

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

RSA-5019-2014(O&M)

Date of decision:-5.12.2019

Jaswant Singh through his LRs

...Appellant

Versus

Pritam Singh through his LRs 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.

CM-11837-C-2014

For the reasons mentioned in the application, the same is
allowed and delay of 20 days in filing of the appeal stands condoned.

RSA-5019-2014(O&M)

Briefly stated, facts of the case are that plaintiff Pritam
Singh had brought a suit originally against defendant Amarjit Singh
for confirmation of possession as owner by way of specific
performance of an agreement dated 27.7.1993 of land measuring 11

kanals 5 marlas situated at village Khun Khun Kalan, Tehsil Dasuya, District Hoshiarpur fully described in head-note of the plaint on payment of balance sale consideration amount of Rs.17,500/-.

As per version of the plaintiff, defendant No.1 was owner of the suit land; he had made endorsement dated 30.7.1987 and entered into an agreement with the plaintiff on 27.7.1993; he had received a sum of Rs.36,000/- in total; out of the total consideration amount agreed to the tune of Rs.53,000/-, the defendant had received Rs.36,000/- vide agreement dated 18.6.1984; Rs.6,000/- on 27.7.1993 at the time of execution of an agreement dated 27.7.1993 i.e. total amount of Rs.36,000/-; the defendant had admitted and acknowledged the agreement dated 18.6.1984 and writing dated 30.7.1987; it was agreed between the parties that the sale deed would be executed and got registered within four months after decision of the appeal pending in the High Court pertaining to the suit land and the defendant would serve notice to the plaintiff to perform his part of the contract after decision of the appeal and in case the defendant failed to execute the sale deed in favour of the plaintiff, then the plaintiff could get the same executed through Court of law and in case the plaintiff failed to get the sale deed executed the earnest money paid by him would stand forfeited; the possession of the land agreed to be sold has already been delivered by the defendant to the plaintiff and the plaintiff is in cultivating possession of the same

without any hindrance of any kind by anyone. According to the plaintiff, he has always been ready and willing to perform his part of the contract, whereas defendant is intentionally not coming forward to complete his part; that defendant No.1 with ulterior motive has not executed the sale deed rather has entered into a compromise with his brother; that against the said compromise, the plaintiff has filed a revision petition in the High Court in which a stay order regarding alienation of the suit property had been passed; the plaintiff had served a legal notice upon the defendant before filing of the suit, notice was duly received by the defendant but he did not file any reply, however, he did not come forward to execute the sale deed and threatened to alienate the suit land to some other person; the plaintiff had filed a suit for permanent injunction restraining the defendant from alienating the suit land. On final refusal of the defendant to execute the sale deed, the plaintiff 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 or had received any amount from him. Such defendant prayed for dismissal

of the suit.

During the pendency of the suit, defendant No.2 had filed an application for being impleaded as a party, which was allowed and he was impleaded as defendant No.2 in the civil suit and the case was fixed for filing of written statement. In the meanwhile, the suit of the plaintiff was dismissed in default. Subsequently, the suit was restored. However, both the defendants did not appear and were proceeded against ex parte. However, defendant No.1 had joined the proceedings at the stage of evidence of plaintiff and had cross-examined the witness of plaintiff.

On the pleadings of the parties, following issues were framed:

1. Whether the defendant had executed an agreement to sell dated 27.7.1993 in favour of plaintiff? OPP.
2. Whether the plaintiff is/was remained ready and willing to perform his part of the contract? OPP.
3. Whether the plaintiff is entitled to specific performance of agreement dated 27.7.1993? OPP.
4. Whether the plaintiff is entitled to any other relief? OPP.
5. Whether the suit of plaintiff is maintainable? OPP.
6. Whether the plaintiff has cause of locus standi and cause of action to file this suit? OPP.
7. Whether the suit is within limitation? OPP.

8. Whether the plaintiff is estopped from filing this suit by his own acts and conduct? OPD.

9. Relief.

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

In order to prove his case, the plaintiff had examined Sh.Diwan Chand as PW1, Smt.Gursharan Kaur as PW2, Sh.Bachan Dass as PW3, Sh.Karamjit Singh as PW4, Sh.Malkiat Singh as PW5, Sh.Sukhwinder Singh as PW6, Sh.Amritpal Singh as PW7 and he himself appeared as PW8 besides tendering certain documents.

