IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1473 of 1991(O&M)
Reserved On:21.03.2024
Date of Order: 18.04.2024

Jangir Singh (since deceased) through LRs

.Appellant

Versus

Surjan Singh (since deceased) through LRs ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Baltej Singh Sidhu, Sr. Advocate, with
Mr. Chandan Singh, Advocate
for the appellant.

Mr. C.M.Munjal, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. On 28.02.2024, after hearing the learned counsel representing the parties, the following order was passed:-

> *"In this Regular Second Appeal, the plaintiff assails the correctness of the observations made by the First Appellate Court while granting alternative relief of recovery of Rs.22,000/- in place of the relief of specific performance of the agreement to sell.*
>
> *In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.*
>
> *Sh.Surjan Singh, being owner of the land agreed to sell 12 kanals 2 marlas land for Rs.20,000/- vide agreement to sell dated 03.01.1985. He received Rs.11,000/- as earnest money in lieu of the sale and the sale deed was to be executed and registered on 07.01.1986. The plaintiff filed the suit on 15.01.1986 for specific performance of the agreement to sell claiming*

that he was always ready and willing to perform his part of the contract, however, the defendant failed to perform his part of the contract. It was further pleaded by the plaintiff that possession of the suit land has already been delivered to him and he continues to be in possession. The defendant, while contesting the suit, claimed that he is an illiterate person and the plaintiff may have obtained his thumb impression when he was in drunken condition. In order to prove the agreement to sell, the plaintiff examined the marginal witnesses of the agreement to sell alongwith the copy of the jamabandi Ex.P3.

On the other hand, defendant appeared as DW1 and examined Diwan K.S.Puri, Document Expert as DW2. The trial court, on appreciation of evidence, found that the plaintiff on 07.01.1986 attended the office of the Sub Registrar, however, the defendant did not come forward to execute the sale deed. Thus, suit for specific performance of the agreement to sell was decreed. The defendant filed the first appeal. The First Appellate Court, on re-appreciation of evidence, held that the finding of fact arrived at by the trial court regarding truthness of the agreement to sell as well as the readiness and willingness of the plaintiff needs no interference. However, the First Appellate Court modified the decree passed by the trial court on the ground that the agreement to sell does not specifically stipulate that the plaintiff can file the suit for specific performance of the agreement to sell. The court held that as per the stipulation, the plaintiff was entitled to the amount equivalent to double of the amount of earnest money and therefore, the decree passed by the trial court was modified.

Heard the learned counsel representing the parties at length and with their able assistance perused the *paperbook.*

*Learned counsel representing the appellant submits that the First Appellate Court has erred in concluding that in the absence of specific stipulation in the agreement to sell enabling the purchaser to file a suit for specific performance of the agreement to sell only relief of refund of the amount equivalent to double of the earnest money is payable. He relies upon the judgment passed by the Supreme Court in '**Man Kaur (Dead) by Lrs vs. Hartar Singh Sangha 2010 AIR (SCW) 6198** and **Kamal Kant Jain vs. Surinder Singh (D) thr' Lrs 2018 (2) RCR (Civil) 809.** He further contends that in para 6 of the plaint the plaintiff has stated that he is in possession of the suit property. The defendant while filing the written statement in the said suit has stated that the possession of the plaintiff is not as an owner. However, the possession of the plaintiff is not disputed. The trial court has specifically recorded the finding of fact that the plaintiff continues in possession of the property.*

*On the other hand, the learned counsel representing the respondent submits that in view of the recent judgment passed by the Supreme Court in **T.D.Vivek Kumar & Another vs. Ranbir Chaudhary, 2023 SCC Online SC 526** submits that exactly similar stipulation has been interpreted by the Supreme Court to hold that the relief of specific performance of the agreement to sell should not be granted.*

Arguments heard. Judgment reserved.

Learned counsel representing the appellant has already filed a synopsis. It shall be open to the learned counsel representing the respondent to file a convenience note within a period of next three working days."

2. Thereafter, the appellant filed an application under Order 41 Rule 27 CPC in order to produce certified copy of the judgment and decree passed in Civil Suit No.200-1 of 13.03.1987 (Surjan Singh vs. Jangir Singh and another), which was dismissed on 15.02.1989. Reply to the application has been filed. The arguments have once again been heard and the judgment was reserved.

3. With respect to the question as to whether the plaintiff can seek specific performance of the agreement to sell in absence of a specific stipulation, it may be noticed that the Supreme Court in ***Mann Kaur (Dead) by LRs vs. Hartar Singh Sanga (2010) 10 SCC 512*** has held that even in absence of specific stipulation in the agreement to sell for its specific performance, the suit for specific performance is still maintainable and the same can be decreed. The same view was reiterated in ***Kamal Kant Jain vs. Surender Singh (D) through LRs (supra)***. This court has carefully read the judgment passed by the Supreme Court in ***T.D.Vivek Kumar and another (supra).*** This judgment is in regard to the peculiar facts of the case and does not form any ratio decidendi to lay down that in no case the relief of specific performance cannot be obtained by the plaintiff unless there is specific stipulation in the agreement to sell.

4. The issue which requires adjudication is as to whether it would be appropriate to grant relief of specific performance of the agreement to sell after a passage of 38 years from the date the sale deed was to be executed?

5. Before 2018, Section 20 of the Specific Relief Act, 1963, gave discretion to the Court to grant or not to grant such relief. However, in the year 2018, the Act was amended and Section 20 was substituted by another provision which does not give any discretion to the courts to grant such

relief or not. However, this amendment has been held applicable prospectively in ***Katta Sujatha Reddy and another vs. M/s Siddamsetty Infa Project Ltd. and others, (2023) 11 SCC 355.***

6. After having analyzed the file, this court is of the considered view that the plaintiff is not entitled to relief of specific performance of the agreement to sell on the following grounds:-

(i) A passage of more than 36 years have elapsed from the date the agreement to sell was executed.

(ii) The total land agreed to be sold is 12 kanals and 2 marlas which is slightly more than 1½ acre. During all this while due to inflation, price of the land would have increased significantly.

(iii) It is evident that the gap between the date of agreement to sell and the agreed date for execution of the sale deed is more than one year and four days. Normally, in the villages in order to secure re-payment of the loan, such agreements are executed while stipulating longer date for execution of the sale deed. In this case also, it appears to be such a case, particularly when both the marginal witnesses of the agreement to sell has stated that at the time of execution of the agreement to sell only Rs.5000/- was paid, whereas remaining Rs.6000/- was paid in the village. Sh. Manjit Singh the witness states that Rs.6000/- was paid at the time of marriage of the defendant's daughter two months prior to the agreement to sell. Similarly Mehar Singh, Lambardar, has also stated that Rs.6000/- was paid in the village Kandukhera, whereas Rs.5000/- was paid at village Lambi where the agreement to sell was executed and signed.

(iv) The First Appellate Court has already ordered that the plaintiff shall be entitled to refund of Rs.22,000/- which is equivalent to the double of the amount of earnest money which was paid at the time of execution of the sale deed. However, the appellate court did not order the defendant to pay the amount with interest. In the facts and circumstances of the present case, particularly in view of passage of more than 39 years from the date the payment of Rs.11,000/- was paid, the defendant is directed to pay the amount of Rs.22,000/- along with interest at the rate of 12% per annum from the date of institution of the suit i.e. 15.01.1986 till its re-payment. Though, the decree for the amount equivalent to the amount of earnest money could not be passed, however, the defendant has not filed any appeal.

(v) The plaintiff has already enjoyed usufruct of the disptued land for the last 39 years. Hence, the plaintiff has been sufficiently compensated.

7. Consequently, the judgment and decree passed by the First Appellate Court is slightly modified and it is declared that the plaintiff shall be entitled to recover a sum of Rs.22,000/- along with interest @ 12% per annum from the date of institution of the suit till its realization. The payment shall be made only when the possession is returned by the plaintiff to the

defendant. In the facts and circumstances of the present case, the application for permission to lead additional evidence is allowed. The judgment dated 15.02.1989, is taken on record and marked as 'Ex.C1'.

8. Disposed of accordingly.

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

April 18, 2024 **(ANIL KSHETARPAL)**
nt **JUDGE**

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