

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 17.1.2019

RSA No. 999 of 2014(O&M)

Babu Ram

---Appellant

versus

Sucha Singh

---Respondent

RSA No. 758 of 2014(O&M)

Babu Ram

---Appellant

versus

Sucha Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Jagdish Manchanda, Advocate
for the appellant**

**Mr. S.M.Sharma, Advocate,
for the respondent**

Rekha Mittal, J.

This order will dispose of RSA Nos. 758 and 999 of 2014 as identical question of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 999 of 2014.

Sucha Singh, respondent-plaintiff filed suit for possession by way of specific performance of agreement to sell dated 8.8.1991. It is averred that appellant-defendant agreed to sell land measuring 4 kanal 17 marlas being 3/5 share of land measuring 8 kanal 1 marla bearing khasra

No. 32//21 (wrongly described as 32//20) in the agreement to sell dated 8.8.1991 and 33//1 vide jamabandi for the year 1986-87, situated at village Paharipur, Tehsil Jagadhri @ Rs. 90,000/- per acre and received a sum of Rs. 10,000/- as earnest money vide receipt dated 8.8.1991. The sale deed was agreed to be executed on or before 15.6.1992. It is averred that the respondent-plaintiff always remained ready and willing to perform his part of contract but the defendant-appellant failed to execute the sale deed. The respondent served legal notice dated 15.6.1992 upon the defendant-appellant but he did not turn up. The respondent remained present in the office of Sub Registrar, Sadhaura on 15.6.1992 to get the sale deed registered on payment of balance sale consideration but the other party did not appear for doing the needful.

The appellant-defendant filed the written statement and raised preliminary objections inter alia that the suit is not maintainable and the same is time barred. On merits, he denied his having entered into agreement to sell or receipt of earnest money of Rs. 10,000/-. It is averred that appellant is a painter and respondent requested him to do the work of whitewashing and painting. The respondent said that he will get the agreement signed for the said work from the appellant and obtained his signatures on blank stamp papers. The respondent might have fabricated and forged the agreement in question but appellant is not bound by the same.

The trial court framed issues, reproduced in para 10 of judgment of the said court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court negated plea of the

respondent-plaintiff with regard to the appellant having entered into agreement of sale dated 8.8.1991 and his entitlement to possession by way of specific performance of the said agreement. Eventually, suit filed by the plaintiff was dismissed.

The appeal preferred by unsuccessful respondent-plaintiff was allowed by the Additional District Judge, Yamunanagar at Jagadhri and the respondent was allowed principal relief of specific performance of the agreement of sale with the direction that appellant shall execute registered sale deed in view of agreement to sell dated 8.8.1991 within a period of two months after receiving the balance sale consideration.

Counsel for the appellant has submitted that the Appellate Court committed a serious error rather illegality by allowing specific performance of the agreement despite the fact that khasra No. 32//20 (6-4) is not ownership of the appellant, therefore, he is not competent to execute sale deed in respect of land comprising khasra No.32//20. It is further argued that respondent-plaintiff filed an application for amendment of the plaint for correction of khasra No. 32//20 to khasra No. 32//21 but the respondent failed to get any relief upto Hon'ble the Supreme Court. It is vehemently argued that as the respondent was not allowed to amend the plaint in order to seek specific performance of agreement to sell in respect of land comprising khasra No. 32//21 and khasra No. 32//20 is not owned by the respondent, findings recorded by the Appellate Court allowing specific performance of the agreement in its entirety cannot be allowed to sustain, thus, liable to be set aside.

Counsel representing the respondent-plaintiff has supported judgment and decree passed by the Court in Appeal with the submission that

the appellant cannot be allowed to take advantage of a typographical error on account of which there is reference to khasra No. 32//20 in place of khasra No. 32//21 in the agreement of sale as well as in the plaint, drafted on the basis of facts mentioned in the agreement of sale. He would apprise the court that appellant filed suit bearing No. 205 of 1992 for declaration to challenge agreement of sale dated 8.8.1991 wherein he has correctly mentioned khasra No. 32//21 and 33//1 in respect of land measuring 4 kanal 17 marlas being 3/5 share of land measuring 8 kanal 1 marla.

I have heard counsel for the parties, perused the paper book and records.

The Appellate Court set aside findings of the trial court with regard to agreement of sale and uphold plea of the respondent that agreement to sell dated 8.8.1991 (Ex. P1) has been duly proved whereby the appellant agreed to sell land for sale consideration of Rs. 90,000/- per acre and received a sum of Rs. 10,000/- as earnest money. Perusal of agreement to sell (Ex. P1) would reveal that appellant agreed to sell land measuring 4 kanal 17 marlas to the extent of 3/5 share out of khasra No. 32//20 measuring 6 kanal 4 marlas and khasra No. 33//1 measuring 1 kanal 17 marlas.

There is no dispute that khasra No. 32//20 is not owned or co-owned by appellant Babu Ram. The application filed by the respondent for amendment of the plaint in order to seek specific performance qua land comprising khasra No. 32//21 was dismissed upto Hon'ble the Supreme Court. It is not certain if the respondent ever filed appropriate proceedings for rectification of agreement of sale by invoking the relevant provisions in law. As plea of the respondent to seek specific performance or execution of

sale deed in respect of khasra No. 32//21 was not allowed to be incorporated in the plaint and on the contrary, appellant is not owner of khasra No. 32//20, the Appellate Court has grossly erred by allowing specific performance of the entire agreement of sale (Ex. P1). In this view of the matter, findings of the Appellate Court allowing specific performance qua land comprising khasra No. 32//20 or 32//21 cannot be allowed to sustain and ordered accordingly.

This brings the court to specific performance of agreement in respect of land comprising khasra No. 33//1. Counsel for the appellant has not advanced any meaningful arguments to assail findings of the Appellate Court that agreement to sell dated 8.8.1991 was executed by the appellant and the respondent always remained ready and willing to perform his part of the agreement with regard to payment of balance sale consideration and incurring expenses for registration etc. As per the settled position in law, the court is competent to allow moulded relief and pass judgment and decree that ought to have been passed in the circumstances of a given case.

Counsel for the respondent has not raised any issue, if claim of the respondent for execution of sale deed only in respect of khasra No. 33//1 (1-17) to the extent of 3/5 share is allowed subject to payment of price @ Rs. 90,000/- per acre. In this view of the matter, the respondent shall be entitle to specific performance of agreement to sell only in respect of 3/5 share of land comprising khasra No. 33//1 as per jamabandi for the year 1986-87 and judgment and decree passed by the Appellate Court is modified accordingly.

In view of what has been discussed hereinabove, the appeals

are partly allowed in the terms indicated above, leaving the parties to bear
their own costs.

(Rekha Mittal)
Judge

17.1.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No