

RSA No.453 of 1996

2024:PHHC:033843

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

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**RSA No.453 of 1996 (O&M)
Reserved on : 22.02.2024
Date of Decision : 11.03.2024**

Mehar Chand

....Appellant

VERSUS

Subhash Chander (deceased) through LR's

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surinder Gandhi, Advocate for the appellant.

Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate and
Mr. Varun Parkash, Advocate for the respondent.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant-appellant in a suit for specific performance.
2. The plaintiff-respondent filed a suit for possession by specific performance of agreement to sell dated 20.07.1988 regarding property in dispute. It was stated that on 20.07.1988 the defendant-appellant agreed to sell the property in dispute for Rs.60,000/- and executed an agreement to sell and received Rs.10,000/- as earnest money vide a cheque. The property in dispute was mortgaged with HouseFed and the defendant-appellant agreed to execute the sale deed after redeeming the property in dispute till 31.12.1990 and also agreed that if he could not redeem the property in dispute then the plaintiff-respondent could get it redeemed and get the sale deed registered after payment of the remaining amount. It was further stated in the plaint that the defendant-appellant delivered the possession of the property in

dispute to the plaintiff-respondent on that very date. However, in October 1988 the defendant-appellant tried to alienate the property in dispute when the plaintiff-respondent filed a suit and got a stay order. The said suit was dismissed for want of prosecution and the plaintiff-respondent had filed an application for revival which was fixed for 09.01.1991. It was further averred that in response to that suit the defendant-appellant had denied the agreement. It was averred that the defendant-appellant was asked to admit the claim of the plaintiff-respondent several times but of no use and that the plaintiff-respondent always remained ready and willing to perform his part of the contract and is still ready and willing to do so. Hence, the suit. In the written statement the defendant-appellant denied the execution of the agreement to sell and stated that he never agreed to sell the property in dispute to the plaintiff-respondent, the alleged agreement, if any, was a false and fabricated document. It was also denied that the defendant-appellant received Rs.10,000/- as earnest money from the plaintiff-respondent. It was also stated that the property in dispute was under mortgage with HouseFed Rs.40,000/- and that the defendant-appellant never agreed to redeem the property in dispute upto 31.12.1990 and that the defendant-appellant had not delivered the possession to the plaintiff-respondent. The further stand taken was that the defendant-appellant was managing a lottery in which the plaintiff-respondent was a member and that some of the members stopped paying the instalment and due to this payment was blocked and payment was not made to the members. The defendant-appellant had taken a loan of Rs.10,000/- from the plaintiff-respondent for paying to the other members and that the loan amount of Rs.10,000/- was repaid by the defendant-

appellant to the plaintiff-respondent and the plaintiff-respondent had played a fraud and misrepresentation upon the defendant-appellant and prepared the false agreement to sell only to grab the property in dispute. It was alleged that the agreement to sell was null and void and ineffective, without consideration, and not binding. It was further stated that there was no question of readiness and willingness of the plaintiff-respondent as the defendant-appellant had not executed any agreement sell. Regarding the earlier suit it was submitted that the same was withdrawn by the plaintiff-respondent. The plaintiff-respondent filed a replication reiterating his pleas taken in the plaint and controverting those of the written statement.

3. The following issues were framed by the Trial Court :

1. Whether the defendant executed agreement to sell dated 20.07.88 in favour of the plaintiff to sell the suit property ? OPP
2. Whether the plaintiff remained ready and willing to perform his part of sale contract in suit ? OPP
3. Whether the plaintiff is entitled to a decree for possession of the suit property by way of specific performance of the sale contract in suit ? OPP
4. If issue No.1 is proved whether the sale contract in suit is false and forged and has been prepared by playing fraud and misrepresentation upon the defendant ? OPD
5. Whether the sale contract in suit is without consideration ? OPD

6. Whether the suit of the plaintiff is not legally maintainable in this form ? OPD

7. Whether the defendant is entitled to special compensatory costs? If so, to what extent ? OPD

8. Relief.

4. Vide judgement and decree dated 15.02.1993 the Trial Court decreed the suit only for recovery of Rs.10,000/- paid as earnest money. The Trial Court found that at the time of the agreement to sell the loan amount payable to HouseFed was Rs.40,000/- but as per statement of DW4 the outstanding balance of HouseFed was Rs.68000/- which was much more than the consideration stated in the agreement to sell and further the defendant-appellant had stated that he had paid Rs.35,104/- to HouseFed and as such it was difficult to calculate how much the plaintiff-respondent should pay to HouseFed and how the amount of Rs.35104/- which was paid to HouseFed by the defendant-appellant was to be adjusted. An appeal was filed by the plaintiff-respondent against the judgement and decree of the Trial Court. Vide judgement and decree dated 11.01.1996 the First Appellate Court accepted the appeal and decreed the suit for specific performance. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant has contended that the Courts have erred in decreeing the suit of the plaintiff-respondent. It is argued that the plaintiff-respondent had not come to court with clean hands. Elaborating the submission it is stated that the defendant-appellant had taken the plea that infact a loan of Rs.10,000/- had been taken from the plaintiff-respondent which was admitted by the plaintiff-respondent in the replication,

