

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

**RSA-531-2015 (O&M)
Date of Decision : 18.12.2019**

Gurmeet Singh through LRs and anotherAppellants

Versus

Gurmeet Singh son of Harchand Singh through LRs and another
.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Ms. Jigyasa Tanwar, Advocate and
Mr. Anshuman Chopra, Advocate
for the appellants.

Mr. Kanwal Goyal, Advocate
with Mr. Amarjit Markan, Advocate
for the respondents.

RAMENDRA JAIN, J. (Oral)

Through this appeal, plaintiffs have assailed judgment dated 13.01.2015 of the lower appellate court, affirming judgment and decree dated 10.06.2011, of the trial court, whereby their suit for possession by way of specific performance against respondent No.1 was decreed for recovery of Rs.2,50,000/- alongwith interest @ 12% per annum from the date of advancement i.e. 21.04.2004 till the date of decree and @ 6% per annum from the date of decree till actual realization of the decretal amount.

Briefly, appellants filed a suit for possession by way of specific performance of agreement to sell dated 21.04.2004 and subsequent writings/extensions dated 13.08.2004 and 13.09.2004 against respondents.

Upon notice, respondent No.1 contested the suit. The trial court, after holding trial, converted the suit for possession by way of specific performance into suit for recovery and decreed the same vide judgment and decree dated 10.06.2011, as aforesaid.

Being aggrieved, appellants approached the lower appellate court, who affirming the judgment and decree dated 10.06.2011, of the trial court, dismissed their appeal vide judgment and decree dated 13.01.2015.

Learned counsel for the appellant-plaintiffs inter alia contends that both the courts below failed to appreciate that appellants, believing the version of respondent No.1 that there was a stay against him obtained by one Bhim Singh, in a civil suit titled as *Bhim Singh versus Gurmit Singh*, kept on extending the dates of execution of sale deed. The appellants were already ready and willing to perform part of their contract and it was only respondent No.1, who failed to perform his part of contract.

Learned counsel for respondent No.1, refuting the above submissions and pleading the legality and validity of judgments and decrees of both the courts below, contends that possession of suit property was never delivered to the appellants, in-as-much as, appellant No.1 as PW3 categorically admitted that khasra girdawari qua possession of suit property was still in favour of respondent No.1. Repeated extension of time by appellants for payment of balance sale consideration rightly weighed in the mind of both the courts below to hold that they were not ready and willing to perform their part of contract. There was no stay, as alleged, against

respondent No.1. Relief of specific performance under Specific Relief Act is an equitable relief. Therefore, both the Courts below, considering, peculiar facts and circumstances of the case, rightly converted the suit of the appellants for possession by way of specific performance to suit for recovery of earnest money with interest.

Having given thoughtful consideration to the rival contentions, this Court finds the instant appeal merits acceptance for the reasons to follow.

Even if, there was no stay qua alienation against respondent No.1, as alleged, in that eventuality also, respondent No.1 was incapable of execution and registration of sale deed in favour of appellants in view of attachment of the suit property/his share by civil court in aforesaid civil suit, filed by Bhim Singh titled as Bhim Singh vs. Gurmit Singh. Thus, plea of appellants-plaintiff that on the asking of respondent No.1 that he was incapable of execution and registration of sale deed on account of stay against him obtained by Bhim Singh, they carried on extending the dates, has illegally been disbelieved by both the courts below.

In his written statement, respondent No.1 took specific plea that agreement in question dated 21.04.2004 was a forged and fabricated document. He never signed the same. He also took alternative plea that in case his signatures are found thereon, the same might have been obtained by appellants on 22.09.2004, when proforma respondent No.2 had taken him to attest sale deed, so to be executed by respondent No.2 in favour of appellant. However, he did not lead any evidence in support of his above plea.

Contrary to it, appellants examined a hand writing and finger print expert PW6 Dr. R.V.Vashista, who vide his report Ex.PW6/B, opined that agreement to sell dated 21.04.2004 bore signatures of respondent No.1. Thus, authenticity and genuineness of agreement to sell Ex.P1 was proved by appellants beyond any shadow of doubt.

Both the courts below failed to appreciate that no notice was legally required to be served upon the respondents before filing the suit for specific performance. Thus, on this very ground, their suit for possession by way of specific performance could not have been converted into suit for recovery.

Initially, filing of suit for permanent injunction by appellants and then the present suit for specific performance, after withdrawal of the same, does not debar them from decretal of their suit for possession by way of specific performance, in-as-much as, cause of action in both the suits, filed by the appellants was different to each other.

Suit for permanent injunction was filed by appellants for restraining respondent No.1 from alienating the suit property in any manner, whatsoever, whereas, the present suit was for possession by way of specific performance, on the basis of agreement to sell dated 21.04.2004.

There is no hard and fast rule that every suit for permanent injunction in such like cases, should be converted into a suit for possession by way of specific performance. A person has both the remedies, either to convert his suit for injunction into suit for

possession by way of specific performance or to file a fresh suit.

In view of aforesaid discussion, the findings of both the courts below qua converting the suit of appellants for possession by way of specific performance into a suit for recovery are set aside. Resultantly, the suit of appellant for possession by way of specific performance of agreement to sell is decreed in toto.

The instant appeal stands accepted accordingly.

18.12.2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No