

**SUPREME COURT OF INDIA**

Ramesh Chand

Vs.

Asruddin

C.A.No.8427 of 2014

(Dipak Misra and Prafulla C.Pant,JJ.,)

06.10.2015

**JUDGMENT**

**Prafulla C.Pant,J.,**

1. This appeal is directed against judgment and order dated 22.01.2014, passed by the High Court of Punjab and Haryana in Regular Second Appeal No. 1344 of 2011 (O&M) whereby said court has dismissed the appeal, and affirmed the decree passed by the first appellate court regarding specific performance of contract, in a suit filed by the plaintiff/respondent No.1.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Brief facts of the case are that plaintiff/respondent No.1 Asaruddin entered into an agreement with defendant No. 1/ appellant Ramesh Chand on 21.06.2004, whereby the appellant agreed to sell his land measuring 12 kanals, 16 marlas, situated in Village Mohammed Nagar, Tehsil Ferozpur Jhirka, District Gurgaon, to the respondent No. 1 for an amount of rupees six lacs. An agreement for sale was executed between the parties after the appellant accepted rupees four lacs as a part of consideration. It was further agreed between the parties that the land in suit, mortgaged with defendant No. 2/respondent No. 2 Gurgaon Gramin Bank, Nagina, would be redeemed by the appellant before execution of the sale deed. It is pleaded by the plaintiff/respondent No. 1 that he was and is always ready and willing to perform his part of contract. The plaintiff/respondent No. 1 gave notice to the appellant to execute the sale deed on 30.11.2004, and remained present with the balance amount of consideration in the Office of Sub Registrar, Nagina, and got his presence marked. But the appellant failed to turn up to execute the sale deed, as agreed between him and the respondent No. 1. Hence the suit for specific performance of contract.

4. The appellant-defendant No.1 contested the suit and filed the written statement before the trial court. He denied the execution of the agreement dated 21.06.2004 to sell his land. It is pleaded by the appellant before the trial court that he had already executed agreement dated 07.05.2004 to sell the land in favour of one Pravin Kumar, resident of Tauru for an amount

of Rs.7,62,200/- after receiving Rs.1,20,000/- as earnest money. In the circumstances, there was no occasion to enter into agreement with the respondent No.1 to sell the same land. It is further pleaded that since the answering defendant was in the need of money, he had taken loan of Rs. 1,50,000/- from the plaintiff on 21.06.2004, on interest at the rate of 1.5% per month. The appellant specifically denied having received rupees four lacs, as alleged by the plaintiff. It is further pleaded that when respondent No. 1 made demand for repayment of Rs.1,50,000/- with interest, and created pressure, the answering defendant asked Pravin Kumar to make payment of Rs.1,80,000/- to the plaintiff. It is further alleged that after said payment was made to the plaintiff on 10.11.2005 by Pravin Kumar, the alleged agreement dated 21.06.2004, which was a kind of security, stood cancelled. And respondent No. 1 should have returned the document to the plaintiff.

5. On the basis of the pleadings of the parties, the Civil Judge (Jr. Division), Ferozpur Jhirka, framed as many as ten issues on 06.09.2005. After recording oral testimony of witnesses of the parties, and considering the documentary evidence on record, the trial court came to the conclusion that it is not a fit case for specific performance of contract, and disposed of the suit with a finding that the agreement executed between the plaintiff and defendant No. 1 was in substance an agreement of security for repayment of loan and directed the defendant No. 1 to pay back earnest money of rupees four lacs with 8% interest per annum from 21.06.2004 till payment is made to the plaintiff.

6. Aggrieved by the decree passed by the trial court, plaintiff filed Civil Appeal No. 51 of 2010 before the first appellate court. After hearing the parties, the appellate court (Additional District Judge, Nuh) vide judgment and order dated 14.02.2011, allowed the appeal, and decreed the suit for specific performance of contract, directing the defendant No. 1 to execute the sale deed in terms of the agreement dated 21.06.2004, after accepting balance rupees two lacs from the plaintiff. This made defendant No. 1 Ramesh Chand to file Regular Second Appeal No. 1344 of 2011 before the High Court. During the Second Appeal, defendant No. 1 appears to have died, and his legal heirs prosecuted the appeal. After hearing the parties, the High Court dismissed the appeal upholding the order passed by the first appellate court. Hence this appeal before us through special leave. During this appeal the plaintiff/respondent No.1 also expired, and his legal heirs got substituted.

7. Learned counsel for the appellant argued before us that the first appellate court and the High Court have erred in law in not considering the fact that the appellant had already executed an agreement of sale on 07.05.2004 in favour of one Pravin Kumar, and the decree of specific performance of contract in the subsequent agreement, if any, in favour of respondent No.1 was not at all desirable. On the other hand, on behalf of respondent No.1 it is contended that he cannot be denied the fruits of decree of specific performance after the findings recorded by the first appellate court which stood affirmed by the High Court.

8. Section 20 of Specific Relief Act, 1963, provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so. However, the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles. Sub-section (2) of Section 20 of the Act provides

the three situations in which the court may exercise discretion not to decree specific performance. One of such situation is contained in clause (a) of sub-section (2) of the Section which provides that where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into or such that the contract though not voidable, gives the plaintiff an unfair advantage over the defendant, the decree of specific performance need not be passed. It is pertinent to mention here that in the present case, though execution of agreement dated 21.06.2004 between the parties is proved, but it is nowhere pleaded or proved by the plaintiff that he got redeemed the mortgaged land in favour of defendant No. 2 in terms of the agreement, nor is it specifically pleaded that he was ready and willing to get the property redeemed from the mortgage.

9. In the above facts and circumstances of the case and the judicial principle discussed above, we are of the opinion that it is a fit case where instead of granting decree of specific performance, the plaintiff can be compensated by directing the appellant to pay a reasonable and sufficient amount to him. We are of the view that mere refund of rupees four lacs with interest at the rate of 8% per annum, as directed by the trial court, would be highly insufficient. In our considered opinion, it would be just and appropriate to direct the appellants (Legal Representatives of original defendant No.1, since died) to repay rupees four lacs along with interest at the rate of 18% per annum from 21.06.2004 till date within a period of three months from today to the L.Rs. of respondent No. 1 (mentioned in I.A. No. of 2015 dated 07.09.2015). If they do so, the decree of specific performance shall stand set aside. We clarify that if the amount is not paid or deposited before the trial court in favour of the L.Rs. of respondent No.1 within a period of three months, as directed above, the decree of specific performance shall stand affirmed. We order accordingly.

10. The appeal stands disposed of. Pending I.A(s) also stand disposed of. No order as to costs.