant no.2 filed the written statement specifically disclosing this fact to the trial court that 1/3rd share of Jaswant Singh has been transferred in favour of wife and son of the plaintiff. Hence, the reason given by the learned first appellate court was wholly erroneous.

Still further learned first appellate court has also held that since some part of the land has been compulsorily acquired vide award dated

24.09.2010, hence the agreement to sell stands frustrated.

In the considered opinion of this court, some part of the land i.e. 2 bighas and 7 biswas has been acquired by the State during the pendency of the suit. In fact after a period of 12 years from the date of filing of the suit. The rights of the parties crystalized on the day the suit was filed. Plaintiff entered into an agreement to sell when the land was not under acquisition. When he filed the suit, the land was not under acquisition.

In the considered opinion of this Court, once the plaintiff is entitled to the specific performance of the agreement to sell, then in such circumstances, the court is competent to decree the suit ordering that the plaintiff would be entitled to compensation of the acquired portion of the land, subject to adjustment of the balance sale consideration payable. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court in **Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647.** Paragraph 14 of the judgment can be extracted for reference.

“14. We accordingly confirm the finding of the High Court that respondent was willing and ready to perform the contract and that it was the appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit land, together with solatium and accrued interest, less a sum of Rs.1,50,000/- (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount

to be paid to the appellant in respect of his services, time and money expended in pursuing the legal claims for compensation.”

The next reason assigned by the court is that the court has to deny the relief for specific performance of the agreement to sell as it is not possible to identify which particular portion of the land would fall to the share of Dalip Singh Suri or his legal heirs.

The plaintiff has been held entitled to the decree for 1/3rd share of the undivided land belonging to Dalip Singh Suri. The share of Dalip Singh Suri in the total land 1/3rd. The decree is with respect to 1/3rd share only. It will be the decree for undivided share in the joint land. Hence, the reason assigned by the court to deny the specific performance is also erroneous.

No doubt Section 20 of the Specific Relief Act confers jurisdiction in the court to exercise discretion. However, such discretion is to be exercised guided by judicial principles based upon sound and reasonable basis and it is capable of correction by a Court of appeal. Discretion is not absolute.

In view of the discussion made above, the question framed above is answered in favour of the appellant. The decree passed by the learned first appellate court is reversed and the judgment passed by the trial court is restored.

Plaintiff would be entitled to the sale deed executed and registered qua the remaining land falling to the share of Dalip Singh or his legal heirs on payment of 1/3rd of the total payment i.e. Rs.1,50,000/- after adjusting earnest money paid to defendant no.1. Plaintiff shall also be

entitled to receive compensation of the land compulsorily acquired by the State with respect to share of Dalip Singh or his legal heirs.

The regular second appeal is allowed.

February 16, 2018
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(ANIL KSHETARPAL)
JUDGE

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