

Bhupinder Kumar Vs. Angrej Singh

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Court : Supreme Court of India

Decided On : Aug-28-2009

Reported in : 2010(2)MhLJ1(SC); (2009)8MLJ417(SC); 2009(12)SCALE4; (2009)8SCC766; 2009(9)LC4113(SC); [2009] 13 SCR 978

Judge : P. Sathasivam and; Deepak Verma, JJ.

Acts : [Specific Relief Act, 1963](#) - Sections 28 and 28(1); Limitation Act; Code of Civil Procedure (CPC) - Order 21, Rule 12

Appeal No. : Civil Appeal No. 5846 of 2009 (Arising out of S.L.P. (C) No. 20332 of 2007)

Appellant : Bhupinder Kumar

Respondent : Angrej Singh

Advocate for Def. : Arunima Dewedi, ; Mary Mitzy, ; Anil Kaushik and ;

Advocate for Pet/Ap. : Bimal Roy Jad, Adv

Disposition : Revision dismissed

Prior history : From the Judgment and Order dated 23.03.2007 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 2972 of 2003

Judgement :

P. Sathasivam, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 23.03.2007 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 2972 of 2003 whereby the High Court dismissed the Revision and upheld the order passed by the Executing Court.

3. The appellant entered into an agreement dated 20.11.1990 to purchase land measuring 1 kanal 14 marlas situated within the Revenue Estate of Pehowa. As per the agreement, the total sale consideration of the property was fixed @ Rs. 3,850/- per marla. The vendor had received Rs. 20,000 as earnest money. The sale, as per agreement, was to be executed and registered on or before 20.05.1991.

4. According to the appellant, he was always ready and willing to perform his part of the contract. In pursuance of the sale agreement dated 20.11.1990, he reached the office of the Sub-Registrar, Pehowa on 20.05.1991 alongwith the balance amount of sale consideration and expenses to get the sale deed executed and registered. Since 20.05.1991 was a holiday on account of Election, the appellant again reached the office of Sub-Registrar, Pehowa on 21.05.1991, but the respondent did not turn up. Subsequently, on 27.05.1991, the appellant sent a legal notice to the respondent requesting him to get the sale deed executed and registered but the respondent again failed to do so. On 13.12.1991, the appellant feeling constrained, filed a suit for possession by way of specific performance of agreement to sell dated 20.11.1990 vide which the respondent had agreed to sell land measuring 1 kanal 14 marlas. By final judgment and order dated 13.10.1998, the Addl. Civil Judge (Sr. Division), Pehowa decreed the suit with costs and directed the respondent to get the sale deed executed and registered in favour of the appellant qua the suit property at the rate of Rs. 3,850 per marla less the amount of Rs. 20,000 already received by the respondent within a period of three months failing which the appellant shall be at liberty to get the sale deed executed and registered through court.

5. As the respondent failed to get the sale deed executed, on 20.04.2001, the appellant moved an application for extension of time to deposit the balance of sale price in the Court of Addl. Civil Judge (Sr. Division), Pehowa in Execution Petition No. 15 of 2001. By order dated 07.05.2002, the Addl. Civil Judge (Sr. Division), Pehowa, dismissed the application for extension of time to deposit the balance sale price and held that the sale agreement stood rescinded as contemplated under Section 28 of the Specific Relief Act and consequently dismissed the execution petition. Aggrieved by the said order, the appellant filed a Civil Appeal No. 49 of 2002 in the Court of District Judge, Kurukshetra. By judgment and order dated 06.05.2003, the District Judge, Kurukshetra dismissed the appeal as not maintainable. Feeling aggrieved, the appellant filed Civil Revision No. 2972 of 2003 in the High Court of Punjab & Haryana at Chandigarh. The High Court by judgment and order dated 23.03.2007, dismissed the Revision upholding the order passed by the Executing Court. Questioning the said order of the High Court, the appellant filed the present appeal by way of special leave petition.

6. Heard Mr. Bimal Roy Jad, learned Counsel for the appellant and Ms. Arunima Dewedi, learned Counsel for the respondent.

7. The following questions arose for consideration before this Court:

(i) Whether the Court has power to extend the time in favour of a decree holder to pay the balance amount/perform conditions as mentioned in the decree for specific performance?

(ii) Whether the appellant had shown sufficient and reasonable ground for extension of time?

8. In order to answer the above questions, it is relevant to know the contents of the decree granted by the original court in Civil Suit No. 1090 of 1991. A decree for possession of the suit land by way of specific performance was passed in favour of the plaintiff and against the defendant. The decree mandates the defendant to execute sale deed on payment of the balance sale price of Rs. 1,39,000/- and get it registered within a period of three months from the date of the decree failing which the plaintiff shall be at liberty to get the sale deed executed and registered

under Order 21 Rule 12 C.P.C. The said judgment and decree was passed on 13.10.1998. It appears that the plaintiff did not deposit the balance sale price within three months from the date of decree. Equally, the defendant did not execute the sale deed. Thereafter, the plaintiff moved an application on 20.04.2001 for the execution of the decree pleading therein that since the judgment debtor-respondent has failed to execute the sale deed, the same be executed through the Court and he (plaintiff) be allowed time to deposit the balance sale price in Court. The judgment debtor-respondent also moved an application under Section 28 of the [Specific Relief Act, 1963](#) with a prayer that the agreement to sell dated 20.11.1990 be rescinded since the plaintiff had failed to deposit the balance sale consideration within the time allowed by the Court. This application was contested by the plaintiff and the Executing Court, vide order dated 07.05.2002, allowed the application and rescinded the original agreement. In view of the same, the execution application filed by the plaintiff was dismissed. We have already mentioned that the said order was affirmed by the High court in Civil Revision.

9. As per the Limitation Act, the decree holder is permitted to execute the decree within a period of twelve years. No doubt, in the case on hand, it is asserted by the appellant that he sent a legal notice to the respondent for compliance of the decree. However, the fact remains that the appellant filed an application in the Executing Court for extension of time for depositing the balance amount in the Court as directed in the decree. The Executing Court as well as the High Court proceeded on the assumption that since the plaintiff-decree holder was not able to deposit the amount as directed in the decree dated 13.10.1998, the said decree cannot be executed since it has no force in the eye of law. Though, the Court has power to extend time in favour of the decree holder to pay the amount as directed or perform the conditions mentioned in the decree in the absence of plausible reasons, the Executing Court has dismissed his application for extension of time and also allowed the application filed by the judgment debtor for rescission of the contract under Section 28 of the Act. Let us consider the entire Section 28 of the Act:

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed. -

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under Sub-section (1), the Court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor; and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in Sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be

(5) The costs of any proceedings under this section shall be in the discretion of the court

10. These provisions have been interpreted by this Court in various decisions. In *K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar* : (1980) 1 SCC 630, this Court has held that the court has power under Section 28 of the Act to extend time for making deposit. The following conclusion in para 4 is relevant:

It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this Court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favour. The disentitling circumstances relied upon by the defendant-respondent are offset by the false pleas raised in the course of the suit by him and rightly negated. Nor are we convinced that the application for consideration and extension of time cannot be read, as in substance it is, a petition for more time to deposit. Even so, specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. Here, the assignment of the mortgage is not a guileless discharge of the vendor's debt as implied in the agreement to sell but a disingenuous disguise to arm herself with a mortgage decree to swallow up the property in case the specific performance litigation misfires. To sterilise this decree is necessary equity to which the appellant must submit herself before she can enjoy the fruits of specific performance.

It is clear that the decree is in the nature of preliminary decree and the suit would continue and be under the control of the Court till either party moves for passing final decree. It is also clear that though the court has power to extend time and it is the duty of the court to apply the principle of equity to both parties.

11. In *Kumar Dharendra Mullick and Ors. v. Tivoli Park Apartments (P) Ltd.* : (2005) 9 SCC 262, this Court, after analyzing earlier decisions, has concluded that when the court passes the decree for specific performance, the contract between the parties is not extinguished. The court does not lose its jurisdiction after the grant of the decree for specific performance nor does it become *functus officio*. The decree for specific performance is in the nature of a preliminary decree, and the suit is deemed to be pending even after the grant of such decree. Hence, the Court retains control over the entire matter even after the decree. Section 28 gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the Trial Court retains its power and jurisdiction to deal with the decree of specific performance. Therefore, the court has the power to enlarge the time in favour of the decree-holder to pay the amount or to perform the conditions mentioned in the decree for specific performance. It is clear that Section 28 gives power to the court either to extend the time for compliance of the decree or grant order of rescission of the agreement. These powers are available to the Trial Court which passes decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clear that the decree for specific performance is in the nature of preliminary decree and the suit is deemed to be pending even after the decree. Sub-section 1 of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes *functus officio*. On the other hand, Section 28 gives power to the Court to grant order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decreed. In deciding application under Section 28(1) of the Act, the Court has to see all attending circumstances including the conduct of the parties.

12. If we apply the above principles to the facts of the present case, the order of the Executing Court and the High Court cannot be faulted with. The suit for specific performance is in the nature of discretionary remedy and on equity, the appellant was not entitled to get the decree executed since he failed to place relevant materials about his inability to tender or deposit the decreed amount. It is relevant to mention that the sale agreement was executed on 20.11.1990, the suit

for specific performance was filed on 13.12.1991 and suit was decreed on 13.10.1998 stipulating that the balance sale consideration was to be paid by 13.01.1999. In fact, only after the judgment debtor filed an application for rescission of agreement on 28.05.2001, the application for extension of time was moved on 13.08.2001. As discussed earlier, though the Court has power and discretion to extend the time for fulfillment of the contract, in the case on hand, there is neither any material to show that the appellant was having the required money nor had he tendered or deposited the same as per the terms of the decree. Both the Executing Court and the High Court found that there was no just and reasonable cause to extend the time for depositing the balance consideration.

13. In the circumstances and the materials placed, we are satisfied that due to bereft of any acceptable material for extension of time, the Executing Court rightly declined to extend the time, consequently rescinded the contract as requested by the respondent judgment-debtor. The High Court, after analyzing all these aspects and finding that the decision arrived at by the Executing Court is just and equitable, dismissed the revision. We are in entire agreement with the said conclusion. Consequently, the appeal fails and the same is dismissed.