

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

RSA-1598-2014(O&M)

Date of decision:-5.12.2019

Jaswant Singh through his LRs

...Appellant

Versus

Malkiat Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.D. Singla, Advocate
for the appellant.

Mr.Ranjit Saini, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Malkiat Singh son of Sadhu Singh, resident of village Khun Khun Kalan, Tehsil Dasuya, District Hoshiarpur had originally brought a suit against defendant Amarjit Singh, resident of that very village seeking confirmation of possession as owner, by way of specific performance of an agreement dated 27.7.1993, of land measuring 5 kanals 13 marlas situated at village Khun Khun Kalan, Tehsil Dasuya, District Hoshiarpur fully described in head-note of the plaint.

As per version of the plaintiff, defendant No.1 being owner of the suit land had entered into agreements to sell the same with him on 17.8.1984, 29.4.1988 and 27.7.1993 after receiving the amount of Rs.25,000/-; as a matter of fact the total amount settled in respect of the suit property between the parties was Rs.36,725/-, out of which the defendant received Rs.20,000/-; vide agreement dated 17.9.1984, 29.4.1988 and endorsement dated 3.10.1992 executed by defendant in favour of the plaintiff earlier and amount of Rs.5,000/- was also received on 27.7.1993; all the earlier writings were admitted vide agreement dated 27.7.1993; the sale deed was to be executed within four months after decision of appeal pending in the High Court after service of notice by the defendants in that regard; the possession of the suit property had already been delivered by the defendant to the plaintiff. According to the plaintiff, he has always been ready and willing to perform his part of contract, however the defendant with *mala fide* intention entered into compromise in respect of the appeal with his brothers pending in the High Court; that was done in absence of the plaintiff; the plaintiff had filed a review petition in the High Court and the High Court stayed the alienation of the suit land or creating third party right in the same vide order dated 25.4.2001; the plaintiff had also served a legal notice upon the defendant, to which the latter filed reply; the plaintiff had filed a suit for permanent injunction, wherein the defendant had

submitted written statement concealing the fact of compromise. On final refusal of the defendant to admit the claim of the plaintiff, he brought the suit in question.

On being put to notice, the defendant No.1 appeared and filed written statement contesting the suit; *inter alia* he had raised preliminary objections that the suit was not maintainable; that the suit was time barred; that the plaintiff had no locus standi or cause of action to file the suit; that the plaintiff was estopped from filing the suit by his act and conduct. On merits, the answering defendant denied having entered into any agreement with the plaintiff. According to him, he was not owner of the suit property as per the decision of the High Court dated 6.2.2001. Such defendant denied having received any money from the plaintiff.

Defendant No.2 was impleaded as a party when application under Order 1 Rule 10 CPC was allowed vide order dated 21.5.2007 by the trial Court. He had filed a separate written statement taking various legal objections, on merits contending that defendant No.1 had no right, title or interest in the suit property and answering defendant had not agreed to execute any sale deed in favour of the plaintiff, whereas the alleged agreement to sell had no effect on the rights of such defendant.

Both the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were

framed:

1. Whether the defendant has executed an agreement to sell dated 27.7.1993 for the land measuring 5 K-13M in village Khunkhun Khurd, as detailed in the head note of the plaint? OPP.
2. Whether the plaintiff remained ready and willing to perform his part of the contract? OPP.
3. Whether the plaintiff is entitled for decree of possession by way of specific performance of the agreement to sell? OPP.
4. Whether the suit is not maintainable? OPD.
5. Whether the suit is within limitation? OPP.
6. Whether the plaintiff has no locus standi to file the present suit? OPD.
7. Relief.

Both the parties led evidence in support of their respective claims.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the defendants and in favour of the plaintiff, issue No.2 against the defendants and in favour of the plaintiff, issue No.3 against the plaintiff and in favour of the defendants, issue No.4 and 6 in favour of the plaintiff and against the defendants, issue No.5 in favour of the plaintiff and against the defendants. Resultantly vide judgment and decree dated 16.11.2010,

the trial Court of Additional Civil Judge (Sr.Divn.), Dasuya, decreed the suit of the plaintiff for the recovery of Rs.25,000/- along with the interest @ Rs.12% per annum from the execution of the agreement till filing of the suit and future interest @ 6% per annum from the date of decree till actual realization.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Hoshiarpur, which was assigned to Additional District Judge, Hoshiarpur, who vide judgment and decree dated 18.11.2013 accepted the appeal and suit of the plaintiff was ordered to be decreed for specific performance of agreement dated 27.7.1993 and both the respondents/defendants were directed to join for execution of the sale deed within a period of two months from the date of decree and the plaintiff was directed to deposit the balance sale consideration in the trial Court within that time. It was observed that if the respondents failed to execute the sale deed in terms of the decree, then the plaintiff/appellant shall be entitled to get the same executed through agency of the Court.

Being dissatisfied with the judgment and decree passed by the first Appellate Court, the defendant No.2 Jaswant Singh had filed the present Regular Second Appeal before this Court, notice of which was issued to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Chapter II of the Specific Relief Act, 1963 deals with specific performance of contracts. Under it Section 20 of the Specific Relief Act provides that 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 Court of appeal.

In the instant case, the facts and circumstances did not call for grant of relief of specific performance to the plaintiff. The trial Court by proper analysis of the factual and legal position had arrived at the conclusion that the plaintiff was not entitled to specific performance of agreement to sell though passed a decree for recovery with interest. The relevant part of the judgment in that regard is para No.15, which for ready reference is being reproduced as under:-

15. Perusal of the entire evidence on record reveals that although the defendant No.1 was co-sharer in the suit property and has executed an agreement to sell in favour of the plaintiff, but later on the suit property was given to the defendant no.2 as the parties entered into a compromise in the Hon'ble Punjab & Haryana High Court. Thereafter, the plaintiff filed a review petition in the Hon'ble High Court, wherein the Hon'ble High

Court was pleased to pass the order for the stay regarding the alienation of the suit land. However, it was sufficiently been proved on record that the defendant no.1 is no longer the owner of the property in dispute which has been transferred due to the compromise effected between the parties and on the order of the Hon'ble Punjab & Haryana High Court. Therefore, the plaintiff is not held entitled to the decree for the possession by way of specific performance of the agreement to sell. However, the plaintiff is held entitled to the alternative relief of the recovery of Rs.25,000/- received by the defendant no.1 from the plaintiff as an earnest money from time to time along with the interest. So in view of my above said discussion, this issue is decided against the plaintiff and in favour of the defendant.

The First Appellate Court without any cogent and justifiable reason accepted the appeal, in the process granted specific performance of agreement to the plaintiff. No cogent and convincing reason for the same could be given. The First Appellate Court lost sight of various factors.

Ex.P14 is the copy of judgment passed by Additional District Judge, Amritsar in Civil Appeal instituted on 5.1.1982 and decided on 7.5.1984 filed by Amarjit Singh - defendant No.1 in the suit, his mother Smt.Kartar Kaur and others against Jaswant Singh –

defendant No.1 in that suit and others. Pritam Singh son of Munsha Singh is shown as one of the respondents in the said appeal. That judgment had been challenged in Hon'ble High Court by filing RSA No.2415 of 1984. However, the matter was compromised between the parties. A perusal of the record goes to show that there has been protracted litigation between defendants *inter se* which has gone up to the High Court and it can certainly be not stated that they had compromised the matter just to defeat the rights of the plaintiff. The compromise comes out to be *bona fide* to resolve the dispute between the defendants and other persons. As a result of that compromise, Amarjit Singh no longer remained the owner of the suit property. He had been compensated by giving him some other property. Once Amarjit Singh did not remain the owner of the property regarding which agreement to sell had been entered into, he could not possibly execute the sale deed in that regard in favour of the plaintiff. Since there is nothing to show that Amarjit Singh and Jaswant Singh had colluded with each other to defeat the rights of the plaintiff, Jaswant Singh can certainly be not asked to join Amarjit Singh in executing the sale deed in favour of the plaintiff. Jaswant Singh was not a party to agreement to sell.

The first Appellate Court by total misappraisal of evidence and wrong interpretation of law granted specific performance of agreement to sell to the plaintiff. It is surprising to

note that learned Additional District Judge, Hoshiarpur went to the extent of labelling the consent decree passed by the High Court to be collusive between the parties completely forgetting that there had been protracted litigation between the parties, which had gone up to the High Court. In appeal before the High Court, Jaswant Singh was the appellant and thirteen respondents were there including Amarjit Singh – defendant No.1. The dispute between the parties was with regard to estate of Sh. Thakur Singh, that was ultimately settled. Jaswant Singh son of Thakur Singh and Smt. Inderjit Kaur wife of Mohan Singh daughter of Thakur Singh were on one side referred to as Party No.1. Amarjit Singh son of Thakur Singh, Smt. Kartar Kaur, widow of Thakur Singh, Jaswant Kaur wife of Niranjana Singh daughter of Thakur Singh as well as Rajinder Kaur wife of Gurnam Singh daughter of Thakur Singh were on the other side referred to as Party No.2. As per the agreement entered into between the Party No.1 and Party No.2, Party No.1 was given a residential house situated at Chowk Kirori, Gali Nihal Singh Wala, Amritsar, land measuring 11 kanals 5 marlas situated at village Khun Khun Kalan, Tehsil Dasuya, District Hoshiarpur and other land measuring 5 kanals 13 marlas was also given to the Party No.1.

Learned counsel for the appellants has referred to various judgments first being **Smt. Annapoorani Ammal Versus G. Thangapalam, (1989) 3 Supreme Court Cases 287** wherein it was

observed that specific performance of contract can be decreed only against executant of the contract having right to dispose of the suit property.

The second judgment referred to by learned counsel for the appellant was ***Shiv Dayal Kapoor and others Versus Union of India and another, 1963 AIR(Punjab) 538*** by a Division Bench of this Court wherein it was observed that rights and obligations under a contract cannot be acquired by or imposed on a third party not privy to the contract.

Learned counsel for the appellants also pressed into service ***K.Appa Rao and another Versus P.Balasubramania Gramani and others, 1976 AIR(Madras) 70*** by a Division Bench of Madras High Court wherein while dealing with a case when an agreement to sell had been entered into by some of coparceners whereas, whereas litigation was pending with regard to the said property; that litigation had ended in a compromise decree vide which other coparceners were allotted that property. It was observed that it cannot be concluded that compromise decree was collusive merely because it was against interest of promise.

Therefore, the observations of learned Additional District Judge, Hoshiarpur was totally wrong and uncalled for. There was no occasion to grant the specific performance to the plaintiff but for the reasons best known to Additional District Judge, Hoshiarpur, he

proceeded to do so. The judgment and decree passed by learned Additional District Judge, Hoshiarpur have no legs to stand and are bound to be set aside by way of acceptance of the appeal.

Resultantly the judgment and decree passed by Additional District Judge, Hoshiarpur are set aside and the judgment and decree passed by the trial Court are restored.

The appeal stands allowed accordingly with costs.

Since the main appeal stands allowed, the miscellaneous application, if any also stands disposed of accordingly.

5.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No