However, the defendant No.1 did not lead any evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff and against the defendants, issue No.3 against the plaintiff and in favour of the defendants, issue No.4 was decided to the effect that the plaintiff was entitled to at least recover double the amount he has paid to the defendant No.1 along with interest, issues No.5 to 8 in favour of the plaintiff and against the defendants. Resultantly vide judgment and decree dated 16.12.2010, the trial Court of Civil Judge (Jr.Divn.), Dasuya, the suit of the plaintiff was decreed only to the effect that he was entitled to recover double the amount he has paid to the defendant No.1 along with interest @ 6% per annum till 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(Ad hoc), Fast Track Court, Hoshiarpur, who vide judgment and decree dated 6.5.2014 accepted the appeal, in the process set aside the judgment and decree passed by the trial Court and directed that suit of the plaintiff/appellant be decreed for specific performance of agreement to sell dated 27.7.1993 on payment of balance sale consideration and both the respondents were directed to join for the execution of 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 Jaswant Singh had filed the present Regular Second Appeal before this Court, notice of which was issued to the respondents, who 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 in paras No.24 to 26, which for ready reference are being reproduced as under:-

24. Further perusal of file reveal that the controversy regarding ownership of the suit property was in dispute and the first judgment regarding the ownership was passed on 20.11.1981 and thereafter appeal was filed, second appeal was filed; and then the parties went to Hon'ble High Court where the parties namely Amarjit Singh and other LRs of his father namely Thakur Singh and Jaswant Singh, Inderjit Kaur etc. effected compromise; and it was decided that said Amarjit Singh and other LRs of Thakur Singh have left their entire

claim over the property situated in village Khun Khun Kalan Tehsil Dasuya and have given the same to Jaswant Singh, Inderjeet Kaur. Therefore, at that time, when the defendant No.1 Amarjit Singh had executed agreement to sell, the defendant No.1 was not the absolute owner of the property, the ownership over property was under consideration in litigation.

25. It means that the defendant No.1 has no absolute authority to enter into agreement to sell the property in dispute with the plaintiff. The property in dispute is now ownership of the Jaswant Singh and Inderjit Kaur. Therefore, the relief of specific performance of contract cannot be granted to the plaintiff, as it was the duty of the plaintiff also to confirm as to whether the person from whom he is purchasing property is actually owner or not. So far as the question regarding the possession of the plaintiff over suit property is concerned, the revenue record reflects that his possession has been since very long as a tenant over the property. It was not that specifically on the date of execution of agreement to sell, the possession of the land in dispute was given to the plaintiff.

26. Under these circumstances, the plaintiff is certainly

not entitled to the relief of specific performance. Hence, this issue is decided against the plaintiff and in favour of defendants.

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. It seems that the Additional District Judge(Ad hoc), Fast Track Court, Hoshiarpur was too much influenced by the judgment passed by Additional District Judge, Hoshiarpur in the connected matter and without due application of mind by him, he decided the case on similar lines.

Firstly in the plaint, the plaintiff had not uttered even a single word that he had earlier been in possession of the suit land as lessee under defendant Amarjit Singh paying lease money to him and rather pleaded that possession of the land agreed to be sold had already been delivered to him so as to make it appear that the possession had been delivered to him under the agreement, while things were different inasmuch as he was in possession as lessee under defendant No.1. Furthermore, he remained silent with regard to the litigation between defendant No.1 and other persons including defendant No.2. The plaintiff himself had been a party in the cases but he chose to keep silent in that regard. The agreement, specific

performance to which is being sought by the plaintiff is said to have been entered on 27.7.1993.

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 certainly 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 (Ad hoc), Fast Track Court, 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 Khun Khun Kalan, Tehsil Dasuya, District Hoshiarpur and other land measuring 5 kanals 13 marlas was also given to the Party No.1.

It may be mentioned here that Pritam Singh plaintiff was a party in the litigation right from the beginning up to the High Court and it cannot be said that the matter was compromised by the parties at his back. He is not shown to have raised any objection to the compromise at that stage. Though he had moved an application to the

effect that he had filed a civil suit in respect of the property under reference and an order of status quo had been passed by the Civil Court and that the disposal of regular second appeal would prejudice the interim order passed in favour of the applicant.

Learned counsel for the appellant had stated that the applicant was still in possession of the property in question as a tenant and order passed by the Court while disposing of regular second appeal would not have any bearing on interim order and/or order passed in favour of the applicant by the Civil Court. Therefore, the said application was disposed of as not pressed.

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 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(Ad hoc), Fast Track Court, Hoshiarpur are 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(Ad hoc), Fast Track Court, Hoshiarpur, he proceeded to do so. The judgment passed by learned Additional District Judge(Ad hoc), Fast Track Court, 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(Ad hoc), Fast Track Court, 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