

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

RSA No. 3175 of 2010(O&M)

Date of decision: 14.2.2020

Lachhman Singh

.....Appellant

VERSUS

Sansari and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. N.S. Rapri, Advocate for the appellant.

Ms. Anupama Takhi, Advocate for respondents No.1 to 6.

REKHA MITTAL, J.

CM No.9318-C of 2010

Prayer in this application is for impleading legal representatives (in short 'LRs') of Nasib Chand— respondent (since deceased).

In view of averments made in the application supported by an affidavit of Lachhman Singh, the appellant, the application is allowed and persons mentioned in para 3 of the application are allowed to be impleaded as LR's of deceased Nasib Chand subject to just exceptions and for the purpose of present lis.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA No.3175 of 2010

Challenge in the present appeal has been directed against judgments and decrees passed by the Courts to express grievance denying specific performance of agreement to sell dated 30.06.2000 in respect of land measuring 41 kanal 11 marlas detailed in headnote of the plaint as the Courts have allowed alternative relief of recovery to the following effect:-

“...The plaintiff is accordingly held entitled to a decree for the recovery of Rs.5,80,000/- from the defendant. The plaintiff is also held entitled to the interest @ 12% per annum on the amount of Rs.3,00,000/- w.e.f. 30.06.2000 and on the total amount of Rs.5,80,000/- w.e.f. 01.07.2002, till the date of filing of the suit. The plaintiff is also held entitled to pendente lite and future interest @ 6% per annum on the decretal amount till the realization thereof...”

Counsel for the appellant would argue that agreement to sell dated 30.06.2000 has been proved in accordance with law whereby the respondent/defendant agreed to alienate the suit land for sale consideration of Rs.6 lakhs out of which Rs.3 lakhs was paid towards earnest money. The sale deed was agreed to be executed on or before 01.07.2002. In between, another sum of Rs.2,80,000/- was paid to the respondent vide receipt dated 04.01.2002 Ex.P4. It is further submitted that vide endorsement dated 28.06.2002 on the back of agreement, date for execution of sale deed was extended upto 01.08.2003. The appellant went to the office of Sub Registrar on the target date and he got his presence marked. It is vehemently argued that appellant always remained ready and willing to perform his part of the agreement who had already paid Rs.5,80,000/- out of total sale consideration of Rs.6 lakhs agreed between

the parties, therefore, impugned judgments and decrees may be modified by allowing principal relief of specific performance of agreement of sale. In support of his contention, he has relied upon judgment of this Court **Abhey Singh and others Vs. Ramesh Kumar and others, 2009(3) PLR 490**, wherein it has been held that in a suit for specific performance of an agreement with regard to sale of immovable property, the normal rule is to allow specific performance and it is only in rare circumstances that said relief may be denied.

Another submission made by counsel is that respondent/defendant failed to adduce any evidence to counter case of the appellant or substantiate his plea that agreement was executed as a security in respect of loan obtained by one Mohinder Kaur. It is further argued that Mohinder Kaur who purportedly had taken the loan from the appellant has not been examined in the case.

Counsel representing the respondents, on the contrary, has supported consistent findings recorded by the Courts on the basis whereof plea of the appellant for specific performance of agreement has been negated and he has been allowed alternative relief of recovery. It is argued that relief of specific performance is discretionary in nature and even if the agreement to sell is proved, specific performance thereof may not be allowed by the Court. According to counsel, the sequence of events noticed by both the Courts lead to inescapable conclusion that agreement is a security document prepared for repayment of loan, therefore, there is no scope for intervention in judicial discretion exercised by the Courts allowing alternative relief of recovery.

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

Before advertng to submissions made by counsel for the parties, it is appropriate to note the provisions of Section 20(1) of the Specific Relief Act, 1963 (in short 'the Act') that says that 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.

Reverting to the case at hand, the agreement to sell is dated 30.06.2000 under which 50% of sale consideration was paid towards earnest money. The sale deed was agreed to be executed on 01.07.2002. Out of balance amount of Rs.3 lakhs, a sum of Rs.2,80,000/- was paid on 04.01.2002. Despite payment of more than 95% of sale consideration, the date for execution of sale deed was extended from 01.07.2002 to 01.08.2003. The instant suit was filed in August 2006. The Courts have rightly considered that had the party intended to alienate the suit land in view of terms and conditions contained in the agreement dated 30.06.2000, where was the occasion for the appellant to agree for extension of date from 01.07.2002 to 01.08.2003, despite the appellant having paid the aforesaid amount. The matter would have been different had possession of the suit land been delivered in favour of the appellant but it is not so. Indeed, in the agreement of sale, there is a recital that possession of land had been delivered in favour of the proposed vendee but the said recital gets falsified and belied from the fact that appellant filed suit for possession by way of specific performance of agreement of sale. There is

no recital in the plaint that the appellant is in possession of suit land and he is required to be given symbolic possession as owner. On the contrary, it has been averred in para 7 of the plaint to the following effect:-

“7. That the plaintiff asked the defendant to admit his claim and to execute a legal and valid sale deed in his favour, as per terms of the agreement to sell in respect of suit land on receiving the balance sale consideration and after execution and registration of the sale deed, to deliver possession of the suit land to plaintiff, as owner, or in the alternative, asked the defendant to pay a sum of Rs.6 lacs, but he has refused to admit either claim of plaintiff for the last 2 days....”

Counsel for the appellant, in response to a query, has failed to point out any materials on record to establish that it is the appellant who is in possession of the land in dispute. In the given circumstances, I do not find any reason to interfere in the conclusions drawn by the Courts that the agreement was executed as a security for repayment of loan and for that reason, the date for execution of sale deed was extended from 01.07.2002 to 01.08.2003 despite the appellant having paid Rs.5,80,000/- on the dates discussed hereinbefore. This apart, had it been true that the parties had actually intended to sell/purchase the land and appellant had paid Rs.5,80,000/- out of Rs.6 lakhs without his being in possession of suit land, there was no reason for him not to file the suit till last date of limitation i.e. 01.08.2006. In this view of the matter, I find it difficult to accept contention of the appellant that judicial discretion exercised by the Courts is either arbitrary or the same is not well based, requiring correction by this

Court. In the given circumstances, the appellant cannot derive any advantage to his contention from the referred authority.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

FEBRUARY 14, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no