

**SUPREME COURT OF INDIA**

Sukhwinder Singh

Vs.

Jagroop Singh

C.A.No.760 of 2020

(R.Banumathi and A.S.Bopanna,JJ.,)

28.01.2020

**JUDGMENT**

**A.S.Bopanna,J.,**

SLP(Civil)No.10949 of 2019

1. Leave granted.

2. The appellant herein was the defendant No.2 in Case No.915 of 16.11.2004/17.04.2015. The respondent No.1 herein was the plaintiff in the suit. The respondent No.2 herein was the defendant No.1 therein. The parties will be referred to in the rank assigned to them in the suit for the purpose of convenience and clarity. The plaintiff instituted the suit seeking for decree of possession by way of specific performance of the Agreement of Sale dated 03.01.2004 executed by defendant No.1 in favour of the plaintiff agreeing to sell the land measuring 3 Kanals 4 Marlas comprised of Khewat No.36/35 Khatauni No.91, Rect. No.63 Killa No.2/2 (3-4), situated in village Dulla Singh Wala, Tehsil and District Ferozpur.

3. The case of the plaintiff was that the property was agreed to be sold for the total consideration of Rs.1,40,000/-. Towards the said amount the plaintiff had paid the sum of Rs.69,500/- as earnest money. The plaintiff had further prayed in the suit to set aside the Sale Deed dated 11.06.2004 executed by the defendant No.1 in favour of the defendant No.2 since according to the plaintiff the same was null and void and did not bind the plaintiff. In the alternative, the plaintiff had sought for a decree to recover a sum of Rs.1,40,000/- of which Rs.69,500/- had been paid as earnest money while the remaining sum of Rs.70,500/- was sought as damages. The defendants at the first instance had failed to appear and contest the suit. Accordingly, the Trial Court by its judgment dated 14.06.2007 had decreed the suit.

4. Though the defendant No.1 did not make out any grievance thereafter, the defendant No.2 who was the purchaser of the property filed a petition under Order 9 Rule 13 of the Civil Procedure Code in Misc. Application No.46 of 23.02.2011 seeking that the ex parte

decree be set aside and the suit be restored for consideration. Since the said petition was filed with delay, an application under Section 5 of the Limitation Act was filed seeking condonation of delay. The Trial Court having considered the same through its decision dated 07.08.2012 dismissed the application seeking condonation of delay, consequently the petition under Order 9 Rule 13 of Civil Procedure Code was also dismissed as barred by Limitation. The defendant No.2 claiming to be aggrieved preferred Civil Revision No.5332/2012 (O&M) before the High Court of Punjab and Haryana at Chandigarh. In the said Revision Petition filed under Section 115 of Civil Procedure Code read with Article 227 of the Constitution of India, the High Court had concurred with the decision of the Trial Court and dismissed the Revision Petition through its decision dated 12.09.2012. The defendant No.2 had carried the same before this Court in Civil Appeal No.1406/2015. This Court on taking into consideration that the defendant No.2 who was the appellant in the said Civil Appeal is to be provided an opportunity to contest the suit, had allowed the appeal by order dated 02.02.2015 subject to payment of Rs.1,50,000/- as cost. Leave to file the written statement in the suit was also granted. Pursuant thereto the defendant No.2 having paid the cost, filed the written statement and the suit was proceeded in accordance with law. Pursuant thereto the impugned judgments are passed which are assailed herein.

5. Mr. Rahul Gupta, the learned counsel for the appellant contends that the defendant No.2 is the bonafide purchaser without notice of the alleged agreement between the plaintiff and defendant No.1. He contends that the entire transaction was entered into in a bonafide manner and the Sale Deed having been registered, the defendant No.2 was put in possession of the suit schedule property as far back as on 11.06.2004. Nearly 16 years have passed by and the defendant No.2 has carried out considerable improvement to the property and is residing in the house constructed therein. In that view, at this juncture if the specific performance as sought by the plaintiff is ordered, greater hardship will be caused to the defendant No.2. It is pointed out that the plaintiff had made the alternate prayer for refund of the earnest money and damages which if considered would serve the ends of justice. The learned counsel contends that even to secure leave to file the written statement and defend the suit the defendant No.2 has already parted with the sum of Rs.1,50,000/- in addition to the sale consideration that was paid to defendant No.1. In that circumstance, the compensation if any, is a matter to be considered by this Court as the grant of specific performance is not a rule and this Court has the discretion to decline specific performance in view of the provisions contained under Section 20 of the Specific Relief Act. It is also his contention that though the defendant No.1 has not contested the suit, there was an obligation on the plaintiff to establish his case which has not been effectively done by proving the readiness and willingness. The learned counsel would contend that though all the three Courts have held against the defendants, the non-consideration of the relevant facts would amount to a concurrent error committed by the Courts. It is, therefore, contended that the judgment and decree be set aside and the right accrued to the defendant No.2 under the Sale Deed dated 11.06.2004 be protected.

