

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

RSA No.1802 of 1991(O&M)

Date of Order:13.09.2023

Parshotam Dass (deceased) through LR's and another**.Appellants****Versus****Hira Lal and others****..Respondents**

RSA No.1840 of 1991(O&M)

Hira Lal and others**.Appellants****Versus****Parshotam Dass (deceased) through LR's and another****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Kabir Sarin, Advocate
for the appellants (in RSA No.1802 of 1991)
for the respondents (in RSA No.1840 of 1991)

Mr. Ajay Jain, Advocate
for the appellants (in RSA No.1840 of 1991)
for the respondents (in RSA No.1802 of 1991)

ANIL KSHETARPAL, J

1. This order shall dispose of two cross appeals separately filed by the plaintiffs as well as the defendants.

2. In a suit for specific performance of the contract, it has been proved that the defendants, at the first instance, executed the agreement to sell dated 23.06.1978 with respect to 47 kanals of land for a total sale consideration of Rs.24,000/-, out of which Rs.15,000/- was received as the earnest money. Subsequently, on 22.09.1981, a fresh agreement to sell was executed and the amount of earnest money was increased from Rs.15,000/-

to Rs.22,000/-, though the total sale consideration still remains to be Rs.24,000/-. Thereafter, another agreement to sell was entered into on 21.09.1983 with respect to the same property in which the amount of earnest money was again increased to Rs.30,000/-, whereas the total sale consideration was now increased and was fixed at Rs.33,000/-. As per the agreement to sell dated 21.09.1983, the parties agreed to execute the sale deed on 15.05.1984.

3. The plaintiffs did serve notice on the defendants for execution of the sale deed. They filed the suit on 07.08.1985.

4. The defendants while contesting the suit, claimed that their father late Sh. Ramji Lal had purchased some clothes worth Rs.4,000/- from the plaintiffs, who runs cloth shop at Mohindergarh and the signatures of Sh. Ramji Lal were obtained on various papers including 'Bahi' (Accounts book).

5. The learned trial court held that the agreement to sell is proved and the plaintiffs were ready and willing to perform their part of the contract. Thus, the suit was decreed.

6. However, the First Appellate Court held that in the facts of the case, it would not be appropriate to exercise discretion in favour of the plaintiffs, particularly, when it is evident that the plaintiffs waited for a period of nearly 7 years to file the suit. The first agreement to sell is dated 23.06.1978, whereas the suit was filed on 07.08.1985. The First Appellate Court directed refund of the earnest money of Rs.30,000/- along with interest @ 15% per annum from 21.09.1983. However, the court also ordered that if the defendants failed to pay the amount, within a period of 1/3 months, the plaintiffs will be entitled to get the sale deed executed. That is

how the two appeals have been preferred, one by the plaintiffs and second by the defendants.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book as well as the requisitioned record.

8. The learned counsel representing the appellants (plaintiffs) contends that the execution of the repeated agreements to sell has been proved and the plaintiffs were always ready and willing to perform their part of the contract. Therefore, the First Appellate Court has erred in granting relief of refund of the earnest money, though the general rule is to grant relief of specific performance.

9. On the other hand, the learned counsel representing the respondents (appellants in the connected appeal) submits that the First Appellate Court has erred in the penultimate paragraph of the judgment as the failure of the defendants to refund the amount within one month, the First Appellate Court revived the decree for specific performance of the agreement to sell.

10. Before the Specific Relief (Amendment) Act, 2018, which was enforced with effect from 01.10.2018, the relief of specific performance of the agreement to sell was a discretionary remedy and the court was not bound to grant such relief merely because it is lawful to do so.

11. Section 20 of the un-amended Specific Relief Act is extracted as under:-

20. Discretion as to decreeing specific performance.—

(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.

(2) The following are 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.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party..”

12. From the narration of the facts, already noticed, it is evident that the various agreements to sell were executed only to secure repayment of the amount which was borrowed by the farmers from the cloth merchants.

13. Approximately 6 acres of land was agreed to be sold initially for a sum of Rs.24,000/- which was increased to Rs.33,000/- in the last agreement to sell. In these circumstances, the core question which arises for consideration is “Whether the First Appellate Court has not exercised the discretion in accordance with the settled principles of law?

14. In the opinion of this court, the First Appellate Court has based its reasoning on sound and reasonable judicial principles and therefore, there is no scope for interference. Moreover, now a period of 45 years has elapsed from the date when the first agreement to sell was entered into. The First Appellate Court has also erred in the penultimate paragraph while ordering relief of specific performance on the failure of the defendants to re-pay the amount during the specified time. The First Appellate Court should have ordered that the recovery of the aforesaid amount shall be first charge on the property, however, it was not appropriate for the First Appellate Court to deny the relief on account of their inability to pay due to poverty.

15. Accordingly the Regular Second Appeal No.1802 of 1991, filed by the plaintiffs is dismissed, whereas the Regular Second Appeal No.1840 of 1991, filed by the defendants is allowed. The plaintiffs shall be entitled to recover the amount of earnest money i.e. Rs.30,000/- along with interest @ 15% per annum from 21.09.1983 till its payment and the aforesaid amount shall remain the first charge on the property.

16. All the pending miscellaneous applications, if any, are also disposed of.

September 13, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO