



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2367 of 1993 (O&M)

Date of Order:30.01.2025

Om Parkash (deceased) through LRs

.Appellant

Versus

Amarjit Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. C.S.Kathuria, Advocate
for the respondent.

ANIL KSHETARPAL, JUDGE (Oral)

1. This Regular Second Appeal has been filed by defendant No.1, to assail the correctness of First Appellate Court's judgment which in turn has reversed the judgment of the trial court.

2. In fact, both the courts have found that defendant No.1, entered into an agreement to sell on 14.02.1979, with respect to half share of the house in favour of the plaintiff on receipt of Rs.4,000/- out of total sale consideration of Rs.20,000/-. As per the agreement to sell, this sale deed was to be executed on or before 14.05.1980.

3. The plaintiff sent notices to the defendant to come and execute the sale deed while honouring the agreement to sell, however, he did not respond. The suit was filed on 25.09.1980.

4. Both the courts have also found that the plaintiff was always ready and willing to perform his part of the contract. The trial Court did not



grant relief of specific performance on the ground of hardship which will be faced by the family of defendant No.1.

5. Upon re-appreciation of the evidence, the First Appellate Court held that defendant No.1 has not made any averment with regard to the hardship while filing the written statement and the trial Court has erred in exercising its discretion.

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 contends that the trial Court had exercised discretion as per Section 20 of the Specific Relief Act, 1963, which was wrongly interfered by the First Appellate Court. He further submits that the property is only half share of the house in which defendant No.1 along with his five members are residing.

8. This court has considered the submissions of the learned counsel representing the parties.

9. The enabling powers to exercise discretion while granting or refusing to grant relief of specific performance is required to be exercised keeping in view the well settled principles of law. In this case, defendant no.1 claimed that he had borrowed loan of Rs.4,000/- and denied execution of the agreement to sell. He further mortgaged his share in favour of his brother Sh. Ved Parkash, defendant no.2, for Rs.6,000/-. Moreover, he never made any assertion with regard to the hardship which was likely to be suffered by his family. In such circumstances, the First Appellate Court upon re-appreciation of the evidence has, as a matter of fact, found that the appellant had failed to make out a case for exercise of discretion in his



favour.

10. This court is required to balance the equities. The court cannot lean in favour of defendant without taking into consideration the interest of the plaintiff, who is not at fault.

11. Keeping in view the aforesaid facts and discussion, the judgment passed by the First Appellate Court is modified and a conditional decree for possession by way of specific performance of the agreement to sell is passed in favour of the plaintiff and against defendant no.1, subject to deposit of balance sale consideration of Rs.16,000/- along with interest @ 12% per annum from the date of filing of the suit till deposit, within a period of three months.

12. With these observations, the appeal is disposed of.

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

(ANIL KSHETARPAL)
JUDGE

January 30, 2025

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