

Jangir Singh Vs. Hari Singh

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Court : Punjab and Haryana

Decided On : Apr-01-2004

Reported in : AIR2004P& H267; (2004)138PLR46

Judge : Viney Mittal, J.

Acts : [Specific Relief Act, 1963](#) - Sections 10; [Powers of Attorney Act, 1882](#) - Sections 2

Appeal No. : R.S.A. No. 1147 of 2004

Appellant : Jangir Singh

Respondent : Hari Singh

Advocate for Pet/Ap. : S.N. Chopra, Adv.; R.K. Battas, Adv.

Disposition : Appeal dismissed

Judgement :

Viney Mittal, J.

1. The defendant is in appeal.

2. A suit for specific performance of an agreement to sell dated February 14, 1996 was filed by Hari Singh, plaintiff. It was claimed by him that the defendant is the owner of the land in dispute and he had agreed to sell the same to the plaintiff vide

agreement dated February 14, 1996 through his attorney and son Jeet Singh for a consideration of Rs. 1,60,000/-. An earnest money of Rs. 53,000/- was paid by the plaintiff. The remaining sale consideration was to be paid at the time of the execution of the sale deed which was to be executed and registered on or before August 15, 1996. On August 14, 1996 and August 16, 1996, the plaintiff remained present for the whole day in the office of the Sub-Registrar along with the balance sale consideration and the remaining amount for the purchase of stamps etc. but the defendant did not turn up. Accordingly, claiming that the plaintiff was always ready and willing to perform his part of the agreement, he filed a suit for specific performance.

3. The defendant contested the suit. He admitted that he is owner in possession of the suit land but denied that Jeet Singh, the attorney and son of the defendant had ever entered into any agreement to sell dated February 14, 1996. In fact the authority of aforesaid Jeet Singh itself was denied. The receipt of any earnest money was also denied.

4. During the course of the evidence led by the parties, the plaintiff proved the due execution of the aforesaid agreement Ex. P1. He also proved that he had remained present before the Sub-Registrar on August 14 and August 16, 1996 as August 15, 1996 was a holiday, It was also proved that Jeet Singh had sold some other land of his father through sale deed Ex. P5 being the attorney of his father. The payment of the earnest money of Rs. 35,000/- was also proved. In fact the plaintiff proved that the earnest money was Rs. 35,000/- and not Rs. 53,000/-, as stated in the plaint inasmuch as the aforesaid figure of Rs. 53,000/- had been mentioned through a typographical mistake. According to the plaintiff, the earnest money was only Rs. 35,000/- which was duly paid.

5. The defendant led the evidence and proved Ex. D1, the power of attorney. It was maintained by the defendant that although there was a power to alienate the land given to the aforesaid attorney (his son Jeet Singh) but he had never been authorised to settle the price of the land, nor had he ever been authorised to enter into an agreement to sell. It was further maintained by the defendant before the learned trial Court that he was ready to refund the double of the earnest money.

6. The learned trial Court on the basis of the evidence led by the parties held that the plaintiff had been able to prove the due execution of Ex. P1 and the payment of the earnest money of Rs. 35,000/- at the time of the execution of the said agreement. The learned trial Court also held that once the general power of attorney had given the power to alienate the suit land, then the aforesaid attorney certainly had the power to enter into an agreement to sell as well. After holding that the plaintiff was always ready and willing to perform his part of the agreement, the suit filed by the plaintiff for specific performance was decreed.

7. The matter was taken up in appeal by the defendant. He learned first appellate Court reappraised the entire evidence. Various pleas taken by the defendant were noticed. On the basis of the aforesaid reappraisal of the evidence, all the findings recorded by the learned trial Court were affirmed and the appeal filed by the defendant was also dismissed.

8. The defendant has remained unsatisfied and has approached this Court through the present regular second appeal.

9. I have heard Shri S.N. Chopra, the learned counsel appearing for the appellant at some length and with his assistance have also gone through the record of the case.

10. Shri S.N. Chopra, the learned counsel appearing for the appellant has primarily argued that the decree for specific performance as passed by the learned Courts below was not legally sustainable in view of the terms and conditions of the agreement. According to Shri Chopra, Ex. P1 stipulated for payment of double the amount of earnest money by the defendant and, therefore the specific performance of such an agreement could not have been ordered. Shri Chopra placed reliance Upon a judgment of the Hon'ble Supreme Court of India in Dadarao v. Ramrao 2000 (1) Civil Court Cases 199 : (1999 AIR SCW 4818) and also an order of this Court in RSA No. 742 of 2001 decided on May 24, 2001 (titled Jagtar Singh v. Basant Singh).

11. It has further been argued by Shri Chopra that the defendant had appointed his son Jeet Singh as his general attorney. A power had been given to the

aforesaid attorney to alienate the suit property belonging to the defendant. However, the aforesaid power could not be construed to mean that the attorney had power to enter into an agreement to sell as well. For this preposition, Shri Chopra has relied upon a judgment of the Calcutta High Court reported as Janki Pershad Singh v. Syed Yahia Hossain, 1912 Indian Cases 637.

