

Ramphal Vs Mukha Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 24, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 148

Constitution of India, 1950 â€” Article 227

Specific Relief Act, 1963 â€” Section 28

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Jainainder Saini, Advocate for the Appellant; Anil Rathee, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Narain Raina, J.

In matters of enforcement or disputes arising out of an agreement to sell immovable property and for consequential

possession, no periods are prescribed or allowed by the Code of Civil Procedure, 1908 to do acts and things in furtherance thereof since they fall

purely in the domain of private acts of parties determined by contract and consent. It is only when there is a prescription in the Code to do acts

and things within the prescribed, can the jurisdiction u/s 148 of the Code be invoked or exercised by the Court to enlarge time in its discretion from

time to time to such period as not to exceed 30 days in total even though the period originally fixed or granted may have expired.

2. In the suit for possession by way of specific performance of the agreement to sell brought by the plaintiff respondent, the vendor made a

statement in court that he is ready to execute the sale deed in favour of the plaintiff as per terms and conditions of the agreement to sell dated 9th

May, 2012. On the statement of the defendant in the pending suit the Court called upon the vendee to make payment of the balance sale

consideration till 24th April, 2014. The plaintiff failed to act within the time allowed and preferred an application seeking extension of time for

payment of balance sale consideration.

3. Earlier, the defendant on his part stuck to the terms of the agreement to sell by effecting partition of the suit property vide mutation No. 1885

which was sanctioned on 25th May, 2012. What is presently at issue in this case is with respect to the readiness and willingness of the plaintiff to

offer balance consideration for registration of the sale deed in his favour. Demarcation of the land was not a term agreed to in the agreement to sell

and thus cannot be read into the document. The vendor did what he could honestly do in the circumstances, that is, to serve a legal notice on the

plaintiff on 27th November, 2012 through counsel calling upon him to come forward and get the sale deed executed and registered within seven

days after making the payment of balance sale consideration. This opportunity was not availed nor any steps were taken to conclude the sale

transaction.

4. During the pendency of the proceedings and after making known their stand contesting the case, the aforesaid statement was made to the effect

that the vendors are still ready and willing to convey the property. It is, in these circumstances that the Court made the offer order and fixed a date

accordingly. Balwinder Singh co-sharer to the extent of 1/2 share in the land measuring 136K-8M produced an affidavit in the Court that in a

family partition, the respondent was put in possession of specific khasra numbers and he would have no objection in case the sale deed is executed

by his uncle Mukha @ Mukhtiar Singh in favour of the plaintiff. The learned trial Court has found that the suit land was to be demarcated at the

time of delivery of possession and not at the time of execution of sale deed. The learned trial Court has recorded in the order that even at the time

of hearing in Court, the plaintiff was not ready with the balance sale consideration. Despite everything weighted against the plaintiff, the Civil Judge

(Senior Division), Fatehabad vide order dated 30th April, 2014 invoked its power u/s 148 CPC, in the interest of justice, and granted an

indulgence of one month further time to facilitate execution of the sale deed, failing which, it will be presumed that the applicant is not ready and

willing to perform his part of the contract by paying the balance sale consideration. The time fixed for execution of the sale deed was till 24th May,

2014.

5. This is where the facts rest. In such circumstances, the petitioner cannot also avail the benefit of Section 28 of the Specific Relief Act, 1963

since the provision locks in only when a suit for specific performance is decreed. Then alone may the Court be justified in extending time for

performance. The power u/s 28 of the Act is one in the realm of discretionary relief. A decree has not come into existence as yet in the present

case. If the petitioner has failed to abide by the directions of the Court to which he was a party and does not assail it, then I find nothing perverse

nor any error committed apparent on the face of the impugned order. The indulgence shown by the Court in enlarging time by one month, though

of doubtful origin, when not availed is sufficient to non-suit the petitioner in a property matter where large sums of money were involved to be paid

and received. No further indulgence can be shown by this Court in its revisional jurisdiction under Article 227 of the Constitution of India which is

merely supervisory in nature to keep subordinate courts within the bounds of their jurisdiction. In property matters equitable jurisdiction can hardly

be exercised when fault is found with the conduct of the plaintiff-vendee in failing to abide by the contractual terms and conditions agreed to

between the parties each bound to the other.

6. For the foregoing reasons, no ground for interference is made out in this petition. The petition stands dismissed.