

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1706 of 1997 (O&M)

Date of Order: 17.08.2023

Shanti Devi (Deceased) through LRs

.Appellant

Versus

Sohan Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Sr. Advocate, with
Mr. Akshat Dalal, Advocate
for the appellant.

Mr. Hitesh Ghai, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. This regular second appeal has been filed by the plaintiff (since deceased). Her suit for grant of decree for possession by way of specific performance of the agreement to sell was decreed by the trial court. However, the first appellate court has reversed the judgment and decree passed by the trial court only on the ground that the agreement to sell does not enable the plaintiff to seek the relief of specific performance as it only provides for refund of the double of the amount of the earnest money. Hence, the only issue that requires adjudication is “whether the decree for specific performance of the agreement to sell can be refused solely due to the absence of a specific stipulation to this effect in the agreement to sell?”

2. Before addressing the aforementioned question, it would be appropriate to consider the admitted facts.

3. On 02.05.1989, the execution of the agreement to sell with respect to 203.25 square yard plot for a total sale consideration of

Rs.3,25,000/- on receipt of Rs.25,000/- as earnest money is admitted by the parties. As per the agreement to sell, the sale deed was to be executed on 08.05.1989. It is the case of the plaintiff that the agreed date for the execution of the sale deed was extended on the request of the defendant at the first instance to 08.06.1989 and in the second instance on 10.07.1989. The plaintiff on 10.07.1989 attended the office of the sub-Registrar, however, the defendant did not come forward. On 04.07.1989, the plaintiff sent a notice to the defendant which was followed by telegram dated 06.07.1989. The defendant sent a reply on 10.07.1989. The suit was filed on 18.07.1989.

4. In the written statement, the defendant asserted that the time was extended on the request of the plaintiff and the plaintiff was never ready and willing to perform his part of the contract. The execution of the agreement to sell on receipt of the earnest money was not disputed.

5. As already noticed, the trial court decreed the suit, whereas the First Appellate Court has modified the decree while ordering refund of the double of the amount of the earnest money.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book

7. The learned counsel representing the appellant while referring to the various provisions of the Specific Relief Act, 1963 submits that the plaintiff has a statutory right to enforce the performance of the agreement to sell and absence of specific stipulation in the agreement would not debar him from seeking the relief particularly when there is no contract to exclude the specific performance of the agreement to sell. He in support of his submissions relies upon the judgments passed in **Man Kaur (dead) by LRs**

vs. Hartar Singh Sangha, (2010) 10 SCC 512 and Kamal Kant Jain vs. Surinder Singh (D) through LRs, 2017 AIR (SC) 5592.

8. On the other hand, the learned counsel representing the respondent submits that the defendant contacted the plaintiff on 08.07.1989 while offering to perform his part of the contract but the plaintiff was not ready and willing to perform. Hence, he submits that the court should not grant relief of specific performance to the plaintiff.

9. Both the courts have examined the aforesaid assertion of the defendant but found no substance therein. Moreover the plaintiff filed the suit within 8 days of 10.07.1989, the date on which the sale deed was to be executed. On preponderance of probabilities, the trial court has concluded that the plaintiff was always ready and willing to perform her part of the contract.

10. In Man Kaur's case (supra), the Supreme Court examined clauses 11 and 12 of the agreement and held that even if the agreement does not specifically provide for specific performance, the plaintiff is not debarred from seeking relief of specific performance particularly when the agreement does not debar the specific performance. Para 19 of the judgment is extracted as under:-

“19. In this case, clauses 11 and 12 of the agreement deal with consequences of breach. They are extracted below :

"11. That in case the seller fails to perform his part of contract of sale according to the terms and conditions agreed upon in this agreement to sell in matter of execution of the sale deed and its registration, on the receipt of the balance sale price, he shall be liable to

pay double the amount of the earnest money received by her from the purchaser.

12. That in case the purchaser fails to get the transaction of the sale completed by means of execution and registration of sale deed according to the terms of this agreement for sale, he shall forfeit his earnest money of Rs.10,000/- advanced by the purchaser to the said seller."

The agreement does not specifically provide for specific performance. Nor does it bar specific performance. It provides for payment of damages in the event of breach by either party. The provision for damages in the agreement is not intended to provide the vendor an option of paying money in lieu of specific performance. Therefore, we are of the view that plaintiff will be entitled to seek specific performance (even in the absence of a specific provision therefor) subject to his proving breach by the defendant and that he was ready and willing to perform his obligation under the contract, in terms of the contract."

11. On careful reading of the Specific Relief Act, 1963(hereinafter referred to as 'the 1963 Act'), it is evident that there are certain contracts which can be specifically enforced by filing a suit. Section 10 of the 1963 Act enables the party to file a suit for specific performance. Clause-(b) of Section 10 of the 1963 Act enables the Court to specifically enforce the contract particularly when the non-performance of the agreement would not afford an adequate relief. Explanation (i) specifically provides that the breach of contract to transfer immovable property cannot be adequately relieved by compensation in money. In these circumstances, the conclusion

drawn by the First Appellate Court was not correct.

12. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is set aside to the extent that the relief of specific performance was denied to the plaintiff. The judgment and decree passed by the trial court is restored. The amount of Rs.3,00,000/- shall remain with the plaintiff. The suit of the plaintiff is decreed subject to payment of Rs.3,00,000/- along with interest @ 12% per annum from the date of the institution of the suit till its deposit. The decree shall be subject to the plaintiff depositing the balance amount along with interest within a period of two months, from today.

13. With these observations, the regular second appeal is disposed of.

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

August 17, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO