

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

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**RSA No. 6284 of 2014 (O&M)  
Date of Decision : 20.02.2019**

Shakuntla Devi

... Appellant

Versus

Satyabir and others

...Respondents

**CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Ashok Kumar Khunger, Advocate for the appellant.

Mr. Amit Arora, Advocate for  
Mr. Sudhanshu Makkar, Advocate for respondent No.1.

Mr. Amit Arora, Advocate for respondent No.3.

**HARNARESH SINGH GILL, J.**

Present regular second appeal has been preferred by Smt. Shakuntla Devi against the judgment and decree dated 25.11.2011 passed by Additional Civil Judge (Senior Division), Bhiwani and against judgment and decree dated 14.11.2014 passed by Additional District Judge, Bhiwani.

As per the brief facts of the present case, appellant Smt. Shakuntla Devi being a plaintiff filed a suit for specific performance on 10.09.2002 on the basis of the agreement to sell dated 08.08.1992 (Ex.P-1). As per appellant-plaintiff she entered into an agreement to sell to purchase land measuring 6 marlas owned by Satyabir/respondent-defendant No.1 through his General Power of Attorney (GPA) holder- Sant Lal/Resondent-defendant No.2 for the sale consideration of Rs.85,000/- which was received by the GPA namely Sant Lal and vacant possession of the property was handed over to the plaintiff. There was no specific date to execute the sale deed but the respondents-defendants No.1 and 2 were duty bound to execute

these registered sale deeds in favour of the appellant-plaintiff. It is further alleged that appellant-plaintiff filed a civil suit seeking relief of injunction and the appellant-plaintiff is still ready and willing to execute and register the sale deed of disputed property on her own expenses. It is further stated that the sale deed dated 03.12.1997 (Ex.D-4) has been executed by respondent-defendant No.2 in favour of Smt. Krishna Devi/respondent-defendant No.3 in order to grab money from the plaintiff and harass her and the said sale deed dated 03.12.1997 is not binding on the right of the plaintiff. The respondents-defendants appeared before the trial court. Respondent-defendant No.2 Sant Lal (GPA) did not prefer to contest the suit and he was proceeded against ex-parte on 25.01.2011. Respondent-defendant No.1 have taken a specific stand that he is the owner in possession of the disputed property and he was having good relation with respondent-defendant No.2 and executed GPA in his favour just to maintain the property and no right to alienate the property was ever given. Even the sale deed executed by respondent-defendant No.2 (GPA) in favour of Smt. Krishan Devi, respondent-defendant No.3 is not binding on the rights of respondent-defendant No.1. Respondent-defendant No.1 has also taken a specific stand about these two documents i.e. agreement to sell dated 08.08.1992 and sale deed dated 03.12.1997 are illegal and void and the property in dispute is a residential house and not a plot as it has been wrongly mentioned as 'plot' in agreement to sell dated 08.08.1992. Respondent-defendant No.3 have contested the present suit and stated that she is owner in possession of the suit property/residential house on the basis of registered sale deed No. 3374 dated 03.12.1997 and have further alleged that the agreement to sell dated 08.08.1992 is based on fraud and the

appellant-plaintiff has got no right, title or concern whatsoever with the disputed property.

After taking into consideration the contentions raised by the parties, following issues were framed:-

1. Whether the defendant No.2 Sant Lal son of Kishan Chand was GPA holder of defendant No.1 Satyavir in respect of the suit land?OPP
2. Whether on the basis of the said GPA defendant No.1 was empowered to execute the agreement to sell dated 08.08.1992 in respect of the suit land in favour of the plaintiff?OPP
3. Whether the registered sale deed dated 03.12.1997 executed by defendant No.2 Sant Lal in favour of defendant No.3 after the execution of agreement to sell dated 8.8.1992 is illegal, null and void and not binding upon the rights of the plaintiff and thus, is liable to be set aside and cancelled?OPP
4. Whether the plaintiff is entitled to the decree of specific performance of agreement to sell dated 8.8.1992?OPP
5. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
6. Whether the plaintiff has no locus standi to file the present suit?OPD
7. Whether the plaintiff is stopped by his own act and conduct from filing the present suit?OPD
8. Whether the plaintiff has no cause of action to file the present suit?OPD
9. Whether the suit of the plaintiff is not maintainable in the

present form?OPD

10. Whether the suit of the plaintiff is time barred?OPD

11. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the court, if so, its effect?OPD

12. Whether the suit of the plaintiff is bad for want of proper court fee?OPD

13. Relief.

After taking into consideration the evidence on record, the Additional Civil Judge (Senior Division), Bhiwani vide judgment and decree dated 25.11.2011 partly decreed the suit with costs against respondents-defendants No.1 and 2 and held that appellant-plaintiff is entitled to get the refund of amount of Rs.85,000/- which she had paid as sale consideration along with interest @ 6% per annum from the date of its payment, till realization. Rest of the reliefs as claimed in the suit was dismissed.

Against the judgment and decree dated 25.11.2011 passed by Additional Civil Judge, (Senior Division), Bhiwani appellant-plaintiff Shakuntala Devi filed the appeal. Similarly respondent-defendant No.1-Satyabir also filed an appeal against the judgment passed by Additional Civil Judge(Senior Division), Bhiwani. Additional District Judge, Bhiwani while taking into consideration both the appeals have held that agreement to sell dated 08.08.1992 (Ex. P-1) is a fake document as the same does not fulfil the contention of receiving the consideration amount by respondent -defendant No.1-Satyabir through GPA-respondent-defendant No.2-Sant Lal. Accordingly, appeal preferred by the appellant-plaintiff, Smt.

Shakuntala Devi was modified and dismissed. The second appeal preferred by respondent-defendant No.1- Satyabir was partly allowed to the extent that he was not liable to refund of Rs.85,000/- alleged to be received as earnest money as per agreement to sell dated 08.08.1992. Against the judgment passed by the courts below the appellant-plaintiff preferred the present regular second appeal.

I have heard learned counsel appearing for the appellant-plaintiff and learned counsel appearing for respondent-defendant no.1-Satyabir.

It has been argued by learned counsel for the appellant that respondent-defendant No.1 duly authorized respondent-defendant No.2- Sant Lal through GPA dated 21.12.1991 (Ex.P-7) and on the basis of said GPA the agreement to sell dated 08.08.1992 (Ex.P-1) was executed in favour of the appellant-plaintiff. The sale consideration of amounting to Rs.85,000/- was received and the possession of the property was handed over to the appellant-plaintiff. It is further argued that sale deed dated 03.12.1997 (Ex.D-4) has got no effect on the right of the appellant-plaintiff and is not binding. It is argued that the sale deed dated 03.12.1997 has been executed with the sale consideration of Rs.35,000/- only whereas agreement to sell was executed on 08.08.1992 and the sale consideration was received i.e. amounting to Rs.85,000/-. During the span of 5 years there is rise in the value of the property but executing the sale deed for the consideration of Rs.35,000/- clearly indicates that it is a sham transaction.

Counsel for the appellant has relied upon the judgment titled as ***Bal Singh and others Versus Ravinder Singh and others*** reported in 2005(3) RCR (Civil). In the said case, the vendor has specifically deposed the fact of the earlier agreement to the subsequent vendee and the

possession was with earlier proposed vendee. The subsequent vendee cannot be held to be bona fide purchaser. Whereas in the present case, respondent-defendant No.2 being the GPA have executed the sale deed in favour of the respondent-defendant No.3 and since the title was clear purchaser had no knowledge of agreement to sell dated 08.08.1992. Thus, the appellant-plaintiff does not get any support from the above said judgment.