12. Having given my thoughtful consideration to the aforesaid contentions of the learned counsel for the appellant, I find myself unable to agree with the same.

13. The relevant stipulation in the agreement Ex. P1 may be noticed as follows :

'.....time limit for registration is fixed as 15-8-1996. So within this period I shall get sale deed registered in favour of party No. 2 and if I do not do so, then party No. 2 may get registration of the sale deed through Court or receive double the amount.....'

14. From the perusal of the aforesaid stipulation in the agreement, it is apparent that option had been given to the purchasing party that in case of default by the seller, the vendee may get the sale deed registered through Court or may opt for receiving double the amount. This stipulation in the said agreement cannot be taken to mean that the vendee (the present plaintiff) had no right to get the specific performance of the agreement by insisting for the execution of the sale deed. The interpretation suggested by Shri S.N. Chopra would actually amount to giving a benefit to the defendant of his own wrong. This cannot be permitted. The reliance placed by Shri Chopra on Dadarao's case (supra) decided by the Hon'ble Supreme Court of India is also misplaced.

15. In Dadarao's case (supra) the Hon'ble Supreme Court has held as follows (at page 4819 of AIR SCW) :

'7. If the agreement had not stipulated as to what is to happen in the event of the sale not going through, then perhaps the plaintiff could have asked the Court for a decree of specific performance but here the parties to the agreement had agreed that even if the seller did not want to execute the sale deed he would only be required to refund the amount of Rs. 1000/- plus pay Rs. 500/- in addition thereto.

There was thus no obligation on Balwantrao to complete the sale transaction.'

Thus, it is apparent that the facts and circumstances of the case in Dadarao's case (supra) were entirely different than the case in hand. The law laid down in the aforesaid case has no application to the present case whatsoever.

16. Almost in identical circumstances the law laid down by the Apex Court in Dadarao's case (supra) was considered by this Court in RSA No. 5218 of 2003, decided on March 18, 2004 (Karnail Singh v. Gurigbal Singh) wherein it was observed as under:

'A reading of the agreement Ex. D1 shows that it has been provided as under :.....It has been agreed that if purchaser does not execute and registered sale deed up to the date fixed, then the earnest money received shall be forfeited and the agreement shall be treated to be cancelled. However, if I do not get the mutation entered in my name on the basis of the sale deed and after obtaining a copy of the Jamabandi do not get the sale deed executed, then I shall be bound to pay the earnest money of Rs. 50,000/- along with penalty amount of Rs. 50,000/- total being Rs. 1,00,000/- to the purchaser.....'A perusal of the aforesaid agreement does show that whereas a specific stipulation has been inserted in the said agreement that in case of the default by the purchaser to execute the sale deed, the amount of earnest money shall be taken to be forfeited and the transaction shall be taken to be cancelled, but in case of a similar default by the seller, it was merely provided that the purchaser would be entitled to Rs. 50,000/- along with penalty amount of Rs. 50,000/-. There is no stipulation of the agreement being cancelled in such a situation. In these circumstances, the contention of the learned counsel that the agreement was to be treated as cancelled even in the case of default by the seller cannot be accepted. When a specific stipulation has been inserted with regard to the cancellation of the agreement on a default by the purchaser but no such stipulation is added on any such default by the seller, then such a stipulation cannot be inferred at all. In fact no such plea was raised before the Courts-below. No issue in this regard has been framed. It is well settled that when there is execution of an agreement to sell with regard to an immovable property, then even if there is a default clause with regard

to the refund of earnest money along with penalty, still the Court on a prayer made by the plaintiff can order the specific performance.'

17. It is, thus, apparent that the contention of the learned counsel for the appellant that the specific performance of the agreement Ex. P1 could not be ordered but the plaintiff was merely entitled to receive double the amount of the earnest money is wholly without any justification and is, accordingly, rejected.

18. The other argument of Shri Chopra is also without any basis. It is not in dispute that through power of attorney Ex. D1, the defendant had authorised his son Jeet Singh to alienate the land belonging to Jagir Singh. Once the authority had been given to Jeet Singh to alienate the suit property, then the power to enter into an agreement for the sale of the said land was inherent in the said attorney. The reliance placed by Shri Chopra on the judgment of the Calcutta High Court in Janki Pershad Singh's case (supra) is also completely misplaced. In the said authority the attorney had been merely authorised to execute the sale deed and admit the execution thereof before the registering officer. It was in those circumstances that the Court had held that the power to execute the document was not same thing as power to enter into an agreement. This is not the position in the present case. As noticed above, Jeet Singh, the attorney-son of the defendant had been authorised through the power of attorney Ex. D1 to alienate the suit property. The power to alienate necessarily and inherently contains the power to take such steps as may be required, including the power to enter into an agreement. In this view of the matter, the other contention of Shri Chopra is also liable to be rejected.

19. No other point has been urged.

20. Nothing has been shown that the findings recorded by the learned Courts-below suffer from any infirmity or are contrary to record in any manner.

21. No question of law, much less any substantial question of law, arises in this appeal. 22. No merit. Dismissed.