Mohinder Singh and ors. Vs. Guljit Singh

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Court : Punjab and Haryana

Decided On : Feb-18-2000

Reported in : (2000)126PLR115

Judge : R.L. Anand, J.

Acts : Specific Relief Act, 1963 - Sections 12 and 20

Appeal No. : Regular Second Appeal No. 917 of 1998

Appellant : Mohinder Singh and ors.

Respondent : Guljit Singh

Advocate for Def. : Deepak Thapar, Adv.

Advocate for Pet/Ap. : Sunil Chadha, Adv.

Disposition : Appeal dismissed

Judgement :

R.L. Anand, J.

1. Defendants in the trial Court have filed the present appeal against the judgment and decree dated 6.3.1998, passed by the Court of Add). Distt. Judge, Ludhiana, who dismissed the appeal of the defendant-appellants and affirmed the judgment and decree dated 21.8.1996, passed by the Court of Addl. Civil Judge (Sr. Divn.),

Jagraon, who decreed the suit of the plaintiff-Guljit Singh for possession by way of specific performance.

2. The brief facts of the case can be noticed in the following manner:-

3. Guljit Singh filed a suit for possession by way of specific performance on the basis of the agreement of sale dated 11.4.1989 against Buta Singh, Mohinder Singh, Darshan Singh and Jasbir Kaur and it was pleaded by the plaintiff that the defendants 2 to 4 are recorded as owners of the suit property bearing khasra No. 175 Killa Nos. 4, 5, 6/1 as per Jamabandi for the year 1984-85, situated in Kacha Malak road, Agwar Gujjaran, Jagraon. Defendant No. 1 is the general attorney of defendants 2 to 4, i.e. Mohinder Singh, Darshan Singh and Jasbir Kaur. The defendants have entered into agreements to sell the plots out of the aforesaid land to various persons and had demarcated the land into various plots and defendant No. 1 managed to sell the plots on behalf of defendants 2 to 4. Defendant No. 1 entered into an agreement of sale on 11.4.1989 to sell 10 marlas, i.e. 6 bishwash kham out of rectangle No. 175, killa No. 4, as shown red in the site plan attached with the plaint. The defendants agreed to, sell the said property at the rate of Rs. 7,000/- per bishwa and a sum of Rs. 10,000/- was received as earnest money. The sale deed was to be executed on or before 31.12.1989. It was stipulated in the agreement that the plaintiff would leave 10 feet wide passage on the western side whereas other 10 feet would be left either by the vendor or by the vendee, whosoever may be. So, 20 feet wide passage was to be left as thorough fare. On 31.12.1989, it was a Sunday and the sale deed as per terms and conditions was to be effected on 1.1.1990 in favour of the plaintiff. The plaintiff remained present and ready with the balance sale consideration in the office of the Sub Registrar, Jagraon. He was willing to get the sale deed registered from the defendants with regard to the plot in dispute but the defendants did not honour the terms of the contract. After the expiry of a reasonable time, the plaintiff marked his presence in the office of the Sub Registrar on 1.1.1990. The plaintiff also served a notice upon the defendants on 9.1.1990 by giving an opportunity to the defendants to come and execute the sale deed on 24.1.1990. The defendants did not come present on 24.1.1990 as well. The plaintiff, again, moved an application in the office of the Sub Registrar, Jagraon. The plaintiff was always ready and willing to perform his

part of the contract as per the terms of the contract dated 11.4.1989 and even now he is ready and willing to perform his part of the contract by making the balance payment of the sale consideration but the defendants are dilly-dallying the matter because of the increase in the prices. The defendants have caused irreparable loss to the plaintiff by not executing the sale deed. The defendants are threatening to transfer the plot in dispute to some other person. In these circumstances, the plaintiff prayed for a decree for possession by way of specific performance and, in the alternative he also claimed damages to the extent of Rs. 10,000/-.

4. Notice of the suit was given to the defendants. It was pleaded that the plaint is not in accordance with the law; that the plaintiff has no cause of action to file the suit; that the suit of the plaintiff is not legally maintainable; that the agreement was never executed between the parties; that the agreement is forged and fictitious as defendants 2 to 4 never gave their consent to sell the suit property and that the suit is bad for misjoinder of parties. it was also pleaded by the defendants that the agreement has been forged by the plaintiff in collusion with some others, who are inimical with the defendants. They are not bound by the terms of the agreement which has been pleaded and relied upon by the plaintiff.

5. The plaintiff filed a rejoinder to the written statement of the defendants in which he re-iterated the allegations made in the plaint by denying those of the written statement. Plaintiff further pleaded that Bilta Singh was the lawful attorney of defendants 2 to 4 and he sold the plots to other persons like the. plaintiff as attorney of defendants 2 to 4 and the agreement is a valid and genuine document.

6. From the pleadings of the parties, the following issues were framed by the trial Court:-

'1. Whether the defendant No. 1 being the duly authorised attorney of defendants No. 2 and 4 agreed to sell the land in suit and executed an agreement of sale dated 11.4.1989 on receipt of an earnest money to the tune of Rs. 10,000/-? OPP.

2. Whether plaintiff has been ready and willing to perform his part of the contract? OPP

3. Whether the plaintiff is entitled to the decree for the specific performance? OPP

4. If issue No. 3 is not proved, whether the plaintiff is entitled to the decree for recovery in the alternative, if so. that what amount? OPP

5. Whether the plaintiff has got no locus standi to file the present suit? OPD

7. Whether the defendants No. 2 to 4 never gave their consent to sell the suit property. If so its effect OPD

8. Whether no cause of action has arisen to the plaintiff to file the present suit? OPD

9. Relief.'

7. The plaintiff in support of his case examined Mulka Raj, Avtar Singh Bagga, Tarlok Singh and Harbans Lal. He also appeared as his own witness. Defendants were asked to lead their evidence on 13.1.1992 as per order dated 12.12.1991, but the defendants did not examine any witness and, ultimately, the trial Court closed the evidence of the defendants by order and the suit was decreed in favour of the plaintiff on 21.10.1992 against defendants 1 to 3 but the suit of the plaintiff against Jasbir Kaur, defendant No. 4 was dismissed as withdrawn as the plaintiff made a statement before the trial Court on 21.10.1992 to that effect. The defendants filed an appeal against the judgment and decree dated 21.10.1992 before the Court of the Addl. Distt. Judge, Ludhiana, who set aside the judgment and decree of the trial Court dated 21.10.1992 on 1.12.1994 and the case was remanded back to the trial Court to decide the same afresh after affording two opportunities to the defendants to produce their evidence on their own responsibility.

8. After the remand of the case to the trial Court, the defendants made an application under Order 6. Rule 17, CPC, for the amendment of the written statement and the defendants took up an additional plea that the suit of the plaintiff is bad for partial specific performance of the agreement of sale as the plaintiff had given up the claim against defendant No. 4 Jasbir Kaur. Resultantly, the following additional issue was framed by the trial Court:-

'1-A Whether the suit is bad for partial specific performance? OPD

2. Relief.'

9. After re-trial, the suit of the plaintiff was again decreed by the trial Court vide judgment and decree dated 21.8.1996. Aggrieved by the judgment and decree of the trial Court the defendants filed the appeal before the first appellate Court, which was also dismissed and aggrieved by the judgment and decree of the first appellate Court, the present appeal.

10. I have heard Mr. Sunil Chadha, counsel for the appellants and Mr. Deepak Thapar, counsel for the respondent and with their assistance have gone through the record of this case.

11. The learned counsel for the appellants has assailed the judgments and decrees of the Courts below, firstly, by placing reliance upon the provisions of Section 12 of the Specific Relief Act and it was submitted that the specific performance of a part of the contract cannot be specifically enforced. The counsel submitted that Buta Singh allegedly entered into an agreement of sale dated 11.4:1989 as attorney of Darshan Singh, Mohinder Singh and Jasbir Kaur. Buta Singh, admittedly, was not the attorney of Jasbir Kaur, therefore, the specific performance could not be decreed by the Courts below against Jasbir Kaur who had indivisible interest in the property along with Darshan Singh and Mohinder Singh and in this view of the matter both the Courts have committed a wrong.

12. On the contrary, counsel for the respondent argued that the provisions of Section 12(1) of the Specific Relief Act are not attracted in this case because even if it is assumed for the sake of arguments that the suit of the plaintiff could not be decreed for specific performance against Jasbir Kaur wife of Chhinder Singh son of Butta Singh, still the interest of Darshan Singh and Mohinder Singh was identifiable, severable and separate from the share of Jasbir Kaur, therefore, the decree for specific performance still can be granted in favour of the plaintiff Guljit Singh.

13. I find merit in the contention of the counsel for the respondent. It was observed in Kapoor Singh and Ors. v. Surinder Singh, (1993-2) 104 P.L.R. 18, by a D.B. of this Court, after relying upon a judgment of the Hon'ble Supreme Court in Kartar Singh v. Harjinder Singh, A.I.R. 1990 S.C. 854, that section 12 of the Specific Relief Act is not applicable where the share of a contracting party is identifiable, severable and separate from the share of one against whom specific performance of agreement cannot be enforced. It was observed by their Lordships that an agreement can still be enforced against a person who is a signatory to the agreement and the vendee can take the share of such vendor in the suit subject to this right to apply for partition for getting the share demarcated and such a vendee can also take the benefit of apportionment of the sale consideration. In para-9 of the judgment, the Hon'ble D.B. held as follows:-

'From the reading of the above quoted paragraphs, it is clear that Section 12 of the Act shall have no application where a share of a contracting party is identifiable, severable and separate from the share of the one against whom specific performance of the agreement cannot be enforced. Coming to the facts of the present case, we find that it is not a case which is covered under Section 12 of the Act. The share of Surinder Singh is clearly identifiable and is separate and severable from the share of his sister. The suit land was originally owned by Balwant Singh, father of the defendants. On his death, Surinder Singh and Tejinder Kaur succeeded in equal shares and they have 1/2 share each in the suit land. The agreement was entered into by Surinder Singh not only for the sale of his share in the property but also that of his sister. The agreement also provided that in case they fail to execute the Sale Deed, a sum of Rs. 32,000/- will be returned along with damages of the extent of Rs. 32,000/-. His sister did not admit the execution of the agreement and more over, on the record it was proved that she never authorised her brother Surinder Singh to enter into agreement to sell land of her share. Considering that the property is owned jointly by Surinder Singh and Tejinder Kaur in equal shares, the share of Surinder Singh is clearly identifiable and in these circumstances, the agreement can certainly be enforced against Surinder Singh who had signed it. As held by the Supreme Court in Kartar Singh's case (supra), the plaintiffs shall take the share of Surinder Singh in the suit land subject to the right of the plaintiffs to apply for the partition of the property for getting their share demarcated. As regard the apportionment of sale consideration, it shall be reduced by 50 percent as Surinder Singh would be entitled to the amount which he is entitled for the sale of his share under the agreement.'

14. In Kartar Singh's case (supra), it was observed that the specific performance of an agreement of sale in respect of a share of the property cannot be refused on the ground that the property has not been partitioned. It is not a legal infirmity and the vendee has the right to apply for partition and get the share demarcated, also, it was observed by the Hon'ble Supreme Court that the specific performance of the agreement cannot be refused merely because the properties are scattered at different places. In Kartar Singh's case (supra), the property was joint. The vendee entered into an agreement of sale for himself and on behalf of his sister and the sister refused to sell her share of the property and still the specific performance was granted with respect to the share of the vendor. The judgment in Kartar Singh's case (supra) is fully applicable to the facts in hand. Even if it is assumed for the sake of arguments that Jasbir Kaur was not a contracting party to the agreement of sale dated 11.4.1989 through her father-in-law Buta Singh, still the plaintiff can compel Darshan Singh and Mohinder Singh to sell their share in the land which was agreed to be sold by their father Buta Singh. The vendee may ultimately seeks partition from other co-sharers in the partition proceedings.

15. Reliance can also be placed upon Sardar Singh v. Smt. Krishna Devi and Anr., (1995-1)109 P.L.R. 393 (S.C.) and Rakesh Kumar and Ors. v. Sat Pal, (1986-2)90 P.L.R. 214, wherein similar Observations were made by the Hon'ble High Court. In this view of the settled principle of law, the first contention of the counsel for the appellants is totally devoid of any merit and the same is hereby rejected.

16. It was, then, submitted on behalf of the appellants that specific performance could not be granted to the plaintiffs by virtue of the provisions of section 16(1)(c) of the Act, as the plaintiff has failed to aver and prove that he had performed or has always been ready any willing to perform the essential terms of the contract which was to be performed by him, other than the terms of the performance of which has been prevented or waived by the defendants.

17. The argument is misplaced. I have already referred to the pleadings in the earlier portion of this judgment. The case of the plaintiff is categorical that he was ready and willing to perform his part of the contract but the defendants were not discharging their obligations under the contract. The case of the plaintiff is specific that an agreement was supposed to be performed on or before 31.12.1989. It was a Sunday. He went to the office of the Sub Registrar on 1.1.1990. He waited for the defendants to come. He even made an application before the office of the Sub Registrar to prove his bona fide and conduct. Nobody turned up. He waited for the defendants for some reasonable time. He sent a notice to the defendants on 9.1.1990 calling upon them to get the sale deed executed on 24.1.1990. Again, the defendants did not turn up and the plaintiff was left with no other option but to file the suit for possession.

18. The grouse of the counsel for the appellant that the notice dated 9.1.1990 was a unilateral action on the part of the plaintiff and he could not unilaterally extend the time for performance of the agreement.

19. The argument is not acceptable to the Court. The defendants never showed their intention to the plaintiff that they were ready and willing to perform their part of the contract. The record is barren that the defendants ever served a notice upon the plaintiff to remit them the stamp charges so that the defendants may be able to purchase the same. The intention of the defendants was bad and it became bad due to the rise of the prices. They were never ready and willing to perform their obligation under the contract. The plaintiff, on the other hand, showed his bona fides when he went to the office of the Sub Registrar on 1.1.90. The defendants did not turn up. The plaintiff waited for them. He also made an application in order to prove his bona fides Still, he waited for 8 days. Then, he gave a notice calling upon the defendants to perform their part of the contract on or before 24.1.1990. In this manner, it cannot be said that the plaintiff unilaterally extended the limitation. Rather, he showed his willingness and readiness with the money to perform his part of the contract. Moreover, in the present case, the total consideration was hardly Rs. 42,000/- out of which a sum of Rs. 10,000/- was given to the defendants. Even after 31.12.1989, the defendants did not serve any notice to the plaintiff that they were willing to perform their obligation or that the plaintiff was not

ready with the money. In this view of the matter, I also repel the second argument of the counsel for the appellants. Ready and willingness has to be seen in the background of all cumulative facts and circumstances. The plaintiff has specifically pleaded in the plaint that he was ready and willing to perform his part of the contract at all material times. Conduct he has shown by going to the office of Sub Registrar on two dates. We also know that in the case of immovable property, time is not the essence of the contract. By no act of the defendants, time was made the essence. The plaintiff is not negligent in pursuing his remedy before the Courts.

20. It was, then, submitted by the counsel for the appellants that both the Courts in the present set of circumstances should not have granted the decree for specific performance when the plaintiff himself had prayed for an alternative relief in the plaint.

21. The argument is, again, totally devoid of any merit. Under the law, a right has been given to the plaintiff that in addition to the claim, he can claim damages in the alternative. The plaintiff has not committed any sin or illegality when he has claimed the alternative relief. The question is whether by asking for the alternative relief, the plaintiff had waived his right for possession by way of specific performance. The answer of this Court is in the negative. As per the provisions of Section 10 of the Act, as contained in Chapter II of the Act, the specific performance of any contract may, in the discretion of the Court, be enforced (a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. As per Explanation added to section 10 of the Act, unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, It is a case of immovable property, breach on the part of the defendants is well proved and in such circumstances, specific performance should be enforced unless the case of the plaintiff is covered by any of the exceptions as contained in Section 12 or 16 of the Act.

22. It was also argued by the counsel for the appellants that at one point of time on 21.10.1992, the plaintiff made a statement before the trial Court that he does not want to pursue his relief against Jasbir Kaur, defendant No. 4 meaning thereby, that the suit of the plaintiff against Jasbir Kaur stood dismissed.

