

SUPREME COURT OF INDIA

Surinder Kaur

Vs.

Bahadur Singh

C.A.No.7424-7425 of 2011

(Deepak Gupta and Aniruddha Bose, JJ.,)

11.09.2019

JUDGMENT

Deepak Gupta, J.,

1. The question of law arising in these appeals is whether a vendee who does not perform one of his promises in a contract can obtain the discretionary relief of specific performance of that very contract.

2. Briefly stated the facts are that Mohinder Kaur, predecessor in interest of the appellants entered into an agreement with Bahadur Singh, predecessor in interest of the respondents on 13.05.1964 whereby she agreed to sell the suit land to Bahadur Singh for a total sale consideration of Rs.5605/-. Out of this, Rs.1000/- was paid as earnest money at the time of execution of agreement to sell, and it was agreed that the balance amount would be paid at the time of registration of the sale deed. The possession of the land was handed over to the vendee on the date of agreement to sell itself. Since there was some litigation with regard to the property it was agreed between the parties that the sale deed would be executed within one month from the date of decision of civil appeal pending before the Punjab and Haryana High Court.

3. To decide the appeals, it would be necessary to refer to Clauses 2 and 3 of the agreement to sell which read as under:-

“

xxx xxx xxx

2) That an appeal in respect of the above-mentioned land is pending in the High Court and after decision in the said appeal, the First Party shall execute and register Sale Deed in favour of the Second Party in the month of July, 1965.

3) That the possession of the land has been handed today and in case the decision by the High Court in the appeal is after one year, then the sale deed shall be executed and registered after one month from the date of decision and in the circumstance, the Second Party shall pay to the First party the customary rent for

the said land.
xxx xxx xxx ”

4. It is not disputed that the litigation referred to in the agreement was decided on 17.01.1977, i.e., about 13 years after the agreement to sell was entered into. Bahadur Singh requested Mohinder Kaur to execute the sale deed but since she failed to do so, a suit for specific performance of the agreement was filed by Bahadur Singh. In the alternative, it was prayed that a decree be passed for a sum of Rs.5605/-, i.e. Rs.1000/- paid as earnest money and Rs.4605/- as damages. This suit was contested on various grounds but we are concerned with only one wherein the defendant raised the plea that since Bahadur Singh had admittedly failed to pay the rent of the land in terms of Clause 3 of the agreement, he was not entitled to a decree for specific performance.

5. The suit has been decreed by all the courts below. There is no dispute with regard to the factual aspects. The only issue is whether the vendee Bahadur Singh who admittedly did not pay the rent is entitled to a decree of specific performance of the agreement dated 13.05.1964. The courts below have held that the agreement contained several promises which may be reciprocal, contingent or separate. Section 51 of the Contract Act, 1872 provides that when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

6. The aforesaid provisions have to be read along with Section 16(c) of The Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.

7. We shall also have to take into consideration that the specific performance of contract of an immovable property is a discretionary relief in terms of Section 203 of The Specific Relief Act as it stood at the time of filing of the suit.

8. Section 20 of The Specific Relief Act lays down that the jurisdiction to decree a suit for specific performance is a discretionary jurisdiction and the court is not bound to grant such relief merely because it is lawful.

9. The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard and fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case. As far as the present case is concerned, the vendor, who was a lady received less than 20% of the sale consideration but handed over the possession to the defendant, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with

the sale of the land. One cannot lose sight of the fact that the land had been handed over to Bahadur Singh and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell.

10. Admittedly, Bahadur Singh did not even pay a penny as rent till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if we were to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that Bahadur Singh had failed to perform his part of the contract. There can be no manner of doubt that the payment of rent was an essential term of the contract. Explanation (ii) to Section 16(c) clearly lays down that the plaintiff must prove performance or readiness or willingness to perform the contract according to its true construction. The only construction which can be given to the contract in hand is that Bahadur Singh was required to pay customary rent.

11. It has been urged that no date was fixed for payment of rent. Tenancy can be monthly or yearly. At least after expiry of one year, Bahadur Singh should have offered to pay the customary rent to the vendor which could have been monthly or yearly. But he could definitely not claim that he is not liable to pay rent for 13 long years.

12. Learned counsel for the respondents urged that in case of non-payment of rent the plaintiff was at liberty to file suit for recovery of rent. We are not impressed with this argument. A party cannot claim that though he may not perform his part of the contract he is entitled to specific performance of the same.

13. Explanation (ii) to Section 16(c) of The Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do in so far as payment of rent is concerned.

14. A perusal of Section 20 of The Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub clause(c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the Court can refuse to grant such discretionary relief. Explanation (2) to the Section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff.

15. In this case, Bahadur Singh having got possession of the land in the year 1964 did not pay the rent for 13 long years and even when he filed the replication in the year 1978, he

denied any liability to pay the customary rent. Therefore, in our opinion, he did not act in a proper manner. Equity is totally against him. In our considered view, he was not entitled to claim the discretionary relief of specific performance of the agreement having not performed his part of the contract even if that part is held to be a distinct part of the agreement to sell. The vendee Bahadur Singh by not paying the rent for 13 long years to the vendor Mohinder Kaur, even when he had been put in possession of the land on payment of less than 18% of the market value, caused undue hardship to her. The land was agricultural land. Bahadur Singh was cultivating the same. He must have been earning a fairly large amount from this land which measured about 9² acres. He by not paying the rent did not act fairly and, in our opinion, forfeited his right to get the discretionary relief of specific performance.

16. In view of the above, we allow the appeals, set aside the judgment and decree of all the courts below and dismiss the suit for specific performance. As far as the alternative plea of refund is concerned, we are clearly of the view that since the respondents enjoyed the land for 55 long years without payment of any rent they are not entitled to any relief. No order as to costs.