

RSA-4935-2011

-1-

216

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

RSA-4935-2011 (O&M)

Reserved on : 15.02.2024

Date of Decision: 20.02.2024

Mangal Dass Bhatti (deceased through LRs)

.....Appellant

VERSUS

Inder Singh Kohli

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jain, Senior Advocate with
Mr. S.P. Arora, Advocate and
Mr. Varun Parkash, Advocate for the appellant.

Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate
Mr. Daanish Mahajan, Advocate and
Ms. Nikita Goyal, Advocate for the respondent.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 23.09.2011 passed by the First Appellate Court whereby the appeal of the defendant-respondent was accepted and the suit of the plaintiff-appellant was decreed for recovery of Rs.2 lacs along with future interest @ 6% from date of the decree till realization.

2. The brief facts relevant to the present *lis* are that a suit for specific performance was filed by the plaintiff-appellant qua agreement to

RSA-4935-2011

-2-

sell dated 21.12.2001 alleged to have been executed by the defendant-respondent in favour of the plaintiff-appellant in respect of land measuring 75 kanals 18 marlas bearing Khewat No.250, Khatuni No.300, Khasra Nos.32//6(6-12), 32//13/3(3-7), 32//7/1(1-13), 32//7/2(3-15), 32//14(8-0), 32//15/1(1-2), 32//17(8-12), 32//18(8-0), 32//23(7-11), 32//24(7-11), 32//25/3(3-10), 32//27(0-5), Khatuni No.345, Khasra Nos.32//15/2(6-2), 32//16(7-4) and 32//25/1(0-8), Khewat No.573, Khatuani No.715, Khasra No.32//25/2(3-0) situated in Village Naharpur, HB No.150, Tehsil Jagadhari, District Yamuna Nagar. It was averred in the plaint that the agreement to sell dated 21.12.2001 was an agreement-cum-receipt of earnest money which was executed by the defendant-respondent in favour of the plaintiff-appellant in the presence of witnesses and the sale deed was to be executed after harvesting Rabi 2002 crop. However, the defendant-respondent, inspite of harvesting *Rabi* 2002 crop, did not intimate the plaintiff-appellant about it. In February 2003, May 2003, September 2003 and December 2003 the plaintiff-appellant alongwith Adrish son of Dost Mohd. approached the defendant-respondent for execution and registration of the sale deed but the defendant-respondent put the plaintiff-appellant off on one pretext or the other whereas the plaintiff-appellant had always been ready to perform his part of the contract on payment of the balance sale consideration. It was further averred that in May 2004 and June 2004, Adrish on behalf of the plaintiff-appellant had approached the defendant-respondent for execution of the sale deed in favour of the plaintiff-appellant, however, the defendant-respondent did not come forward. It was further averred that on 25.10.2004 the plaintiff-appellant alongwith Adrish approached the defendant-

RSA-4935-2011

-3-

respondent for execution and registration of the sale deed in terms of the agreement but the defendant-respondent put the matter off on one pretext or other. In November 2004 the plaintiff-appellant alongwith Adrish and Surinder Chhabra approached the defendant-respondent for getting the sale deed executed and registered in favour of the plaintiff-appellant in terms of the agreement. The defendant-respondent admitted to execute the sale deed in favour of the plaintiff-appellant but later on he did not execute the sale deed. It was further averred that the plaintiff-appellant through his counsel sent a registered notice dated 06.12.2004 to the defendant-respondent requiring him to execute and register the sale deed in favour of the plaintiff-appellant within seven days. Hence, the present suit for specific performance was filed. On notice the defendant-respondent appeared and filed his written statement taking preliminary objections regarding maintainability, locus standi, estoppel, jurisdiction, mis-joinder and non-joinder of necessary parties and cause of action. On merits it was denied that the defendant-respondent had ever entered into an agreement to sell as alleged by the plaintiff-appellant regarding the suit land nor had he received any amount as earnest money. It was stated that the plaintiff-appellant was a property dealer and he played fraud with people just to grab their property. Replication was filed by the plaintiff-appellant.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the defendant executed an agreement to sell on 27.12.2001 in favour of plaintiff to sell the disputed property for a total consideration of

RSA-4935-2011

-4-

Rs.50,50,000/- and received earnest money of Rs.2 Lac as alleged ? OPP

2. Whether the plaintiff was and is still ready to perform his part of the contract ? OPP

3. Whether the suit is not maintainable ? OPD

4. Whether the plaintiff has no locus standi ? OPD

5. Whether this court has no jurisdiction to try the suit ? OPD

6. Whether the suit is bad for misjoinder and non joinder of necessary parties ? OPD

7. Whether the suit is liable to be rejected under Order 7 Rule 11 CPC ? OPD

8. Whether the suit is liable to be rejected under Order 6 Rule 15 CPC ? OPD

9. Whether the plaintiff has concealed material facts from the court ? OPD

10. Whether the defendant is entitled to special costs ? OPD

11. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 25.05.2009. Aggrieved by the same, the defendant-respondent preferred an appeal. The First Appellate Court vide judgment and decree dated 23.09.2011 though allowed the appeal, however, passed a decree for recovery of Rs.2 Lacs in favour of the plaintiff-appellant alongwith interest