On the other hand, learned counsel for the respondent-defendant no.1-Satyabir has argued that while executing GPA dated 02.12.1991 (Ex. P-7) no authority was given to respondent-defendant No.2-Sant Lal to sell the property rather only authority was given to maintain the property. Thus, he has argued that agreement to sell dated 08.08.1992 and sale deed dated 03.12.1997 are liable to be set aside.

After hearing learned counsel for the parties and going through the documents on record and perusing the judgments passed by the courts below, the agreement to sell dated 08.08.1992 was executed by respondent-defendant No.1 through GPA respondent-defendant No.2. Perusal of Ex. P-7 i.e. GPA dated 07.12.1991 shows that the respondent-defendant No.2 was authorized to execute the sale deed and which has been executed in favour of Smt. Krishn Devi-responent-defendant No.3.

The respondent-defendant No.1 had failed to prove on record that he had received Rs.85,000/- from appellant-plaintiff as there is neither any oral testimony nor documentary evidence on behalf of the appellant-plaintiff. The lower appellate court have rightly drawn conclusion that agreement to sell dated 08.08.1992 (Ex.P-1) is a fake document and does not fulfil the contentions of receiving the consideration amount. Moreover,

in my view the relief of specific performance is discretionary in nature.

Sections 20 and 21 of Specific Relief Act, 1963 are reproduced hereunder:-

***20. Discretion as to decreeing specific performance.—***

*(1) 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 a court of appeal.*

*(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—*

*(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*

*(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or*

*(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.*

*Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).*

*Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant*

*within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.*

*(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.*

*(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.*

**21. Power to award compensation in certain cases.—**

*(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.*

*(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.*

*(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.*

*(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).*

*(5) No compensation shall be awarded under this section unless the plaintiff has claimed such*

*compensation in his plaint:*

*Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.*

*Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.*

Appellant/plaintiff entered into agreement to sell with respondent No.1 on 08.08.1992 and suit for specific performance is filed on 10.09.2002 whereas sale deed in favour of respondent/defendant No.3 was executed, qua same property, on 03.12.1997 appellant/plaintiff has failed to show her ready and willingness even it is the case of appellant/plaintiff that total sale consideration was paid.

Hon'ble Supreme Court of India in the case titled as ***B. Vijaya Bharathi versus P. Savitri and others*** reported in 2018(1) RCR(Civil)4 has held that even defendant may not be a bona fide purchaser would not come in his way of stating that the suit must be dismissed at the threshold because of lack of readiness and willingness of plaintiff which is the basic condition for grant of specific performance.

Similar view has been taken by Hon'ble Supreme Court of India in case titled as ***Mrs. Vijaya Shrivastava versus M/s Mirahul Enterprises and others*** reported in 2006(3) RCR (Civil)740 and has held that even if the contract is found to be concluded, still the court can refuse specific performance if the subsequent purchaser is found to be a bona fide purchaser for value without notice.

Thus, the agreement to sell in question was executed on

08.08.1992 and the appellant-plaintiff filed suit on 10.09.2002, after the gap of about 10 years which also creates doubt in the mind of this court that the agreement to sell dated 08.08.1992 is a fake document and is giving no right to the appellant-plaintiff for the relief of specific performance. Even otherwise, the documents placed on record by producing the electricity bill, copy of the judgment passed in civil suit titled as *Smt. Shakuntala Devi versus Om Parkash* does not support the claim of the appellant-plaintiff. It shows that she was never in possession of property in question.

After taking into consideration the above facts and circumstances and going through the record no interference is called for in the well reasoned judgment passed by Additional District Judge, Bhiwani, dated 14.11.2014. No substantial question of law arises for consideration in the present appeal. Thus, the present appeal is devoid of merits and is hereby dismissed.

20.02.2019  
pooja saini

(HARNARESH SINGH GILL)  
JUDGE

|                                   |               |
|-----------------------------------|---------------|
| <i>Whether speaking/reasoned?</i> | <i>Yes/No</i> |
| <i>Whether reportable?</i>        | <i>Yes/No</i> |