

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

1. **RSA No.2263 of 2018(O&M)**

Date of decision: 17.2.2020

Man SinghAppellant

VERSUS

Harpyari (since deceased) through LRsRespondent

2. **RSA No.2298 of 2018(O&M)**

Man SinghAppellant

VERSUS

Harpyari (since deceased) through LRsRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Panwar , Advocate for the appellant.

REKHA MITTAL, J.

This order will dispose of RSA Nos.2263 and 2298 of 2018 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.2263 of 2018.

The appellant/plaintiff sought possession by way of specific performance of agreement to sell dated 18.08.2006 in respect of land measuring 2 kanal 9 marlas for sale consideration of Rs.95,550/- out of which Rs.90,000/- were paid at the time of agreement and balance sale consideration i.e. Rs.5550/- was agreed to be paid at the time of execution

and registration of sale deed . No target date was fixed for execution and registration of sale deed. The plaintiff always remained ready and willing to perform his part of the contract. He got issued legal notice dated 04.06.2009 asking the defendant to get the sale deed executed and registered on or before 25.06.2009. The notice was duly replied by the defendant vide reply dated 11.07.2009 asking the appellant to supply copy of the agreement. The plaintiff sent copy of agreement to sell through registered cover on 18.07.2009 but the defendant refused to receive the registered notice. The defendant failed to appear in the office of Sub Registrar on 25.06.2009 to perform her part of the agreement but the appellant got his presence marked in the office of Sub Registrar Palwal. In reply, vide letter dated 18.07.2009, the respondent was asked to get the sale deed executed and registered on or before 03.08.2009 but the respondent did not appear and plaintiff got his presence marked in the office of Sub Registrar, Palwal.

The respondent/defendant filed the written statement and controverted the allegations with regard to execution of agreement of sale, receipt of earnest money and her liability to execute the sale deed in favour of the appellant/plaintiff. It is averred that the answering defendant is an illiterate lady of more than 80 years of age, living with her daughter Sukan. The plaintiff along with witnesses came to her house when her daughter was away from the house. He obtained her thumb impressions on some blank papers on the pretext that they will get pension sanctioned from Haryana Government and believing his version, she put her thumb impression on blank papers on which the agreement was fabricated and manipulated. She has admitted receipt of notice dated 25.06.2009 and

reply thereto vide communication dated 11.07.2009. She has denied the allegations with regard to issuance of notice on 18.07.2009. All other material averments of plaint were denied with a prayer for dismissal of suit.

The trial Court framed issues, reproduced in para 4 of the judgment of 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 rejected claim of the plaintiff/appellant and eventually the suit was dismissed with costs. In appeal filed by unsuccessful plaintiff/appellant, the Court reversed the judgment and decree of the trial Court in respect of its findings on agreement to sell but allowed alternative relief of return of earnest money with interest at the rate of 6% per annum from the date of agreement till realization by taking into consideration the provisions of Section 20(2) of the Specific Relief Act, 1963 (in short 'the Act') and making observations against the appellant in respect of his entitlement to seek specific performance, in para 23 of the judgment.

Counsel for the appellant would argue that findings of the Appellate Court in respect of agreement to sell have attained finality as respondent (since deceased) represented by her LRs has not filed an appeal against return of earnest money with interest. It is argued with vehemence that once the appellant has successfully proved that agreement to sell was executed by the respondent for sale of suit land and she had already received substantial amount i.e. Rs.90,000/- out of sale consideration of Rs.95,550/- and the appellant always remained ready and willing to perform his part of the agreement, there was no reason for the Appellate

Court to reject his claim for grant of principal relief of specific performance of agreement without recording any tangible and justifiable reasons. It is further submitted that in case the impugned judgment passed by the Appellate Court is allowed to sustain, it would amount to putting premium over illegal act of the respondent/defendant.

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

Apart from the fact that the appeal has been filed after delay of 103 days, the same is devoid of merit and deserves to be dismissed.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to note a relevant extract from Section 20(1) of the Act, quoted thus:-

“(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.

Sub-section (2) of Section 20 deals with 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.”

Reverting to the case at hand, the respondent/defendant was an illiterate rustic villager aged about 70/80 years. Unfortunately, she died during pendency of suit even before she could appear in the witness box to depose in terms of defence raised in the written statement. In cross examination, the appellant had stated that he knew Harpyari and she was his grandmother. There is a joint khatoni number of his land and that of Harpyari. When Harpyari was alive, he was not visiting her but had been visiting occasionally (kabhi kabhi).

As per case set up by the appellant, agreement was executed on 18.08.2006 and out of sale consideration of Rs.95,550/-, he had already paid Rs.90,000/- on the day of agreement leaving balance sale consideration to the tune of Rs.5550/-. In cross examination, he would state that he had money to pay balance amount of Rs.5550/- to be paid at the time of registration but on that day, it was not working day in the Tehsil office and for that reason, it was agreed that registry would be done in a day or two but he did not get the registry done in a day or two. Voluntarily stated that registry would be got done when ‘Dadi’ would so desire.

Perusal of averments raised in the plaint would reveal that after 18.08.2006, the appellant issued notice for execution and registration of the sale deed after about three years on 04.06.2009 calling upon the respondent to remain present in the office of Sub Registrar on 25.06.2009. There is no plea that prior to 04.06.2009, the appellant ever approached the respondent for execution and registration of the sale deed. It is not the case of appellant that possession of suit land was delivered to him under the agreement of sale or otherwise, at any point of time. In the connected appeal, the appellant has set up another agreement dated 18.08.2006 for sale of land measuring 17 marlas situated in another village for sale consideration of Rs.34,000/- out of which Rs.30,000/- was stated to be paid under the agreement. In the said case also, the appellant has pleaded notice dated 04.06.2009 calling upon the respondent to execute the sale deed. The facts of the said case are exactly identical viz-a-viz the instant case except subject matter of agreements. It does not appeal to logic that if there was a transaction for sale of immovable property in which the vendee had already paid about 95% of sale consideration without obtaining possession, he would wait almost for three years in taking first step seeking execution and registration of the sale deed. Taking into consideration relationship between the parties coupled with the aforesaid discussion, in my considered opinion, non-allowing of specific performance of agreement in the given circumstances can safely be covered under clause (a) and (c) of Section 20(2) of the Act. In this view of the matter, I do not find any reason to interfere in the discretion exercised by the Appellate Court denying specific performance of agreement and allowing only alternative relief of recovery with interest.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed in limine.

February 17, 2020 'D. Gulati'	(REKHA MITTAL) JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no