6. Shri Mahendra Kumar, learned counsel for the plaintiff/respondent No.1 would seek to sustain the judgment passed by the Courts below. It is contended that all the three Courts have concurrently held against the defendants and the reversal of the same is not

warranted. It is his case that the plaintiff had entered into an agreement of sale and had also paid the part sale consideration of Rs.69,500/-. The suit at the first instance was decreed on 14.06.2007 and the plaintiff had pursuant to the decree deposited the balance sale consideration of Rs.70,500/- on 03.08.2007. The learned counsel contends that though the date for execution of the Sale Deed was stipulated as 15.06.2004, the Sale Deed was executed by the defendant No.1 in favour of defendant No.2 on 11.06.2004 so as to defeat the right of the plaintiff. It is contended that the defendant had connived with each other in that regard and, therefore, the same cannot be considered as a bonafide transaction. The learned counsel further contends that though an alternate prayer was made in the suit for the payment of damages as indicated therein, the property in question is highly valuable and as such the plaintiff should have the benefit of the appreciation as well. It is, therefore, contended that the appeal is liable to be dismissed.

7. In the above background, it is seen that the contention of the plaintiff in the suit was that the defendant No.1 had agreed to sell the suit schedule property through the Agreement dated 03.01.2004 and the plaintiff had paid a sum of Rs.50,000/- on the said date and a further sum of Rs.19,500/- on 29.02.2004. Thus, in all a sum of Rs.69,500/- was paid as earnest money. The date for execution of the Sale Deed was stipulated as 15.06.2004 on which date the balance sale consideration of Rs.70,500/- was to be paid. The plaintiff contended that he was ready and willing to complete the transaction and as such on 15.06.2004 i.e. the stipulated date, the plaintiff appeared in the office of Sub-Registrar with the balance sale consideration and other expenses. According to the plaintiff the defendant did not turn up but the plaintiff got his presence marked by moving an application. It is only subsequently the plaintiff came to know that the defendant No.1 had executed a Sale Deed dated 11.06.2004 in favour of the defendant No.2 in respect of the very suit property. It is in that light the plaintiff had sought further relief as noted above.

8. The defendant No.2 who had availed the opportunity granted by this Court and filed written statement on payment of cost had denied the execution of the agreement to sell and the receipt of earnest money. The defendant No.2 relying on the Sale Deed dated 11.06.2004 contended that having purchased the property he is in possession and enjoyment of the same. The defendant No.2, therefore, sought for dismissal of the suit. The Trial Court framed as many as seven issues for its consideration based on the pleadings. The plaintiff examined himself as PW1 and also examined the witnesses as PW2 to PW4. The documents at Exhibits P1 to P9 were marked. The defendant No.2 examined himself as DW1 and examined two witnesses as DW2 and DW3. The Trial Court with reference to the said evidence has decreed the suit. The Lower Appellate Court has re-appreciated the material on record and concurred with the Trial Court. The High Court though was examining the Second Appeal where limited scope for reappreciation of the evidence is available, it is noticed that the High Court has not even adverted to the basic requirements to arrive at its conclusion. Be that as it may, considering that the suit in question was filed seeking for specific performance, the consideration to that effect as made by the Trial Court and endorsed by the Lower Appellate Court as also the High Court will have to be noticed cumulatively.

9. The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted. In the instant case though the defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the plaintiff is with the defendant No.1 and the contention of the defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defence put forth, the plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the defendant No.1, even if the payment of Rs.69,500/- and the claim by the plaintiff of having gone to the office of Sub-Registrar on 15.06.2004 is accepted, the fact as to whether the plaintiff had notified the defendant No.1 about he being ready with the balance sale consideration and calling upon the plaintiff to appear before the Sub-Registrar and execute the Sale Deed was required to be proved. From among the documents produced and marked as Exhibit P1 to P9 there is no document to that effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit. Despite the same, merely based on the oral testimony of PW1, the Courts below have accepted the case put forth by the plaintiff to be ready and willing to complete the transaction.