23. The argument of the counsel for the appellants can be rejected for two reasons; firstly, the decree dated 29.10.1992 was set aside by the first appellate Court and the suit was remanded and; secondly, the plaintiff was aware that Buta Singh was not the attorney of Jasbir Kaur and, therefore, he could not validly bind the interest of Jasbir Kaur in the area in dispute. The plaintiff confined his claim to Darshan Singh and Mohinder Singh for whom Buta Singh was the general attorney vide deed of attorney dated 15.4.1977. Darshan Singh and Mohinder Singh were bound by the acts of Buta Singh, who was their father. I have already held above that section 12(1) of the Act, in the present case, is no bar and the plaintiff is entitled to seek the remedy of specific relief against Darshan Singh and Mohinder Singh and he would be deemed to have been substituted with regard to the property in question in place of Darshan Singh and Mohinder Singh and the plaintiff can always seek partition once he becomes a co-sharer with the other co-sharers.

24. It was lastly submitted by the counsel for the appellants that it would result into undue hardship to the appellants if the suit of the plaintiff is allowed to be decreed.

25. The argument is not convincing. The fault does not lie with the plaintiff, if the case has been decided by the law Courts belatedly. In Ram Dass v. Ram Lubhaya 1998(2) R.C.R. (Civil) 642, it was held that the principle of equity, good conscience and fairness is the foundation of grant of relief of specific performance. The object of Section 20 of the Specific Relief Act is to avoid resultant undue hardship to one party while avoiding undue gain to the other. Mere lapse of time and in adequate consideration are no grounds to exercise discretion under Section 20 because Section 20 is an exception to the rule of grant of relief of specific performance. Once lawful agreement is proved, equity would demand enforcement of an agreement rather than grant of alternative relief of damage if the plaintiff was always ready and willing to perform his part of the contract. Equity has to be

balanced. If the defendant was guilty of the breach of agreement he cannot be held entitled to any protection of equity.

26. In Rattan Lal v. Smt. Bharpal and Ors. (1998-3)120 P.L.R. 525, it was observed as follows:-

'The principles of law enunciated in these cases is the reiteration of settled principles of law. The principles of equity, good conscience and fairness being very foundation for grant of relief of specific performance is the concept not introduced by judicial pronouncement but explicitly indicated by the Legislature in the provision of Section 20 of the Specific Relief Act. The very language of Section 20 spells out and indicates the wide discretion that is vested in the Court of competent jurisdiction to grant or decline to grant a relief of specific performance for transfer of immovable property. The guiding principles for determination of such controversies have been consistently cogitated by various Courts but to a common end. The common goal sought to be achieved is to avoid resultant undue hardship to one party while avoiding undue gain to the other by mere lapse of time attributable to erring party.'

27. It was observed in this case that an alternative prayer by a plaintiff in a suit cannot be construed as a waiver or abandonment of the main relief in the suit. Also, it was observed that a lawful agreement being proved and the judicial conscience of the Court being satisfied, equity would demand enforcement of an agreement rather than granting an alternative relief of damages to the plaintiff. Equity must give relief where equity demands. When the time has been taken by the Courts in deciding suits or appeals, this normally should not be allowed to work to the disadvantage of the party to the lis. The acts of the Courts shall cause prejudice to none was so stated by the Hon'ble apex Court in the case of Atma Ram Mittal v. Ishwar Singh Punia, (1989-1)95 P.L.R. 143 (S.C.)

28. This Court is of the considered opinion that this appeal is totally merit less and the same is hereby dismissed and directions are given to defendants 1 to 3 to execute the sale deed in favour of the plaintiff in respect of their 2/3rd share in the property in dispute on receiving balance consideration and put the plaintiff in possession of the property. The plaintiff shall deposit the balance consideration

amount in the Court in respect of the shares of defendants 2 and 3. On notice being given to defendants 1 to 3, they shall execute the sale deed in favour of the plaintiff failing which it shall always be open to the plaintiff to move the Court for getting the sale deed executed by Court on behalf of the defendants 2 and 3. No costs.