

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA Nos.3082 & 3608 of 2013 (O&M)

Date of Decision : January 14, 2020

Jatinder Mohan

...Appellant

Vs.

Amar Chand & Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Kawaljit Singh, Advocate for the Appellant.

Mr. G.S.Punia, Advocate with
Ms. Harveen Kaur, Advocate for the Respondents.

SUDIP AHLUWALIA, J.

These Appeals have been preferred by the Appellant/Plaintiff, who had initially filed the Suit in the Court of Ld. Addl. Civil Judge (Senior Division) Kharar against the Respondents seeking a declaration to the effect that he is in possession of the disputed land as described in the Heading of the original Plaint, by virtue of an Agreement to Sell dated 12.11.2001 executed in his favour by the Defendants/Respondents, after he had paid an amount of Rs.10 Lacs, out of which an amount of Rs.3 Lacs was given in cash and balance of Rs.7 Lacs was delivered by way of three separate Cheques drawn on Allahabad Bank Sector 17-B, Chandigarh. The Agreement was for transfer of Defendants' 2/3rd share of land at the rate of Rs.40 Lacs per Killa. The date fixed for execution of the Sale Deed in pursuance of the aforesaid Agreement was 20.8.2002. It was the Appellant's contention in the Plaint that although he was in possession of the

land, but the Defendants not only have been denying this fact but had also refused to execute the Sale Deed as agreed upon in spite of his repeated requests. He therefore, sought the aforesaid declaration of being in possession of the suit land and for a Specific Performance of the Agreement to Sell dated 12.11.2001 by directing the Defendants to execute the requisite Sale Deed after receiving the balance consideration of Rs.93 Lacs. He had also made an alternative prayer for recovery of double amount of earnest money paid by him i.e. Rs.20 Lacs apart from damages to the tune of Rs.50 Lacs, and an injunction to restrain the Defendants from alienating the said land in favour of any third person.

2. The Suit was contested on behalf of Defendants who filed their Written Statements denying the material averments of the Plaintiff. They specifically denied the Claim that the Plaintiff had been put in possession of the suit land. In addition, it was also their contention that they were always ready and willing to perform their part of contract as agreed by them, and had even remained present before the Sub Registrar on 20.8.2002 for the entire working hours of the day to execute the Sale Deed, but the Plaintiff himself did not come there, on account of which, the earnest money paid by him stood forfeited in terms of the Agreement. As such according to the Defendants, the Plaintiff was not entitled to any Decree of declaration since he was neither in possession of the land, nor was entitled to the Decree of Specific Performance as he himself was not ready and willing to stand by terms regarding the date and time mentioned in the Agreement, and that he was also not entitled to any refund or compensation, since

in pursuance of the specific written Agreement between the parties, the amount of earnest money so paid by him stood to be forfeited on account of his default in paying the balance on the stipulated date.

3. The Ld. Trial Court decreed the Suit partially in favour of Plaintiff by granting him the alternative relief of refund of double the earnest money i.e. Rs.20 Lacs in all, with Statutory interest thereupon.

4. The Judgment of the Ld. Trial Court was challenged by both sides, who filed their separate Appeals, which were decided by the Ld. Additional District Judge, S.A.S. Nagar (Mohali) vide his impugned common judgment dated 4.3.2013. The Appeal preferred on behalf of Plaintiff/Appellant was dismissed by the Ld. ADJ Mohali, while that filed by the Defendants/Respondents challenging the grant of alternative relief to the Plaintiff by the Trial Court was allowed and consequently, the Suit stood dismissed in *toto* as he was found not entitled to any damages or refund of the Earnest Money.

5. This Court has carefully gone through the pleadings and evidence led on behalf of both sides, as also their respective written arguments and the Citations relied upon by them.

6. The submissions raised on behalf of Appellant have been summarized as under -

- i) That once the Agreement to Sell was held to have been proved in both the Courts below, the Decree of Specific Performance ought to have been granted keeping in view the denial of the Agreement by the Defendants ;
- ii) That in the recital in the Agreement it was mentioned that possession of the disputed land had been delivered to the

Plaintiff/Vendee, and so the declaration and consequential relief of permanent injunction qua his possession ought to have been granted in his favour ;

iii)That conduct of the Defendants in misrepresenting themselves to be owners of an area measuring 20 K 12 M, although they were subsequently found owners of only 11 K 11 M according to Jamabandi for the year 2003-04, and their refusal to execute the Sale Deed in favour of Plaintiff in spite of having received the huge amount of Rs.10 Lacs is also a relevant fact for granting a Decree of Specific Performance in his favour ;

iv)That permitting forfeiture of the Earnest Money would amount to unjust enrichment of the Defendants, and that the alleged delay in filing the Suit is irrelevant inasmuch as although the Agreement was entered into in the year 2001, but it was revealed subsequently in 2003-04 that the entire area did not belong to them, excepting an area measuring 11 K 11 M which would indicate that the Defendants had failed to get their ownership completed, and consequently the Suit, which in any case, was filed within three years from the date of Agreement was not only within limitation, but also cannot be treated as having been filed after any unreasonable delay.