10. Instead of arriving at an appropriate conclusion on that aspect, the Trial Court while answering the issues No.1 and 2 has concluded that the amount of sale consideration has already been paid and the fact that the Civil Suit has been filed by the plaintiff are sufficient to establish that the plaintiff remained ready and willing to perform his part of the contract. On the other hand, it is noticed that what had been paid as on the date of filing the suit was only the earnest money and the balance amount was deposited only on 03.08.2007 after the suit was decreed at the first instance on 14.06.2007 and not as on the date of filing the suit. Hence the concurrent conclusion reached by all the three Courts is an apparent error, the correction of which is necessary. It is no doubt true that as on the date of decision for the second time after restoration, the amount had been deposited which is not the same as having deposited or paid prior to or at the time of filing the suit. Even if the amount had been deposited as on the date of filing the suit, the readiness and willingness with possession of the sale consideration as on 15.06.2004 was necessary to be proved, which has not been done. Hence, in our opinion the Courts below have not appropriately considered this aspect of the matter.

11. Further, in a circumstance where the defendant No.2 had contested the suit and had put forth the contention that he was a bonafide purchaser without notice and through his evidence had deposed that he had no knowledge of agreement entered into between the defendant No.1 and defendant No.2, that aspect required appropriate consideration. However, the Courts below have on the contrary concluded that the defendants No.1 and 2

being of the same village, the defendant No.2 would have knowledge of the agreement entered into by the defendant No.1 in favour of the plaintiff. Such conclusion is only an assumption and there is no evidence with regard to the knowledge of defendant No.2 even if he was from the same village. In addition, the Lower Appellate Court has concluded that since the defendant No.1 has not caused appearance in spite of notice having been issued and he not being examined as a witness it could be gathered that there is connivance amongst the defendants to defeat the rights of the plaintiff. Such assumption is also not justified since the defendant No.2 had purchased the property for a consideration under a registered document and the defendant No.2 was also put in possession of the property. In that circumstance the defendant No.1 who had lost interest in the property, if had not chosen to appear and defend the suit the same cannot be a presumption of connivance in the absence of evidence to that effect.

12. In the background of the above consideration, the plaintiff in any event was not entitled to a decree for specific performance and possession of the property against the defendant No.1. In the circumstance the declaration of the Sale Deed dated 11.06.2004 executed by the defendant No.1 in favour of the defendant No.2 to term the same as null and void as claimed by the plaintiff also did not arise. Despite the said position what is necessary to be taken note is that the sale in favour of the defendant No.2 was on 11.06.2004 i.e. subsequent to the date of the suit agreement dated 03.01.2004. Despite holding that the defendant No.2 is a bonafide purchaser, what cannot be lost sight is that the defendant No.1 had received a sum of Rs.69,500/- from the plaintiff as far back as on 03.01.2004. That apart if the transaction was concluded at that stage the plaintiff would have been entitled to the benefit of the land. Even as per the ground at (Para x) raised by the defendant No.2 in this appeal, it would indicate that there has been considerable appreciation in the market price. Though in the normal circumstance the return of the advance received and the compensation for denial of the property was to be paid by the defendant No.1, as noted, the defendant No.1 having lost interest in the property has not appeared in the instant proceedings nor is there any material to indicate that he has benefited from the appreciation since even as per the contention of the plaintiff he has sold the property for a lesser price. In that situation the plaintiff cannot be left 'high and dry'. If that be the position the defendant No.2 who has benefited from the property will have to repay the advance and compensate the plaintiff in the peculiar facts of the instant case. In that circumstance the defendant No.2 (the appellant herein) is required to be directed to pay a sum of Rs.3,50,000/- only which is inclusive of the advance amount of Rs.69,500/- to the plaintiff (the respondent No.1 herein) in full quit of all claims. The said amount is also to be directed to be paid by the defendant No.2 to the plaintiff within a period of three months failing which the same should carry interest at 12% per annum till payment. The plaintiff should also be entitled to withdraw the amount of Rs.70,500/- stated to have been deposited by him before the Trial Court.

13. In view of the above, the following order:

- i) The appeal is allowed in part. The judgment and decree dated 24.07.2015 passed in Case No. 915 of 16.11.2004/17.04.2015 and affirmed by the Lower Appellate

Court as also the High Court to the extent of granting the relief of specific performance is set aside.

ii) The judgment and decree dated 17.04.2015 in Case No. 915 shall stand modified, and the appellant - defendant No. 2 is directed to pay a sum of Rs.3,50,000/- only to the plaintiff within three months.

iii) If the amount is not paid within the time stipulated the same shall carry interest at 12% per annum thereafter.

iv) The plaintiff shall be entitled to withdraw the amount of Rs.70,500/- lying in deposit before the Trial Court with the interest accrued, if any.

v) In the facts and circumstances, the parties to bear their own costs. Pending application, if any, shall stand disposed of.