though no such plea was raised in the plaint itself. However, the plaintiff-respondent had further stated that he had filed a suit for recovery of the loan amount against the defendant-appellant which suit was pending. As per learned counsel this statement was incorrect as no such suit for recovery was filed by the plaintiff-respondent and a wrong statement was made before the Court disentitling the plaintiff-respondent to a decree in his favour. Further, the plaintiff-respondent had averred in the plaint that possession of the property in dispute was handed over to him at the time of agreement to sell which has been found to be incorrect. It is further contended that the plaintiff-respondent had failed to prove his readiness and willingness and therefore the suit for specific performance ought to have been dismissed. A further argument has been raised that decreeing the suit would cause immense hardship to the defendant-appellant and his family as the property in dispute was the only residential house held by them. It was also argued that the suit was premature it having been filed before the date fixed for execution of the sale deed.

6. Per contra, learned senior counsel appearing for the plaintiff-respondent has submitted that both the Courts have returned concurrent findings of fact in his favour which warrant no interference in second appeal. It is submitted that since both the Courts have decreed the suit, the readiness and willingness stands established. It is argued that the defendant-appellant had not taken a plea of hardship in his written statement and neither the argument of loan found favour with the Courts below. It is submitted that a suit cannot be dismissed as being premature since the relief could be granted subsequently.

7. Heard learned counsel for the parties and perused the record.

8. In the present case the agreement to sell is dated 20.07.1988. The target date for redemption of the mortgage and execution of the sale deed was 31.12.1990. As per the admission of the plaintiff-respondent in the plaint itself, before filing the present suit for specific performance he had in 1988 itself filed a suit for injunction against the defendant-appellant regarding the property in dispute. It is further stated in the plaint that this suit for injunction was dismissed in default and an application for restoration was filed which was fixed on 09.01.1991. While that application was pending, the present suit for specific performance was filed on 19/20.12.1990. On 21.12.1990 notice in the present suit was issued for 11.01.1991. Unfortunately, counsel for both the parties are unable to shed any light as to what happened in the restoration application filed in the suit for injunction.

9. In a suit for specific performance the conduct of a plaintiff has to be blemishless throughout entitling him to the specific relief. In the present case in his plaint the plaintiff-respondent made no mention of having lent money to the defendant-appellant. It was when the defendant-appellant took a plea in his written statement of having taken a loan of Rs.10,000/- from the plaintiff-respondent that the plaintiff-respondent in his replication stated that *“It is correct that the defendant borrowed an amount of Rs.10,000/- from the plaintiff and in consideration thereof executed a pronote and receipt in his favour on the basis of which the plaintiff has filed a suit for recovery against him which is pending in the Court of Sub Judge Ist Class Rajpura (B)”*. The pronote and receipt for Rs.10,000/- were never produced by the plaintiff-respondent. Surprisingly, in his cross-examination

the plaintiff-respondent denied having given any loan of Rs.10,000/- to the defendant-appellant. No documents evidencing the filing or pendency of any suit for recovery of Rs.10,000/- by the plaintiff-respondent was produced by him though in his deposition he mentioned filing a suit for recovery of Rs.2,000/-. Thus, clearly the plaintiff-respondent disclosed half-baked facts in his pleadings and in his oral deposition before the Court. To the contrary, the defendant-appellant mentioned in his written statement about taking a loan of Rs.10,000/- from the plaintiff-respondent and having repaid the same. This was supported in his statement as DW4 and by the statements of his witnesses DW1 and DW3. Infact DW3 also deposed that he had withdrawn money from his bank which was given to the defendant-appellant for paying to the plaintiff-respondent. Even the plea by the plaintiff-respondent of being in possession of the property in dispute was negatived and the Trial Court found that he was not in possession. The conduct of a plaintiff has to be judged having regard to the entirety of the pleadings as also the evidence brought on the record. In the present case the plaintiff-respondent has not come to the court with clean hands and has come forward with untrue facts. Refusal of decree for specific performance of agreement to sell in such a situation would promote honesty in society.

