

## Kirpal Singh Vs Khazan Singh and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 25, 2014

**Acts Referred:** Specific Relief Act, 1963 - Section 12 17 20 21 22  
Transfer of Property Act, 1882 - Section 52

**Citation:** (2015) 3 RCR(Civil) 646

**Hon'ble Judges:** Fateh Deep Singh, J

**Bench:** Single Bench

**Advocate:** V.K. Sandhir, Advocate for the Appellant; B.R. Gupta, Advocate for the Respondent;

### Judgement

Fateh Deep Singh, J.

1. This is a regular second appeal by the now aggrieved plaintiff-appellant Kirpal Singh, against the findings dated 17th April, 1986 of the First

Appellate Court of learned District and Sessions Judge, Amritsar. Initially the learned trial Court of Sub Judge 1st Class Ajnala (Amritsar) through

judgment and decree dated 11th March, 1985 decreed the suit of the plaintiff for specific performance of the contract of sale dated 23rd April,

1982, in respect of land measuring 30 kanals and 14 marlas being 4/5 share out of total land measuring 38 kanals and 8 marlas belonging to

Varinder Singh, Karamjit Singh, Jagjit Kaur and Gajwinder Kaur alias Rajwinder Kaur, heirs of deceased Bharpur Singh, situated in the revenue

estate of Pandori Sukha Singh, Tehsil Ajnala, District Amritsar. These findings were subsequently modified by the First Appellate Court of learned

District and Sessions Judge, Amritsar, whereby, the learned Court instead partly allowed the appeal of defendants, the then appellants, Khazan

Singh and others and set aside the decree for specific performance passed in favour of the plaintiff and rather decreed in the alternate for the

recovery of ` 10,000/- i.e. ` 5,000/- being earnest money and ` 5,000/- being liquidated damages against defendants No. 5 to 7. The cogently

established facts which could not be disputed by Mr. B.R. Gupta, Advocate, representing the respondents and even have been firmly established

in the evidence and consistently upheld by the two Courts below are that defendants No. 5 to 7 entered into an agreement to sell in respect of this

very agricultural land vide agreement dated 23.4.1982 Ex.P 1, whereby, the agreed rate was ` 22,000/- per killa and out of which the owners

received ` 5,000/- as earnest money and undertook to execute the sale deed by 15th Poh, 2038 corresponding to December, 1982. It needs to

be stressed here that admittedly this land earlier was under mortgage with defendants Khazan Singh and others for sum of ` 40,000/- and it was

highlighted so in this agreement. It is alleged that the owners through the two sale deeds both dated 8.6.1982 Ex.D1 and Ex.D3 sold this land to

these defendants on the basis of an agreement to sell dated 8.3.1982 pertaining to 23 kanals of this land @ ` 20,000/- per killa. Aggrieved over

this, the plaintiff filed suit for possession by way of specific performance of his agreement to sell and in the alternate sought a recovery of ` 10,000.

It is essential to highlight here that during the course of this appeal, legal heirs of Chanan Singh and Khazan Singh respondents were arrayed so.

2. The stand of the plaintiff is vehemently denied by defendants No. 1 to 4, who in their joint written reply have staked the claim that it was on the

basis of agreement to sell dated 8.3.1982 they have purchased the property for valuable consideration through two sale transactions both dated

8.6.1982 Ex.D1 and Ex.D3 showing total ignorance of any such agreement to sell so claimed by the plaintiff and have sought to project themselves

as bonafide purchasers for valuable consideration. The owners-defendants in their separate written statements had denied the agreement to sell so

claimed by the plaintiff in his favour. The plaintiff reiterated his stand in his replication. The learned trial Court framed the following issues:-

1. Whether the defendants No. 5 to 8 executed a contract for sale on 23.4.1982 to make the sale of the suit land in favour of the plaintiff. If so, on

what terms? OPP

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

3. Whether the defendants No. 1 to 4 are bonafide purchasers for consideration and without notice? OPD

4. Whether the plaintiff is entitled to the specific performance? OPP

5. Whether the defendants No. 5 to 7 entered into an agreement to sell the suit land in favour of defendants Nos. 1 to 4 on 8.3.1982. If so, its

effect? OPD

3. The plaintiff examined PW1 Shamsher Singh attesting witness of the agreement to sell in favour of the plaintiff proving this document as Ex.P1.

PW2 Giani Uttam Singh, Deed Writer, did not produce the record and was subsequently examined to prove writing Ex.P1. PW3 Darshan Singh,

another eye-witness corroborated the case of the plaintiff. PW4 C. Kulwinder Singh has proved the fact that police has taken into possession the

Deed writer register of PW2 Giani Uttam Singh in a case registered against him. Plaintiff Kirpal Singh has testified as PW5 proving the agreement

to sell Ex.P1.

4. The defendants examined DW1 Krishan Par-tap, Deed Writer to prove sale deed Ex.D 1. DW2 HC Dalbir Singh has produced the police

record of the FIR, whereas, DW3 Kunan Singh proved agreement to sell Ex.D1 and DW4 Gurbax Singh corroborated the same. DW5 Malook

Singh, Deed Writer, testified having scribed the sale deed Ex.D3 which is corroborated by DW6 Aror Singh, Lambardar, who has proved both

the sale deeds in favour of defendants, subsequent purchasers by way of Ex.D1 and Ex.D3. DW7 Darshan Singh, Deed Writer has sought to

corroborate two sale deeds Ex.D1 and Ex.D3. Defendant Partap Singh has testified as DW8 to reiterate the stand of the defendants. Consequent

upon hearing the arguments, impugned findings were recorded and that is how the parties are before this Court.

5. The following substantial question of law had arisen in this matter as per the concurrence shown by the two sides.

Whether the learned lower Appellate Court in reversing the exclusive findings of the trial Court has exceeded its jurisdiction, if so, to what effect?

Heard.

6. Mr. V.K. Sandhir, Advocate counsel for the appellant has laid much stress by citing three judgments in Guruswamy Nadar Vs. P. Lakshmi

Ammal (D) through LRs. and Others, ; Rattan Lal (since deceased) through His Legal Representatives Vs. S.N. Bhalla and Others, and Man Kaur

(dead) by LRS. Vs. Hartar Singh Sangha, arguing that since it is during the operation of the agreement to sell in favour of the plaintiff the sale deeds

have been executed and, thus, are clearly hit by the principle of Lis Pendens enshrined in Section 52 of the Transfer of Property Act and that the

subsequent sale cannot have the overriding effect on the earlier executed agreement to sell. However, Mr. B.R. Gupta, Advocate on behalf of the

respondents placing reliance on Abdul Haq Vs. Mohammad Yehia Khan and others--> and Harjinder Singh v. Kartar Singh and others 1975

RLR 377 has sought to project that on account of such a deceptive act of the owners the bonafide purchasers cannot be put to a disadvantageous

position and it is duly proved on the records that subsequent purchasers were neither in the knowledge nor were aware of the alleged previous

agreement to sell so entered between the plaintiff and the owners and, therefore, argument that the agreement to sell in the light of the subsequent

sale deeds has been rendered otiose and which have never been challenged by the plaintiff to be an outcome of fraud or their legal permissibility.

7. Going through the arguments and the records, the counsel for the respondents could not deter this Court to accept the findings returned by the

trial Court qua issues No. 1, 2 and 5 and which findings even have been rightly appreciated by the learned First Appellate Court. It is the findings

on issues No. 3 and 4 which have their impact on the final outcome of this adjudication. No doubt, as has been argued on behalf of the appellant