RSA-4935-2011

-5-

6% per annum from the date of decree till realization. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned senior counsel appearing on behalf of the plaintiff-appellant would contend that since there was a variation in the suit property as described by the plaintiff-appellant in the plaint and the suit property which had been referred to by the defendant-respondent in his legal notice dated 06.09.2002 (Ex.P5), hence, the relief for specific performance could be granted qua the numbers given by the defendant-respondent himself. The learned senior counsel has vehemently contended that in the present case the agreement (Ex.P1) was in writing, however, certain terms and conditions were not contained in the agreement though they were agreed upon between the parties and on the basis of that Section 18 of the Specific Relief Act, 1963 would come to his aid and the suit for specific performance ought to have been decreed. The learned senior counsel would further contend that the defendant-respondent in his cross-examination has admitted the execution of the agreement (Ex.P1), he has however denied his signatures even on the written statement which goes to show that the defendant-respondent is not stating the truth. It is further the contention of the learned senior counsel for the plaintiff-appellant that a legal notice was sent by the plaintiff-appellant on 06.12.2004 (Ex.P2) asking the defendant-respondent to come forward for execution of the sale deed and on his failure to do so the present suit was filed. The learned senior counsel would submit that in the legal notice dated 06.09.2002 (Ex.P5) which was sent by the defendant-respondent, the details of some other land were given which the defendant-respondent claimed he had entered into an agreement for. It is further the

RSA-4935-2011

-6-

contention of the learned senior counsel that the suit, if not for the land stated in the plaint, ought to have been decreed for the land stated in the said legal notice as both sets of land are owned by the same person.

6. *Per contra*, the learned senior counsel for the defendant-respondent has contended that Ex.P5 is a legal notice which was sent by the defendant-respondent in response to a letter dated 31.05.2002 written by one Surender Kumar son of Panna Lal who had no dealing with the defendant-respondent. It is further the contention of the learned senior counsel that though the said notice was sent to the plaintiff-appellant, but there was an absolute silence till 06.12.2004 when the notice (Ex.P2) dated 06.12.2004 was sent to the defendant-respondent asking him to come and execute the sale deed. It is further the contention of the learned senior counsel that a bare perusal of the agreement (Ex.P1) reveals that the said document is totally bereft of any details as to who is the vendee. It is submitted by the learned senior counsel that though it has been stated that the agreement-cum-receipt was executed in the presence of the witnesses, the signatures of the witnesses are not present on the said receipt-cum-agreement. In support of his contentions the learned senior counsel has relied upon the judgments of the Hon'ble Supreme Court in the cases of **The National Textile Corporation Ltd. Vs. Naresh Kumar Badrikumar Jagad & Ors. [2011(2) RCR (Rent) 293]**, **Bachhaj Nahar Vs. Nilima Mandal & Anr. [2009(1) RCR (Civil) 855]**, **U.N. Krishnamurthy (since deceased) thr. Lrs. Vs. A.M. Krishnamurthy [2022(3) RCR (Civil) 479]** and **Ritu Saxena Vs. J.S. Grover & Anr. [2019(4) RCR (Civil) 540]**.

7. I have heard the learned senior counsel for the parties and with

RSA-4935-2011

-7-

their able assistance have gone through the record.

8. In the present case the suit for specific performance was filed on the basis of a receipt dated 21.12.2001 (Ex.P1) which simply reads as *“Received Rs.Two Lakhs only as advance against bargain of land area total seventy five kanals and eighteen marlas as detailed given by the circle Patwari against total value of Fifty Lakhs Fifty thousand only”*. The said receipt is alleged to be signed by the defendant-respondent. It is to be noted that neither the name of the vendee nor the details of the land are stated in the said receipt-cum-agreement nor is the target date mentioned.

9. Thereafter, a legal notice (Ex.P5) was sent by the defendant-respondent to one Surender Kumar, Deepak Sondhi and the plaintiff-appellant on 06.09.2002 stating therein that the defendant-respondent had entered into an oral agreement to sell his agricultural land measuring 75 kanals 18 marlas comprised in Rectangle No.74//21 (8-0), 22/1 (2-12), 75//25/2(6-18), 81//5/1(5-11), 82//1(8-0), 2(8-0), 3(8-0), 4(8-0), 32//18 (8-0), 23//(7-11), 24//(5-6) situated in the revenue estate of village Naharpur, Hadbast No.150, Tehsil Jagadhari District Yamuna Nagar, as per jamabandi for the year 1997-98, for a total sale consideration of Rs.50,50,000/-. It has been stated in the said notice that a letter dated 31.05.2002 had been received which was written by one Surender Kumar who had nothing to do with the land and that though the date for execution of the sale deed as decided was 15.04.2002, which had since passed, however, the defendant-respondent was still ready and willing to execute the sale deed in respect of the land mentioned in the legal notice on receipt of the balance sale consideration. Thereafter there was total silence on the part of the plaintiff-

RSA-4935-2011

-8-

appellant. Subsequently, a legal notice dated 06.12.2004 (Ex.P2) was sent on behalf of the plaintiff-appellant to the defendant-respondent stating therein that on 21.12.2001 the parties had entered into an agreement to sell land measuring 75 kanals 18 marlas bearing Khewat No.250, Khatauni No.300, Khasra Nos.32//6(6-12), 32//13/3(3-7), 32//7/1(1-13), 32//7/2(3-15), 32//14(8-0), 32//15/1(1-2), 32//17(8-12), 32//18(8-0), 32//23(7-11), 32//24(7-11), 32//25/3(3-10), 32//27(0-5), Khewat No.278 Khatauni No.345, Khasra Nos.32//15/2(6-2), 32//16(7-4) and 32//25/1(0-6), Khewat No.573, Khatauni No.715, Khasra No.32//25/2(3-0) situated in Village Naharpur, HB No.150, Tehsil Jagadhari, District Yamuna Nagar. Immediately thereafter on 17.12.2004 the present suit was filed. The details of the land as mentioned in the notice sent by the defendant-respondent and those mentioned in the plaint do not tally.

10. The learned senior counsel appearing on behalf of the plaintiff-appellant relying upon Section 18 of the Specific Relief Act, 1963 has contended that in case there is any variation in the land as claimed by the plaintiff and in the land description as given by the defendant the suit could still be decreed. It is further the contention that since the defendant-respondent had agreed in his legal notice to execute the sale deed qua the land mentioned therein and since both the parcels of land are owned by the defendant-respondent, therefore, the present suit ought to have been decreed for that parcel of land which was mentioned by the defendant-respondent in his legal notice dated 06.09.2002. It is apt to note that there was no response by the plaintiff-appellant to the legal notice dated 06.09.2002. Even the legal notice dated 06.12.2004 (Ex.P2) sent by the plaintiff-appellant does not

RSA-4935-2011

-9-

mention anything about the earlier legal notice dated 06.09.2002. The plaintiff-appellant filed a suit for 75 kanals 18 marlas as described in the plaint which is different from the parcel of land which has been mentioned in the legal notice dated 06.09.2002. The argument of the learned senior counsel for the plaintiff-appellant that the suit ought to have been decreed for the parcel of land mentioned in the legal notice (Ex.P5) dated 06.09.2002 sent by the defendant-respondent qua which he was willing to execute the sale deed deserves to be rejected. It is trite that a relief which is totally beyond the pleadings cannot be granted. This is not a case of variation as referred to in Section 18 of the Specific Relief Act, 1963 but a case where there are no details of the land allegedly agreed to be sold. Section 18 of the Specific Relief Act, 1963 reads as under :

“18. Non-enforcement except with variation. - Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely :

(a) where by fraud, mistake of fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contact;

(b) where the object of the parties was to produce a

certain legal result which the contract as framed is not calculated to produce;

(c) where the parties have, subsequently to the execution of the contract, varied its terms.”

11. Though in the plaint certain khasra numbers have been given, there is no mention of these khasra numbers in the written statement. Rather, in the written statement there is a complete denial and no khasra numbers have been given. A case for variation could have been argued had the plaint and the written statement referred to some difference in the subject khasra numbers. Hence, to say that the plaintiff-appellant can get the benefit of Section 18 of the Specific Relief Act, 1963 is rather far-fetched.

12. The Hon’ble Supreme Court in the case of **The National Textile Corporation Ltd.** (supra) has held as under :

“7. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to

see just where the two sides differ. (Vide: M/s. Trojan & Co. v. RM N.N. Nagappa Chettiar, AIR 1953 SC 235; State of Maharashtra v. M/s. Hindustan Construction Company Ltd., 2010 (2) RCR (Civil) 614; and Kalyan Singh Chouhan v. C.P. Joshi, 2011 (1) RCR (Civil) 865.”

13. Yet again in the case of **Bachhaj Nahar** (supra), it has been held as under :

“16. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata,

estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of Rs.one lakh, the court cannot grant a decree for Rs.Ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

14. The learned counsel for the plaintiff-appellant has submitted that since there was a legal notice which was sent by the defendant-respondent himself stating therein that he was willing to execute the sale deed qua that land mentioned in the said legal notice, though the present suit has not been filed for that parcel of land, the suit be decreed on the basis of this admission made by the defendant-respondent. However, this plea cannot be accepted in view of the law laid down by the Hon'ble Supreme Court. The argument of the learned counsel for the plaintiff-appellant deserves to be rejected as the same would amount to decreeing the suit beyond the pleadings of the parties. The argument raised by the learned counsel for the plaintiff-appellant regarding the admission by the defendant-respondent in his cross-examination would be of no avail inasmuch as there is no clear

RSA-4935-2011**-13-**

admission regarding the parcel of land involved in the agreement to sell dated 21.12.2001. It is trite that the plaintiff has to stand on his own feet. The plaintiff-appellant in the present case has miserably failed to show that the agreement to sell was qua the suit land.

15. In view of the above, I do not find any illegality or infirmity in the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.02.2024

Yogesh Sharma

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