



In the High Court of Punjab and Haryana, at Chandigarh

**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

Date of Decision: 16.07.2024

Anoop Singh (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Harminder Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Abhinav Gupta, Advocate
for the appellant(s).

Mr. G.S.Punia, Senior Advocate
with Ms. Harveen Kaur, Advocate
for respondent No.1.

Anil Kshetarpal, J.

CM-1879-C-2024

1. For the reasons stated in the application, the same is allowed and order dated 13.02.2024 is recalled. The appeal is ordered to be restored to its original number. With the consent of the learned counsel representing the parties, the appeal is taken up on board of this Court for hearing, today itself.

RSA-1293-1992

2. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

Procedure, 1908 (hereinafter referred to as “CPC”), as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

3. In this regular second appeal, defendant No.2 assails the correctness of the First Appellate Court’s judgment, which, in turn, has reversed the Trial Court’s judgment.

4. The relevant facts, in brief, are required to be noticed in order to understand the controversy involved in the present case. Jagtar Singh (defendant No.1) was the owner of the property. On 04.09.1982, he entered into an agreement to sell on receipt of ₹15,000/- as earnest money with respect to the land measuring 17 kanals and 14 marlas out of the total sale consideration of ₹45,000/- in favour of the plaintiff, namely Harminder Singh. As per the agreement to sell, the sale deed was to be executed and registered on or before 08.06.1983. Anoop Singh, minor son of Jagtar Singh (defendant No.2) filed a suit for injunction against his father on 14.09.1982 claiming decree of permanent injunction from alienation, which was not contested by Jagtar Singh. The suit was decreed on 04.10.1982. The plaintiff visited the office of the Registrar on 08.06.1993, however, Jagtar Singh (defendant No.1) did not come forward to honour the agreement to sell, forcing the plaintiff to file a suit on 28.11.1983. Defendant No.1 denied the execution of the agreement to sell. He claimed that the plaintiff might have procured his signatures on the stamp papers when he was under the influence of liquor. Anoop Singh (defendant No.2), minor son of Jagtar Singh, became party to the suit. He claimed that the suit property is a Joint



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

Hindu Family property and Jagtar Singh has no right to sell the property without legal necessity. Replication was filed by the plaintiff to the separate written statements filed by the defendants and the Trial Court settled the following issues:-

- “1) Whether the defendant executed agreement to sell dated 4.9,1982 and received an amount of Rs.1500 as earnest money? OPP.*
- 2) If issue No.1 is proved, whether the agreement is the result of fraud and is without consideration? OPD.*
- 3) Whether the plaintiff was ready and willing to perform his part of the contract? OPP.*
- 3A) What is the effect of the decree obtained by defendant No.2 against defendant No. 1? OPParties.*
- 3B) Whether the property in dispute is Joint Hindu Family of the defendant. If so, its effect?OPD.*
- 3C) Whether the agreement to sell is without legal necessary if so its effect? OPD.*
- 4) Relief.”*

5. The Trial Court dismissed the suit on the ground that Harminder Singh did not sign the agreement to sell and his father Ajit Singh, who signed the agreement to sell, had no power of attorney in his favour. Before the First Appellate Court, the plaintiff filed an appeal, whereas the appellant (defendant No.2) filed the cross-objections. The First Appellate



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

Court, while relying upon the unamended Section 20(4) of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”), held that the signatures of Harminder Singh (plaintiff) were not required and the Doctrine of Mutuality was not applicable in view of the specific provisions of the 1963 Act. The First Appellate Court has also held that the plaintiff was always ready and willing to perform his part of the contract. Hence, the judgment of the trial Court was reversed and the suit for specific performance was decreed. The cross-objections filed by Anoop Singh (defendant No.2) were also dismissed. This appeal was admitted after regular hearing in the year 1992 and has now come up for final disposal.

6. 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 although admits that Section 20(4) of the 1963 Act provides that the plaintiff is not required to sign the agreement, however, he submits that in the absence of his signatures, there exists no valid contract. He submits that unless and until, the parties agreed to the common terms and conditions, there cannot be an agreement. The learned counsel further submits that even if the 1963 Act excludes the applicability of the Doctrine of Mutuality, however, there has to be a valid contract between the parties. He further submits that after a passage of nearly 42 years, it would not be appropriate to grant the decree for specific performance in view of the judgment passed by the Supreme Court in *Shenbagam and Others v. K.K.Rathinavel* 2022 AIR (Supreme Court) 1275.



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

8. Per contra, the learned counsel representing respondent No.1 submits that Jagtar Singh (defendant No.1) has not filed any appeal and has accepted the decree for specific performance. He further submits that the defendant cannot be permitted to take benefit of delay in disposal particularly when he has filed the appeal.

9. This Court has considered the submissions of the learned counsel representing the parties. The learned counsel representing the appellant has not pressed for any further issue.

10. As far as the existence of a valid contract, it would be noticed that the agreement to sell is signed by defendant No.1 as well as the father of the plaintiff. It is attested by two marginal witnesses who have been examined. As per unamended Section 20(4) of the 1963 Act, the party is entitled to seek specific performance of a contract even if it is not signed by him. Unamended Section 20 of the 1963 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



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

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;

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.



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

(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 other party.”

11. Once the contract is governed by the 1963 Act, the general provisions would not be applicable. In any case, even an oral agreement is permissible. It is not necessary that the agreement to sell must be in writing.

12. With regard to another submission of the learned counsel representing the appellant, it would be noticed that the Supreme Court in *Shenbagam's case (supra)* found that the Courts failed to frame issue with regard to readiness and willingness. The Courts also failed to adjudicate the issue with regard to readiness and willingness. Moreover, it was found that the plaintiff was required to pay the balance consideration to enable the respondent to discharge the mortgage. In that context, the Supreme Court has held that now, after a passage of sufficiently long time, it would not be appropriate to grant the relief of specific performance. With highest respect, the aforesaid judgment would not be applicable in the facts of the present case. Firstly, in this case, there was a specific issue with regard to readiness and willingness of the plaintiff. Both the Courts held that the plaintiff was always ready and willing to perform his part of contract. Moreover,



**Civil Misc. No. 1879-C of 2024 And
Civil Misc. No. 6493-C of 2024 In/And
Regular Second Appeal No. 1293 of 1992 (O&M)**

defendant No.1 has not filed any appeal. Additionally, it is evident that the appellant, in order to frustrate the contract, has filed a suit for injunction which was not contested by his father, namely Jagtar Singh. Thus, they were trying to derail the enforcement of the agreement to sell.

13. However, this Court cannot overlook the fact that the sufficient length of time has elapsed.

14. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is modified. The suit filed by the plaintiff for possession by way of specific performance of the agreement to sell shall stand decreed subject to payment of ₹30,000/- along with the interest @ 12% per annum from the date of filing of the suit i.e. 28.11.1983 till its payment within a period of two months from today. The decree passed by the First Appellate Court shall stand modified accordingly.

15. Accordingly, the present appeal is disposed of.

16. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

July 16, 2024
“DK”

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