

(2010) 03 P&H CK 0334

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ram Diya

APPELLANT

Vs

Hukam and Others

RESPONDENT

Date of Decision: March 23, 2010

Acts Referred:

- Specific Relief Act, 1963 - Section 20

Citation: (2010) 159 PLR 285

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Judgement

Mahesh Grover, J.

A suit for specific performance was initiated by the present appellant seeking enforcement of the agreement to sell dated 9.5.1994. As per the agreement, the total sale consideration of the property was Rs. 2 lacs and the sale was to be completed by 31.7.1994. The appellant had paid Rs. 1,80,000/- to the respondent No. 2 as earnest money. On the appointed day the respondent failed to appear before the Sub-Registrar which led to the filing of the instant suit.

2. The plea as set up by the respondent No. 2 to refute the agreement to sell was that he was brought to Sonepat and the agreement to sell was executed under the influence of liquor. Respondent No. 1, who being a subsequent purchaser was impleaded later on, also denied the case of the plaintiff-appellant.

3. The learned trial court decreed the suit and directed the sale to be completed by enforcing the agreement to sell in favour of the appellant. In appeal, the findings were reversed by the first Appellate Court by observing that the agreement to sell was in favour of three persons, namely, the plaintiff/appellant and his two sons, namely, Narender Kumar and Ramesh Chander and since they were not impleaded as parties in the suit, the suit was bad for non-joinder of necessary parties. It went on to dismiss the suit in totality.

4. Aggrieved by the findings of the first Appellate Court, learned Counsel for the appellant has contended that the agreement to sell was in favour of the appellant alone and that two sons of the appellant were merely mentioned as beneficiaries of the intended sale but under no circumstances it can be said that they were necessary parties to the suit. He further contended that in any eventuality even if the findings of the first Appellate Court are accepted, then also the first Appellate Court had gone wrong in not exploring the possibility of resorting to the provisions of Section 20 of the Specific Relief Act as the amount which was concededly given at the time of execution of the agreement to sell has not been refunded to him. He thus contended that looking from any angle the first Appellate Court has committed illegality by reversing the findings.

5. The learned Counsel for the respondents sought to defend the findings which were recorded by the first Appellate Court.

6. I have heard the learned Counsel for the parties.

7. The Supreme Court in *Mukesh Kumar and Ors. v. Col. Harbans Waraich and Ors.* 1999 (2) P.L.J. 362 has observed that even though the contract can be enforced by way of specific performance by one of the parties to the contract but yet the persons who are intended beneficiaries of the contract have necessarily to be impleaded as parties and in the eventuality of their not joining the suit as plaintiff they have to be arrayed as defendants. The legal proposition, therefore, as dealt with by the first Appellate Court cannot be faulted with. This situation ought to have led the first Appellate Court to explore the possibility of resorting to the provisions of Section 20 of the Specific Relief Act because sale having been effected in favour of a third party, the agreement had been rendered inexecutable.

8. Now the question arises that whether in the eventuality of the agreement not being capable of enforceable for whatever reasons the question of compensating the appellant in terms of money ought to have been explored. It is conceded case that the appellant had given Rs. 1,80,000/- at the time of execution of the agreement to sell. The intention of the respondent No. 2 is apparently dishonest as he first somersaulted from his stand of having executed the agreement to sell by setting up a plea of the same being executed under the influence of liquor and then he chose to alienate the suit land in favour of some other person i.e. Respondent No. 1. The appellant has also expressed his satisfaction in the event of his being compensated in terms of the amount which he had paid, along with interest.

9. Having regard to the aforesaid I am of the opinion that the following question of law arises for the consideration of this Court:

Whether in the event of the agreement not being capable of being enforceable, the court is obliged to explore the possibility of resorting to the provisions of Section 20 of the Specific Relief Act?

The aforesaid proposition has been held to be a question of law by the Supreme Court in. [Rajeshwari Vs. Puran Indoria](#), .

10. Having regard to the aforesaid, the said question of law is answered in favour of the appellant to hold that the first Appellate Court was obliged to explore the possibility of taking recourse to the provisions of Section 20 of the Specific Relief Act to order the refund of the amount deposited by the appellant pursuant to the execution of the agreement to sell and by not doing so it has committed a patent illegality which has resulted in grave injustice to the appellant.

11. Therefore, the appeal is accepted to this effect and it is directed that respondent No. 2 shall pay the amount of Rs. 1,80,000/- along with interest @10% per annum to the appellant. The interest shall be calculated from the date when the agreement was executed and the amount was paid till the date of its realisation.

12. The appeal is disposed of in the aforesaid terms.

13. In the event of the execution of the decree the executing Court shall make earnest endeavour to ensure that the amount is recovered at the earliest considering that the appellant was deprived of the fruits of the property.