10. Further, the case as set-up by the plaintiff-respondent was that the target date for redemption of the mortgage and execution of the sale deed was 31.12.1990. To show his readiness and willingness, as per his deposition in Court as PW1, on 31.12.1990 he reached the office of the Sub Registrar with the balance sale consideration of Rs.50,000/- and Rs.5,000/- towards expenses. This statement of fact could not have been part of the

plaint which is dated 19.12.1990. Infact, in the plaint the plaintiff-respondent in para 5 only stated that he has the balance amount ready but the defendant-appellant had declined to honour his commitment. No specific amount being ready in cash or in the bank was disclosed by the plaintiff-respondent. Thus, the readiness and willingness on 31.12.1990 disclosed in the oral statement of the plaintiff-respondent is not supported by his pleadings in the plaint. It is settled law that no amount of evidence which is not supported by pleadings can be looked into by a Court. The readiness and willingness of the plaintiff-respondent is thus also not proven in this case with supporting pleadings.

11. The discretion to grant or refuse specific performance cannot be arbitrarily exercised. The power under Section 20 of the Specific Relief Act, 1963 to exercise discretion to grant or refuse specific performance has a number of parameters on which it is exercised, one way or the other. The principle that the discretion to decree specific performance cannot be arbitrarily exercised is enumerated in the provisions of Section 20 (as it stood before its amendment by Act No.18 of 2018). It reads :

“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 I - 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 II - 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 other party.”

12. Specific performance, being an equitable relief, can be refused on the ground that the plaintiff had not come to Court with clean hands and had suppressed material facts. Likewise, the defendant too can suffer specific performance, because of breach of contract being fully proved against him, his conduct prior to commencement of action and during the course of trial disentitle him to the discretion of the Court granting the alternate relief of refund instead of specific performance. There have been cases where phenomenal rise in the price of immovable property has weighed with the Courts in substituting the relief of specific performance by a decree for payment in lump sum of a much higher compensation to the

successful plaintiff or requiring the plaintiff to enforce specific performance on payment of a higher sale consideration.

13. In the case of **Shenbagam vs. KK Rathinavel [2022 SCC OnLine SC 71]** the Hon’ble Supreme Court held :

“29. All the three courts, including the High Court, grossly erred in the manner in which they have adjudicated upon this dispute in a suit for specific performance. In the first instance, the trial court failed to frame an issue on whether the respondent-plaintiff was ready and willing to perform his obligations under the contract and instead assessed whether he is entitled to the relief of specific performance. In doing so, the trial court viewed the legal issue from an incorrect lens. The foundation of a suit for specific performance lies in ascertaining whether the plaintiff has come to the court with clean hands and has, through his conduct, demonstrated that he has always been willing to perform the contract. There is a conspicuous absence in judgment of the trial court of any reference to evidence led by the respondent to indicate his willingness to perform the contract. The trial court merely adverted to “document produced on behalf of the plaintiff” and concluded that he had sufficient means to purchase the suit property. Apart from this observation, the judgment fails to analyse the terms of the agreement, the

obligations of the parties and the conduct of the respondent or the appellant.

30. In evaluating whether the respondent was ready and willing to perform his obligations under the contract, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction.

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41. True enough, generally speaking, time is not of the essence in an agreement for the sale of immoveable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement to sell was entered into between the parties. The price of the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the

contract. However, we order a refund of the consideration together with interest at 6% per annum.”

14. Recently, in the case of **Major Gen. Darshan Singh (D) by LRs & Anr. vs. Brij Bhushan Chaudhary (D) by LRs [CA No.9360 of 2013 decided on 01.03.2024]** the Hon’ble Supreme Court held :

“9. Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity.”

In para 14 of the same decision it was inter-alia held :

“14. As observed earlier, the relief of specific performance is discretionary and equitable. Considering the plaintiffs’ conduct of making false and/or incorrect statements in the plaint, which were very material, we hold that the plaintiffs are disentitled to relief of specific performance.”

15. In **Lourdu Mari David vs. Louis Chinnaya Arogiaswamy [(1996) 5 SCC 589]** it was inter-alia held that :

“It is settled law that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words the party who

*makes false allegations does not come with clean hands
and is not entitled to the equitable relief.”*

16. The facts and the evidence on the record in the present case do not make a clear cut case of an agreement to sell having been executed for sale of the suit property. The transaction of 20.07.1988 seems to be pointing towards the give-and-take financial dealings between the parties and not a definite case of agreement to sell the suit property, coupled with several inconsistencies in the pleadings and the deposition of the plaintiff-respondent. Considered from this perspective and keeping in mind the totality of the facts and evidence on the record, especially the conduct of the plaintiff-respondent in concealing facts from the Court, this Court deems it appropriate to decline to the plaintiff-respondent the decree of specific performance of the agreement to sell dated 20.07.1988.

17. As per the law laid down by the Constitution Bench of the Hon’ble Supreme Court in the case of **Pankajakshi (dead) through LR’s & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law.

18. In view of the above, the present appeal is allowed, the judgements and decrees passed by the Trial Court and the First Appellate Court are set aside and the suit of the plaintiff-respondent stands dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.03.2024
Aman Jain

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO