

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

RSA No.52 of 2022 (O&M)
Date of decision: 22nd July, 2022

Jai Narain & others

... Appellants

Versus

Rajmati & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Munish Kumar Garg, Advocate for the appellants.

MANJARI NEHRU KAUL, J.

The plaintiffs being dissatisfied with the relief of refund of double of the earnest money along with interest at the rate of 9% granted by the trial Court in the suit instituted to seek possession of 19 Kanals 13 Marlas land by way of specific performance of the agreement to sell dated 26.05.1992, are in Regular Second Appeal before this Court as the First Appellate Court concurred with the judgment and decree dated 21.01.2019 of the learned trial Court and dismissed the plaintiffs' appeal.

In brief, the pleaded case of the plaintiffs may be noticed as thus:

Sardara (predecessor of the plaintiffs) entered into an agreement to sell with Dharmila (predecessor of the defendants) on 26.05.1992 in respect of 19 Kanals 13 Marlas land situated in the revenue estate of village Humayunpur, Sub Tehsil Salhawas, District Jhajjar for a total sale consideration of ₹ 1,70,000/-, out of which earnest money of

₹50,000/- was paid. Balance amount of ₹ 1,20,000/- was agreed to be paid before the Sub Registrar at the time of registration of the sale deed. The agreement to sell was entered into on the representation of Dharmila that he was owner in possession 1/9th share of the land comprised in Khewat No.117, Khatoni No.158 to 162, measuring 55 Kanals 15 Marlas; 1/9th share in land comprised in Khewat No.119, Khatoni No.167 to 171 measuring 78 Kanals 12 Marlas; and 94/2130 share in the land measuring 106 Kanals 10 Marlas comprised in Khewat No.118, Khatoni No.163, 164 and 166 (total 19 Kanals 13 Marlas) situated in the revenue estate of village Humayunpur, Sub Tehsil Salhawas, District Jhajjar. At the time of agreement to sell dated 26.05.1992, the sanctioning of the mutation for partition qua the suit property was pending. Hence, it was agreed and stipulated in the agreement that after the decision of mutation proceedings of partition, which had gone in 'Nazar Sani' (reconsideration), the vendor would give one month's notice to the vendee for getting the sale deed registered. After the Khewat of suit property was partitioned, the vendor still did not offer to get the sale deed executed. The parties to the original agreement since passed away and the plaintiff being the legal heir of the vendee, filed the instant suit claiming that the defendants being legal heirs of the vendor were bound to honour the agreement to sell. It was further averred that ever since the agreement to sell dated 26.05.1992, the vendee, and after his death the plaintiffs had always been ready and willing to perform their part of the said agreement and were still ready for it. The plaintiffs issued legal notice dated

28.11.2013 to the defendants to get the sale deed executed, however, the defendants failed to do so. In the above facts and circumstances, relief of possession of 19 Kanals 13 Marlas land by way of specific performance of agreement to sell dated 26.05.1992 was sought by the plaintiff and for direction to the defendants to execute the sale deed in their favour. In the alternative, relief of recovery of earnest money with an interest @ 24% p.m. along with compensation was also claimed.

The defendants, in their written statement, admitted Sardara to be the predecessor of plaintiffs and Dharmla to be their predecessor however, the execution of agreement to sell dated 26.05.1992 for the purpose of the sale of the land was denied. It was rather claimed that there had in fact been a loan transaction and the agreement was created merely to secure the repayment of loan. It was also submitted that the plaintiffs were well aware of the decision on the 'Nazar Sani' Mutation but never took any action against Dharmla during his lifetime. A prayer was made for dismissal of the suit as no cause of action had accrued to the plaintiffs to file the suit.

On the basis of the material and other evidence led, the courts below disbelieved the version of the defendants regarding loan transactions and recorded findings of fact to the effect that execution of agreement to sell dated 26.05.1992, payment of earnest money in the sum of ₹ 50,000/-, issuance of legal notice dated 24.12.2013 by the plaintiffs to the defendants for getting the sale deed registered, marking of presence by the plaintiffs in the office of Sub Registrar, Matanhail on the date

mentioned in the notice stood duly proved. However, it was held that since the plaintiffs had not been vigilant enough to enquire about the revenue record with regard to removal of objection of 'Nazar Sani' for 22 years, the trial Court vide its judgment and decree dated 21.01.2019 declined the relief for possession by way of specific performance of the agreement to sell dated 26.05.1992. Instead, it directed the defendants to return double of the earnest money of ₹ 50,000/- i.e. sum of ₹ 1.00 lakh to the plaintiffs along with interest @ 9% p.a. from the date of agreement to sell i.e. 26.05.1992 till its realization. The lower Appellate Court upheld the denial of the relief for possession by way of specific performance of agreement to sell dated 26.05.1992 by holding that from their conduct it could be deduced that there was absence of readiness and willingness on the part of Sardara as well as the plaintiffs.

Learned counsel for the appellants has vehemently argued that after coming into force of Specific Relief (Amendment) Act, 2018 (hereinafter referred to as, 'the 2018 Act') w.e.f. 01.10.2018, the Courts have been left with no discretion in the matter of grant of relief of specific performance in respect of contracts. The suits pending on 01.10.2018 i.e. at the time of coming into force the 2018 Act, are required to be decided in terms of the amended provisions of the Specific Relief Act, 1963 (hereinafter referred to as, 'the Act' or 'the 1963 Act'). Once the agreement to sell is proved, the relief of specific performance therefore cannot be declined in view of the mandate of Section 10 of the 1963 Act, as substituted vide the 2018 Act. Therefore, both the Courts

below had erred in declining the relief of possession by way of specific performance of the agreement to sell dated 26.05.1992. It was still further contended that in terms of the agreement to sell dated 26.05.1992, after the decision of the 'Nazar Sani' Mutation proceedings, the vendor was required to give a month's notice to the vendee to get the sale deed registered. Hence, the relief of possession by way of specific performance of agreement to sell could not be declined to the vendee due to failure on the part of the vendor in intimating the decision taken in 'Nazar Sani' Mutation proceedings in time by issuing notice for execution of the sale deed.

I have heard learned counsel for the parties and perused the relevant material on record.

The Hon'ble Supreme Court in '**Adhunik Steels Ltd. vs. Orissa Manganese and Minerals (P) Ltd.**' 2007 (7) SCC 125 has held that law of specific relief, by its essence, is a part of procedural law.

It is well settled position of law that the matters of procedure presumed to be retrospective unless there is an express bar onto its retrospectivity. Therefore, in the absence of any bar to the retrospectivity of the amended provisions of the Act, the suit pending on 01.10.2018 i.e. at the time of coming into force the 2018 Act, is required to be decided in terms of the amended provisions of the 1963 Act.

The discretionary jurisdiction to the decree of specific performance as provided in the unamended Section 20 of the Act has been omitted. After the amendment there is no provision like repealed

provision of Section 20(1) 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 a Court of appeal”*. Similarly, after the amendment there is no provision similar to the repealed provision of Sub-Section (2) of Section 20 providing for cases in which Court may exercise discretion not to decree specific performance. Consequently, the repealed provisions of Section 20 of the Act would not be available for decision in the present case.

Section 10 of the Specific Relief Act, 1963, as it stood prior to its amendment w.e.f. 01.10.2018 provided: -

“10. Cases in which specific performance of contract enforceable.—*Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—*

(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.—*Unless and until the contrary is proved, the court shall presume—*

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:—

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.”

After amendment, w.e.f. 01.10.2018 Section 10 provides as follows:-

“10. Specific performance in respect of contracts. —
The specific performance of a contract shall be enforced by the Court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16.”

In the instant case, ex-facie the provisions of Section 11(2) and Section 14 of the 1963 Act would not be attracted. The amended Section 16 of the 2018 Act, which would be relevant in the instant case, reads as under:-

“16. Personal bars to relief. — Specific performance of a contract cannot be enforced in favour of a person—

(a) who has obtained substituted performance of contract under Section 20; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract,

or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to 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.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.”

A perusal of the above provisions makes it evident that after the amendment of Section 10 of the 1963 Act, the words “**specific performance of any contract, may, in the discretion of the Court, be enforced**” have been substituted with the words “**specific performance of a contract shall be enforced subject to**”. The Court, thus, is now obliged to enforce the specific performance of a contract subject to the provisions of Sub-Section (2) of Section 11, Section 14 and Section 16 of the Act. Relief of specific performance of a contract is no longer discretionary, after the amendment.

Though Section 10 of the 2018 Act mandates that the specific performance of contract ‘**shall**’ be enforced by the Court, yet it also puts

a condition, “.....**subject to the provisions contained in Sub-Section (2) of Section 11, 14 and 16**”. So, effectively Sections 11(2), 14 and 16 have diluted the mandatory nature of the provisions of Section 10, hence the relief is not absolute. The just remedy would be possible only when the significance of the key phrase ‘**shall be enforced**’ is understood in consonance with other amendments and the same is then harmoniously read with the conditions or exceptions laid down in Sections 11(2), 14 and 16 of the Act. Therefore, the readiness and willingness of the plaintiff to perform his part of the contract, as specified under Section 16(c) of the Act, still remains a relevant factor for the relief of specific performance of a contract.

The readiness and willingness of the plaintiff to perform his part of the contract as specified under Section 16(c) of the Act still remains a relevant factor for the relief of specific performance of a contract.

To adjudge readiness and willingness on the part of the plaintiff to perform his part of the contract, the Court would be required to take into consideration the conduct of the plaintiff along with all other attending circumstances. Readiness and willingness must be reflected in the conduct of the plaintiff, mere use of expression ‘ready and willing’ in the pleadings and evidence would not suffice.

Adverting to the case in hand, from the passivity of the plaintiffs in enquiring about the decision on ‘Nazar Sani’ Mutation for more than 12 years after the decision of ‘Nazar Sani’ Mutation and more

than 22 years of the execution of the agreement, it can be discerned that the plaintiffs have failed to prove that they had been always ready and willing to perform the essential terms of the contract. The plaintiffs intended to execute the sale deed on finalization of ‘Nazar Sani’ Mutation. Failure on the part of the vendor in intimating the decision taken in ‘Nazar Sani’ Mutation proceedings by issuing notice for execution of the sale deed would not absolve the plaintiffs from discharging the burden to prove that they had always been ready and willing to perform the essential terms of the contract and all throughout remained attentive and acted prudently.

The findings regarding absence of readiness and willingness on the part of Sardara – predecessor of the plaintiffs as well as the plaintiffs, as recorded by the Courts below including the lower Appellate Court, on the basis of the evidence and other material led, does not suffer from any illegality or perversity. In view thereof, the instant appeal being without any merit is dismissed and the impugned judgments and decrees are hereby affirmed.

(MANJARI NEHRU KAUL)
JUDGE

July 22, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No