

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

RSA No.3141 of 2018 (O&M)

Date of Decision: 10.07.2018

Gurmeet Kaur

... Appellant

Versus

Beant Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. L.S.Sidhu, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Beant Singh-plaintiff instituted a suit for possession by way of specific performance in respect of suit land, fully detailed and described in the head note of the plaint and which was partly decreed by the trial Court vide judgment dated 18.08.2017 and alternate relief of recovery was granted.

Civil appeal was preferred by plaintiff and which has been accepted vide judgment dated 11.01.2018 passed by the learned District Judge, Sri Muktsar Sahib and whereby suit of the plaintiff stands decreed for the main relief sought i.e. Possession of the suit property by way of specific performance of the agreement to sell.

Defendant-Gurmeet Kaur has filed the present second appeal assailing the judgment dated 11.01.2018 passed by the lower Appellate Court.

Briefly, it may be noticed that plaintiff had instituted a

suit for possession by way of specific performance of agreement to sell dated 23.05.2013 in respect of suit land measuring 06 kanals 01 marla as described in the head note of the plaint and in the alternate for recovery of Rs.12,10,000/- i.e. Rs. 10 lacs as refund of the amount already made over to the vendor and Rs.2,10,000/- as damages. Further relief of permanent injunction was sought restraining the defendant Gurmeet Kaur from alienating the suit land in any manner.

As noticed hereinabove, suit of the plaintiff was partly decreed and the alternate relief for recovery of an amount of Rs.10 lacs along with interest @9% per annum from the date of execution of the agreement to sell dated 23.05.2013 till the date of decree and future interest @6% per annum from the date of decree till realization was granted.

The civil appeal preferred by plaintiff-Beant Singh stands accepted in terms of impugned judgment dated 11.01.2018 passed by learned District Judge, Sri Muktsar Sahib and the suit for the main relief of possession of the suit property by way of specific performance of the agreement dated 23.05.2013 has been decreed.

Learned counsel representing the defendant/appellant has contended that under Section 20 of the 'Specific Relief Act' (for short 'the Act'), Court has the discretion to grant relief of specific performance but is not bound to grant such relief merely because it is lawful to do so. Section 20(2) of the Act has been adverted to contend that certain situations have been culled therein and under

which the Courts may exercise discretion not to award decree of specific performance. It is strenuously argued that one of such eventualities is where performance of contract would involve some hardship on the defendant which he did not foresee. Further argued that in the present case, the appellant/defendant was the owner of land measuring 06 kanals 01 marla which was subject matter of the agreement to sell in question and upon which a house had been constructed more than 05 years back and being used for residence purposes and as such the lower Appellate Court has erred in overlooking such vital aspect while granting the main relief of possession of the suit property by way of specific performance.

Counsel for the appellant has been heard at length and pleadings on record have been perused.

In the present case, the trial Court has returned findings as regards execution of the agreement to sell dated 23.05.2013 having been duly proved. Such finding is based upon appreciation of evidence of the scribe as well as marginal witnesses, namely, Gurditta Singh and Jagga Ram. The readiness and willingness of the plaintiff/respondent to perform his part of the contract has also been proved by noticing that he had duly appeared before the Sub Registrar concerned on the date fixed for registration and execution of the sale deed and he had also got attested his affidavit to such effect to prove his presence. Trial Court, however, partly decreed the suit and granted the alternate relief of recovery of the earnest money along with interest.

Concededly, appellant/defendant did not prefer any appeal against the judgment of the trial Court. In other words, the findings as regards due execution of the agreement to sell and the readiness and willingness of the plaintiff/respondent to perform his part of the contract were never assailed by the appellant herein and the same as such have attained finality.

In the considered view of this Court, the plea of hardship sought to be raised by learned counsel in the instant second appeal is wholly misconceived. Counsel for the appellant has conceded before this Court that the plea of hardship was not even raised in the written statement filed before the trial Court. Rather stand of the appellant/defendant was of an outright denial as regards execution of the agreement to sell. It was in furtherance of such stand that while she stepped into witness box, appellant has stated that a house stands built on the suit property and which is used for residence purpose. In terms of Section 20 of the Specific Relief Act, 1963, 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. Undoubtedly, the discretion to be exercised by the Court should not be arbitrary but should be passed on sound and reasonable basis. The agreement in question has been held to be duly proved and the plaintiff/respondent has been found ready and willing to perform his part of the contract. The trial court without assigning any reasoning declined the main relief as regards possession of the suit property by way of specific performance of the contract but

only granted the alternate relief of recovery of the amount that had been paid to the vendor. In the civil appeal preferred by the plaintiff/respondent, the lower Appellate Court in the impugned judgment dated 11.01.2018 has specifically noticed that the plea of hardship had not even been pleaded and set up and accordingly decreed the suit of the plaintiff in toto. Even otherwise the plea of the appellant/respondent as regards outright denial of the execution of the agreement to sell and on the other hand citing hardship to deny the main relief of specific performance of contract based on such agreement are mutually inconsistent.

This Court does not find any infirmity in the view taken by the lower Appellate Court in the impugned judgment dated 11.01.2018 granting in favour of the plaintiff/respondent the main relief of possession of the suit property by way of specific performance of the contract.

The instant second appeal does not raise any question of law much less substantial question of law.

Appeal dismissed.

Since the main appeal itself has been decided, pending application(s), if any, shall also stand disposed of.

10.07.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
No