

Shagan Singh - Appellant @HASH Om Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 15, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Section 100
Specific Relief Act, 1963 - Section 20

Citation: (2017) 1 RCRCivil 123

Hon'ble Judges: Amit Rawal, J.

Bench: Single Bench

Advocate: Sandeep Jasuja, Advocate, for the Appellant; None, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Amit Rawal, J. (Oral)â€"CM No. 8441-C-2014

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

CM stands allowed.

CM-8440-C-2014

For the reasons mentioned in the application, which is duly supported by an affidavit, the delay of 56 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-3634-2014

2. The appellant-plaintiff is aggrieved of the dismissal of non-granting of the discretionary relief under Section 20 of the Specific Relief Act, 1963

and has been only held entitled to recovery of the suit amount i.e. Rs. 1,15,000/- along interest @ 12% per annum from 10.12.2004 till filing of the

suit and pendente lite and further interest @ 6% per annum till its realization.

3. Mr. Sandeep Jasuja, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit for specific of the agreement to sell dated

10.12.2004 in respect of land measuring 10 kanals 10 marlas detailed as (a) 8 kanals 12 marlas, i.e. â...™ share of 51 kanals 11 marlas comprised of

Rect. No.8 Killa No.11/1 (3-0), 21(8-0), 22 (7-8), 23 (8-0), 24/2 (2-0), 25(6-2), rect. No.9, Killa No.23/2/2 (4-8), 17/2 (0-4), 24 (8-0), 25/1

(4-0), Khewat No.452, Khatoni No.537, and (b) 01 kanal 18 marlas i.e. 38/587 shares of 29 kanals 8 marals comprised Rect. No.8, Killa

No.24/1 (6-0), Rect. No.9 Killa No.14 (7-7), 18 (8-0), Khewat No.453, Khatoni No.540 as per Jamabandi for the year 1999-2000 situated at

Village Ladhuka, Tehsil Fazilka, was filed against the payment of earnest money of Rs. 1,15,000/- which was agreed to be sold @ Rs. 90,000/-

per acre. The appellant-plaintiff had always been ready and willing to perform his part of the agreement to sell and appeared before the office of

Sub-Registrar Fazilka on 20.05.2005. Preceding to filing of the suit, a legal notice dated 30.05.2005 was sent and accordingly, the suit was filed

on 09.12.2005. The respondent-defendant was served and appeared through his counsel, but did not file written statement and his defence was

struck off. Thereafter, he did not appear and was proceeded ex parte. The agreement to sell had been proved through the testimony of attesting

witness i.e. PW-2 Kulwant Singh and the scribe, namely, Sucha Singh (PW-3). Both of them have deposed in terms of the averments in the suit,

much less, the payment of earnest money of Rs. 1,15,000/-. The service/legal notice has also been proved on record. The Courts below relied

upon the entry dated 07.08.2004 in the jamabandi for the year 1999- 2000 to show that the property was mortgaged with PADB Bank, Fazilka.

It is, in this background of the matter, the discretionary relief has been declined. In support of his contentions, he relies upon the judgment of this

Court rendered in ""Raj Singh v. Inder Jeet"", 2005 (2) RCR (Civil) 479, thus, urges this Court for formulation of the following substantial

questions of law:-

1. Whether the appellant-plaintiff had been always ready and willing to perform his part of the agreement to sell?.
2. Whether the discretionary relief under Section 20 of the 1963 Act can be denied, if the property is mortgaged and the amount of mortgaged is

less than total sale consideration?.

3. Whether the judgment and decree of both the Courts below suffers from illegality and perversity?.

4. In the present appeal, the notice of motion was issued on 30.09.2014. The respondent-defendant has not put in appearance despite service and

accordingly, the I proceed to decide the appeal on merits.

5. I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

6. Shorn of the facts as noticed above, the agreement to sell has been proved, much less, readiness and willingness. The suit has been filed with a

legal notice. No evidence, in this regard, has been brought on record by the respondent-defendant. The loan amount was Rs. 80,000/-. The

Courts below ought not to have declined the discretionary relief as the outstanding amount of the bank could have been paid off, in essence, the

liability of the borrower would have been discharged. This aspect is totally escaped the notice of both the Courts below. I am in agreement to the

ratio decidendi culled out by this Court in ""Raj Singh's case (supra). For the sake of brevity, the findings rendered in paragraph Nos.3 and 4 of the

judgment cited supra read thus:-

3. After hearing the learned counsel I am of the considered view that this appeal deserves to be dismissed as there are concurrent findings of facts

on the issue that an agreement to sell was validly executed on 7.6.1995 for valuable consideration. It has also been proved under Issue No.3 that

the plaintiff-respondent had been ready and willing to perform his part of the contract and there was failure on the part of the defendant-appellant

who did not appear before the Sub-Registrar where the sale deed was to be executed. The finding in this regard has been recorded under Issue

No.1 also. Whenever there is proof of execution of agreement to sell and readiness and willingness on the part of the plaintiff-respondent is proved

then unless the enforcement of specific performance result into unfairness the specific performance has to be ordered. In this regard, reliance may

be placed on a judgment of the Supreme Court in the case of Surya Narain Upadhaya v. Ram Roop Pandey, 1995 Supp. (4) SCC 542 and

also on the observations made in Her highness maharani Shantidevi P. Gaikwad v. Savjibhaai Haribhai Patel, 2001 (5) SCC 101. It is

further appropriate to mention that non-disclosure of the mortgage of land is a circumstance which would weigh against the defendant-appellant

rather than against the plaintiff-respondent. Therefore, exercise of discretion by the Id. Lower appellate Court deserves to be approved and

specific performance of the agreement has to be ordered. Therefore, I am of the view that no substantive question of law in fact arises for the

consideration of this Court because an omission to mention lien on the property would be an irrelevant consideration and inequitable benefit to the

defendant-appellant.

4. I am further of the view the reliance of the lower Appellate Court on a judgment of this Court in the case of ""Mohinder Singh and others v.

Guljit Singh"" 2002 (2) RCR (Civil) 403 (P&H) is also meritorious. Apart from the observation with regard to the requirement to enforce

specific performance of the agreement it has also been held by this Court in Mohinder Singh's case (supra) that merely because an alternative relief

for damages has been claimed it would not amount to waiver of the principal relief for enforcing specific performance of agreement. The

aforementioned view is fully supported by a judgment of the Supreme Court in the case of Moti Lal Jain v. Ramdasi Devi, 2000 (6) SCC 420

where their Lordships observed as under:-

Merely because the plaintiff claims damages in a suit for specific performance of contract as an alternative relief, it cannot be said that he is not

entitled to the main relief of specific performance of the contract itself.

For the foregoing reasons, the judgment and decree of both the Courts below are not sustainable and the same are set aside and the suit is decreed

in to. The discretionary relief is granted. The questions of law as noticed above are answered in favour of the appellant-plaintiff and against the

respondent-defendant.

7. Since the entire sale consideration has been paid, the appellant-plaintiff shall be entitled to seek the execution of the judgment and decree of this

Court in accordance with law. In case the discharge of the liability of the bank, the appellant-plaintiff cannot be prevented from taking the leave of

Court in accordance with law.

With the aforesaid observations, the appeal stands allowed.

Decree sheet be prepared.