Section 20 of the Specific Relief Act, 1963 (For short, "the Act") vests wide discretion in the Court as to the decreeing the suit for specific

performance and, though, it is to be based on sound and reasonable judicial principles, however, there are certain eventualities which come as a

legal hindrance in decreeing such a relief, that too, after the land has been sold off to a 3rd party and more than 32 years having been elapsed and

provision by way of Sub-section 2 Clauses (b) and (c) enlist the eventualities where the performance of such a contract involves undue hardship or

makes it highly inequitable to enforce the specific performance and under the very garb of Section 21 of this Act, provision has been made that

where the Court decides that specific performance ought not to be granted it can compensate for that very breach. As has sought to be projected

on behalf of the respondents by their counsel admittedly the so called disputed agreement to sell Ex.P 1 by the owners in favour of the plaintiff

highlights firstly that the same has been signed by Varinder Singh defendant No. 5, Karamjit Singh defendant No. 6, Jagjit Kaur defendant No. 7

and has never been signed by one of the other owners Gajwinder Kaur @ Rajwinder Kaur and, thus, in terms of Section 17 of the Act such a

contract cannot be specifically enforced against a vendor or a lessor, who knowingly does not have any title of the property and has contracted to

sell and let the property nor can show his title by any length of time. The same is thus a void ab initio agreement qua that person's share. To the

very query of the Court, learned counsel for the appellant could not satisfactorily answer if such a contract can bind a person who is not a party to

it, thus, absolves this defendant of any such obligation to execute sale deed in favour of the plaintiff. The same is well elicited in the own affidavit of

the plaintiff and in his cross-examination as PW5 as well as of his witness PW2 Giani Uttam Singh, Scribe of this agreement to sell in favour of the

plaintiff. More so, the pleadings of the plaintiff by way of the suit simplicitor reveals that the plaintiff has neither sought to challenge the sale deeds

both dated 8.6.1982 Ex.D 1 and Ex.D3 in favour of defendants No. 1 to 4 nor has sought any such relief for possession or partition in terms of

Section 22 of the Act. Since admittedly after the demise of their predecessor-in-interest, Bharpur Singh, the widow and his children defendants

No. 5 to 8 have stepped into his shoes in equal shares and, therefore, being un-partitioned joint property it would be highly impossible in the

absence of any issue or relief being sought to grant of such a relief and the provisions of Section 22 by way of proviso to Sub-section 2 mandates

that no such relief for possession, partition etc. can be granted unless it has been specifically claimed further debars this Court from accepting this

vehement argument of the learned counsel for the appellant and there is no bar as has been laid down in P.C. Varghese Vs. Devaki Amma

Balambika Devi and Others, . Though, with much fanfare learned counsel for the appellant has sought to place reliance on Guruswamy Nadar Vs.

P. Lakshmi Ammal (D) through LRs. and Others, however, in view of the factual disparity as it is the admitted position in the cited ratio that the

sale was after the filing of the suit in question and which has led to the applicability of Section 52 of the Transfer of property Act. In the present

case, the suit has been filed admittedly on 12.10.1982 whereas, sale deed by the owners in favour of the subsequent purchasers has come about

on 8.6.1982, much prior thereto, and, therefore, this argument of the learned counsel for the appellant falls to the ground.

Though, the stand of the plaintiff as PW5 as to his readiness and willingness is not corroborated by any material evidence when he accepts that he

has never served any legal notice and is totally silent having ever approached the office of the Sub-Registrar or the defendants and the specific date

and time to prove the element of his readiness and willingness to perform his part of the contract are matters which have an adverse impact on the

case of the appellant and shows that neither mentally nor physically he was ready and willing to do so. Even if, the Court intends to order specific

performance of agreement to sell in favour of the plaintiff it would lead to more complications and rather would make any relief elusive to the

plaintiff.

Thus, in view of these discussions, the contract for agreement to sell in favour of the plaintiff cannot be performed and enforced in part in terms of

Section 12 of this Act and since the Court below in the impugned judgment have exercised their powers in terms of Section 21 of the Act by

awarding compensation is sufficient relief to the plaintiff for this unsavoury conduct of the owners. Thus, the appellant cannot derive any benefit by

this invocation and this Court in view of the foregoing discussions and reasons is bound to uphold the findings of the learned First Appellate Court,

whereby, the instant appeal stands dismissed.

No costs.