7. Reliance of the Appellant is first of all on the decision of a Coordinate Bench of this Court in '**Sant Singh Vs. Amarjit Singh**' **2015(9) R.C.R. (Civil) 185**, in which relying upon an earlier decision

in '**Jora Singh v. Lakhwinder Kumar and others**' 2011(1) R.C.R. (Civil) 130 it was held that where the Defendant denied execution of the Agreement itself, he cannot take up a plea to the effect that the Plaintiff was not ready and willing to perform his part of contract. In addition, the Appellant has drawn attention of the Court to the fact that the three additional Issues being Issue Nos.5A, 5B and 5C were framed by the Ld. Trial Court. Those were however, not even referred to in its impugned Judgment and when the matter came up in Appeal before the Ld. Lower Appellate Court, instead of remanding the matter back for decision on those issues, the Ld. Lower Appellate Court itself passed its findings upon the same in the impugned Judgment, which was incorrect in view of decision of this Court in '**Jasbir Singh Vs. Sukhwinder Singh**' 2014(46) R.C.R. (Civil) 479, in which it was held that Trial Court is obliged to decide all the issues framed in the Suit.

8. Another decision of a Coordinate Bench of this Court in '**Smt. Harjit Grewal and others Vs. Dr. Vinod Kumar Batra and others**' 2010(5) R.C.R. (Civil) 340 has been relied upon, in which, it was observed inter-alia -

“In support of the second substantial question of law, the learned senior counsel for the appellants contended that the judgment and decree passed by the learned lower appellate Court cannot be sustained, as the learned lower appellate Court has not recorded issue- wise finding. There is also force in this contention of the learned senior counsel for the appellants. The

learned lower appellate Court being Court of appeal was bound to answer all the issues framed, and in case, any of the issues was not pressed in appeal, the same should be recorded. The judgment and decree passed by the learned lower appellate Court, therefore, cannot be sustained even on the ground that the learned lower appellate Court has failed to give issue-wise finding.

Though in normal circumstances, this Court could have called for report from the learned lower appellate Court on additional issues, but keeping in view the fact that the learned lower appellate Court has not recorded any issue-wise finding on other issues also, the judgment and decree passed by the learned lower appellate Court cannot be sustained. The second substantial question of law is also answered in favour of the appellant/defendants.”

9. Next reliance on the decision of the Supreme Court in '**Silvey and others Vs. Arun Vargese and another**' 2008(2) R.C.R. (Civil) 591 in which the Appeal of the Defendants who had contended that the Plaintiffs themselves had abandoned the Agreement in a Suit for Specific Performance, was dismissed considering his own conduct inasmuch as his contention was found to be factually incorrect and the Suit even though filed after two years after the date of Agreement was held to be maintainable, since the time was not of the essence of the contract.

10. The last reliance is on the recent decision of Apex Court in

'R.Lakshmikantham Vs. Devaraji' 2019 (3) R.C.R. (Civil) 814 in which, it has been observed inter-alia -

“10. The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See Mademsetty Satyanarayana v. G. Yelloji Rao and others AIR 1965 Supreme Court 1405 (paragraph 7) which reads as under:

“(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court’s discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems- English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no

period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

11. In the opinion of this Court however, neither of the above contentions raised on behalf of the Appellant are tenable. It needs to be emphasized that in terms of Section 16 of the Specific Relief Act, 1963 it is specifically provided that such relief cannot be enforced in favour of a person --

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.”

12. It has been further provided in Explanation (ii) for the purpose of above Clause (c) that the *plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.*

13. Now it is seen from the original Plaint filed in the Trial Court that the Plaintiff had only made bald averments in Para 8 without specifically stating anywhere that he has all along being ready and

willing to honour his part of Agreement. Furthermore, there is absolutely no mention anywhere in the entire Plaint as to whether the Plaintiff had actually gone to the Sub-Registrar on the stipulated date (20.8.2002) with the balance consideration money to honour his part of contract. On the other hand, the Defendants not only specifically averred that they had appeared in the Sub Registrar's Office on the relevant date and remained present there throughout the working hours, when in fact it was the Plaintiff who has failed to turn up, and have also led evidence directly supporting this averment. It is however, to be also noted that in their Written Statement, the Defendants have not categorically denied having entered into an Agreement for Sale but have only averred in Para 2 of the Written Statement that the Plaintiff had allegedly got incorporated Page 3 of the Agreement to Sell dated 16.11.2001 the terms of which were not otherwise acceptable to the Defendants being illegal and arbitrary. Nevertheless, the fact that in any event, the Defendants did go to the Sub Registrar's Office on the stipulated date to execute the Sale Agreement although the Plaintiff himself had defaulted in doing so would go to show that there is no blanket denial of the Agreement *per se*. At any rate, the requirement of averment and proof of readiness and willingness on the part of a party claiming specific performance is a Statutory requirement of law as already seen from Section 16(c) reproduced above, and is not at all contingent upon the other party's entitlement to raise any objection on this ground. In fine, if the party seeking enforcement of Specific Performance of an Agreement omits to aver or prove his willingness to comply his part

of the same such as on account of his failure to appear for registration on the stipulated date, as is the case here, he would not be entitled to get such relief of Specific Performance from the Court. Reliance on the decision in **Sant Singh and Jora Singh's cases (supra)** is therefore, altogether misplaced in the present case and for the record it is also noted that in the original decision in **Jora Singh's case**, it was only observed that where the Defendant was never ready and willing to perform his part of contract, it *'does not lie in the mouth of the Defendant to contend that the plaintiff was not ready and willing to perform his part of contract'*. But this observation, which has been relied upon subsequently in **Sant Singh's case (supra)** can by no means be interpreted that it is a cardinal/settled proposition of law 'that a person who denies the execution and registration of the Sale Deed cannot be permitted to raise a plea of readiness and willingness'. As already noted, the Defendants have not categorically denied the execution of the Agreement to Sell itself, and on the contrary, from their averment that they even went to the Sub Registrar's Office on the stipulated date, would leave no room for any doubt that had they in fact accepted the existence of such Agreement.

14. We may now advert to the three additional Issues, which were ignored by the Ld. Trial Court in its original Judgment, but notice of which was subsequently taken by the Ld. Lower Appellate Court. Those additional Issues framed on 12.2.2011 are as follows -

5A- Whether the Plaintiff was ready and willing to perform his part of the contract on or before 20.8.2002 ? OPP

5B- Whether the Plaintiff is entitled to recovery of

compensation in the alternative amounting to
Rs.7,00,000/- ? OPP

5C- Whether mere suit for declaration with alternative prayer
for possession is maintainable ? OPP

15. Now, the Ld. Lower Appellate Court instead of sending back the Suit on remand to the Trial Court for its decision on the aforesaid Issues chose to pronounce its own finding thereupon on the basis of evidence already led in the Suit. There was however, no illegality or impropriety in this course adopted by the 1st Appellate Court since undisputedly, an appeal is legally only a continuation of the original Proceedings/Suit, and in such circumstances needlessly remanding the matter back for a fresh decision on those issues would have resulted only in some avoidable delay, because in any event after the fresh decision, another opportunity to either of the parties to file another Appeal would have arisen. At any rate, the decision in **Smt. Harjit Grewal's case (supra)** does not in any way cast any adverse reflection on the course adopted by the First Appellate Court, since it only decided all the Issues framed in the Suit, which it was obliged to do notwithstanding that the Trial Court had by oversight missed those additional Issues which had been framed subsequently in the Suit.

16. In such circumstances where admittedly, the Plaintiff/Appellant had failed to satisfactorily aver that he was always ready and willing to perform his part of Agreement by way of reporting in the Sub Registrar's Office with balance consideration money for execution of the Sale Deed on the stipulated date, he clearly would not have been entitled to any Decree for Specific Performance. The mere fact that it

was noted in the Agreement that possession of the disputed land had been passed on to the Plaintiff/proposed Vendee is altogether inconsequential in the present case for reasons more than one. At the outset, it may be mentioned that possession follows Title. Undoubtedly, no Title in favour of the Plaintiff stood conveyed merely by virtue of the Sale Agreement, nor there is any evidence such as by way of Revenue Record to indicate that he had physically been found to be in possession. Furthermore, in view of the agitation raised by him at subsequent stage that the Defendants did not have the ownership of the land to the extent of 20 K 12 M as mentioned in the Agreement but were found to be owners of an area measuring only 11 K 11 M from the revenue entries drawn up 2/3 years after original Agreement would also go to totally falsify the Plaintiff's contention that possession of the 'suit land' covered under the Sale Agreement had been actually passed on to him from the date of Agreement itself.

17. Lastly, the submission regarding 'unjust enrichment of the Defendants' raised on behalf of the Appellant is also misconceived, since, as seen from the original Agreement (Ex.P1/D), it has been specifically mentioned on Page 4 thereof 'the second party (Plaintiff/Vendee) would as required get his Plan sanctioned from the Committee/Department for construction and deposited development fees from the same, that if the first party (Defendant) retracts from the term then the second party would be entitled to double the amount of Earnest Money apart from damages and costs through Court and that if the second party backs out from making the purchase, the money would stand forfeited.' Considering these explicit agreed conditions in

the original Agreement for Sale coupled with the fact that the Appellant failed to turn up for making payment of the balance amount on the stipulated date, nor issued any Legal Notice at any stage even thereafter calling upon the Defendants to execute the Sale Deed but instead chose to file the Suit much later on 21.1.2005 which were two years and five months after the stipulated date for execution and in any case much more than three years from the date of the original Agreement itself, this Court is of the view that the Defendants were well within their right to forfeit the Earnest Money in terms of the agreed conditions, and the Ld. Lower Appellate Court therefore, was also correct in setting aside the Decree of the Trial Court for refund of the Earnest Money and the payment of damages, apart from dismissing the other prayers for declaration and Specific Performance to which clearly the Plaintiff was not entitled either in law, or even under any equitable principle.

18. No merits. Dismissed.

(SUDIP AHLUWALIA)
JUDGE

January 14, 2020
AS

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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |