

RAJASTHAN HIGH COURT

Dhara Singh

Vs.

Fateh Singh

Civil First Appeal No. 252 of 2000

(Vineet Kothari, J.)

06.04.2009

JUDGMENT

Vineet Kothari, J.

1. This first appeal has been filed by the plaintiff Dhara Singh against the judgment and decree of the learned trial Court dismissing his suit for specific performance on 16.12.2000.
2. The plaintiff had filed a civil suit No.30/1991 against the three defendants-brothers Fateh Singh, Chhabek Singh and Hardeep Singh in respect of agreement to sell 9 bighas of land agreements being dated 09.02.1985 and 15.12.1985 for sale of total 9 bighas of land situated at 16 GB Tehsil Sri *Vijaynagar, Dist. Sri Ganganagar* for consideration of Rs. 74,250/- mentioned in the agreement dated 09.02.1985 against which the plaintiff paid a sum of Rs. 25,000/- at the time of agreement and some amount later and a total sum of Rs. 66,450/- was paid to the defendants.
3. The suit was contested by the defendants except one of the brothers Chhabek Singh who filed written statement in favor of the plaintiff.
4. That the trial Court has framed as many as 12 issues and while deciding all other issues in favor of the plaintiff including the fact that the plaintiff was put in physical possession at the time of said agreement dated 09.02.1985 in respect of said 9 bighas of land and issues relating to readiness and willingness of the plaintiff, existence of agreement etc. issues No.7 and 8 were however decided against the plaintiff and therefore, the suit was ultimately dismissed by the learned trial Court and the specific performance was refused, however the plaintiff was awarded double the sum paid as compensation.

5. The issues No.7 and 8 are as follows :

"7. Whether the plaintiff is entitled to specific performance under the agreement to sell dated 09.02.1985 in his favor and to get the registered sale-deed executed in his favor or his nominee and got the same registered?

8. Whether the land in question is in joint tenancy rights of the defendants and therefore, cannot be sold in pursuance of the said agreement and whether the suit is maintainable or not?"

6. The learned trial Court while deciding issue No.8 found that the said land situated at Chak 16 GB was recorded in the Revenue record in the joint name in Jamabandi Ex.A/1 and 3/4th share belonged to defendants Hardeep Singh, Fateh Singh and Chhabek Singh, sons of Amar Singh, whereas 1/4th share belongs to Paramjeet Singh and Ranjeet Singh sons of Karam Singh and since there was no partition between these persons in respect of said land, 3 defendants in the present suit could not sell their 3/4th share to the extent of 9 bighas of land and therefore, the specific performance of the agreement could not be decreed in favor of the plaintiff. Issue for about giving double of the amount as compensation to the plaintiff was decided in favor of the plaintiff. Therefore, while dismissing the suit for specific performance, the learned trial Court awarded compensation in favor of the plaintiff to the extent of Rs. 1,32,900/- with 12% interest at double amount of Rs. 66,450/- paid by the plaintiff to the defendants under the said agreement to sell.

7. Being aggrieved by the said decree, the plaintiff has approached this Court by way of present second appeal under Section 96 of Civil Procedure Code. No cross-objections have been filed on behalf of the defendants.

8. Mr. H.S. Sandhu, learned counsel appearing for the plaintiff-appellant submitted that though partition had taken place in respect of said land and Paramjeet Singh and Ranjeet Singh sons of Karam Singh had also sold their 1/4th share with specific killa No. in favour of third party and therefore the present 3 defendants sons of Amar Singh could also sell their share of 9 bighas and as agreement in question was entered into with the plaintiff specific killa number wise and there was no impediment in awarding specific performance under the said agreement dated 09.02.1985 in favors of the plaintiff. The learned trial Court has grossly erred in not giving the said specific performance though the fact is that the appellant-plaintiff was put in physical possession of said 9 bighas of land at the time of agreement itself i.e. 09.02.1985 and he had paid almost entire consideration under the said agreement amounting to Rs. 66,450/- and only a sum of Rs. 7800/- was remaining to be paid upon execution of the

registered sale-deed in favor of the plaintiff and though the learned trial Court had decided all the issues relating to existence of agreement, time being not essence of the contract in question and readiness and willingness of the plaintiff to perform his part of the contract, and limitation in favor of the plaintiff, yet the learned trial Court refused to grant specific performance of the agreement and chose to award compensation at double of the amount already paid by the plaintiff to the defendants under the said agreement. The learned counsel for the appellant relied upon the following judgments :

1. *P.C. Vargheese v. Devaki Amma Balambika Devi*, ¹
2. *Mrs. Chandnee Widya Vati Madden v. Dr. C.L. Katial*, ²
3. *Balwant Singh v. Raja Ram*, ³

9. The learned counsel for the appellant further submitted that the condition of the plaintiff being *bona fide* resident of Rajasthan in order to purchase the agricultural land in Rajasthan also could not stand in the way of the plaintiff in view of circular No.i-(27)/Raj/up 84 dated 22.04.1991 published in Rajasthan Gazette Extra-ordinary dated 23.02.2004 page 509: 2004 RSCS/11/P.110/H.154. He, therefore, submitted that the plaintiff could not refuse specific performance on account of his alleged non-compliance with the, condition of producing evidence of his being *bona fide* resident of Rajasthan as he was earlier residing in Punjab.

10. On the side opposite, Mr. R.K. Singhal, learned counsel appearing for the defendants-respondents urged on all the issues including the issue of readiness and willingness of the plaintiff to perform his part of the contract, limitation for filing suit in question, though the defendants have not filed any cross-objections about the findings given against the defendants by the learned trial Court. He, however, relied upon the decision of the Hon'ble Supreme Court in the case of *K. Narendra v. Riviera Apartments (P) Ltd.*, reported in ⁴ *Apex Court Journal* ⁵ and *Ravinder Kumar Sharma v. State of Assam*, reported in in support of his submission that even without filing cross-objections, the respondents were entitled to make submission in support of the decree assailing the findings of the trial Court in favor of the plaintiff since appeal in question was against the decree and not against the findings of the learned trial Court. Mr. R.K. Singhal further submitted that relief of specific performance under the provisions of Special Relief Act, 1963 is a discretionary relief and cannot be claimed as a matter of right and even in the circumstances, the learned trial Court found that since the land in question was not partitioned, the decree was rightly rejected by the learned trial Court and the trial Court has awarded sufficient compensation for non-

performance of the agreement by the defendants and has awarded double the amount already paid by the plaintiff and that should satisfy the plaintiff and he submitted that with long lapse of time now almost 25 years, if the decree of specific performance is now granted, it will cause serious prejudice to the defendants and with the price of land having escalated very high, the defendants cannot be asked to part with their title over the land in question at such a low price as was determined at the time of agreement dated 09.02.1985 and if this Court comes to the conclusion that the decree of specific performance has to be granted, equity has to be balanced by awarding more compensation in the form of consideration in favor of defendants. In the alternative he also submitted that if this Court agrees with the submission of the respondents and affirms the decree of the learned trial Court, some more compensation than the one awarded by the learned trial Court can be awarded in favor of plaintiff-appellant instead of asking the defendants to execute the registered sale-deed in favor of the plaintiff-appellant. He also urged that the suit was filed after as much as 6 years of the agreement dated 09.02.1982 and therefore the same was also barred by limitation of 3 years as per Section 54 of the Limitation Act and for this reason also, the suit deserves to be dismissed and has rightly been dismissed. He relied upon the following judgments in support of his contentions.

1. *K.S. Vidyanandam v. Vairavan*, ⁷
2. *K. Narendra v. Riviera Apartments (P) Ltd.*, ⁸
3. *V. Pechimuthu v. Gowrammal*, ⁹
4. *Manjunath Anandappa Urf. Shivappa Hansi v. Tummanasa* ¹⁰
5. *Banarsi v. Ramphal*, ¹¹
6. *Ravinder Kumar Sharma v. State of Assam*, ¹²
7. *A.C. Arulappan v. Smt. Ahalya Naik*, ¹³
8. *Pratap Lakshman Muchandi v. Shamlal Uddavadas Wadhwa*, ¹⁴
9. *Bal Krishna v. Bhagwan Das*, ¹⁵

11. I have heard the learned counsels at length and perused the judgment of the learned trial Court, and the judgments cited at the Bar. In the opinion of this Court, the present appeal of the plaintiff deserves to be allowed and the reasons are as follows:

12. While relevant issues for giving specific performance of sale agreement were decided in favor of the plaintiff and only reason for denying him the specific performance of the agreement was that no partition had taken place in respect of land in question, the learned trial Court ought to have found the answer in Section 12 of the Specific Relief Act, 1963, which reads as under :

"12. Specific performance of part of contract.- (1) Except as otherwise hereinafter provided in this section the Court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either.

(a) Forms a considerable part of the whole, though admitting of compensation in money; or

(b) Does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform if the other party.

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Explanation.- For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance."

13. The said section has been discussed by the Hon'ble Supreme Court in the case of P.C. Varghese (supra) in para 22 as under :

"Sub-section (3) of Section 12 of the Specific Relief Act, 1963 (for short "the Act") was enacted with a view to meet such eventualities when the whole of the contract cannot be performed by the vendor.

Section 12(3) already reproduced above. The said provision has been enacted for the benefit of the purchaser and, thus, cannot operate to his detriment. We may notice that under the old Specific Relief Act, the plaintiff was not only required to relinquish his claim of specific contract as regards that part of the contract which cannot be performed but also was required to pay the entire amount of consideration, whereas in terms of Section 12(3) of the new Specific Relief Act, 1963, he is now required to pay the amount of consideration proportion:-

14. While decreeing the suit for specific performance, Apex Court in the said judgment in para 32 held as under:

"The submission of Mr. Reddy to the effect that the learned trial Judge committed a serious error in granting a decree for partition along with a decree for specific performance of contract need not detain us long as in view of Section 22(1)(a) of the Act a decree for partition and separate possession of the property can be granted in addition to a decree for specific performance of contract. As in this case, the appellant herein in view of the amended prayer "C" relinquished his claim in respect of the property belonging to the minor Respondent 4, he also, prayed for a decree for partition and such a prayer having been allowed, no exception thereto can be taken. In any event, the said question has not been raised by the respondents before the High Court at all. Section 22 enacts a rule of pleading that in order to avoid multiplicity of proceedings; the plaintiff may claim a decree for possession and/or partition in a suit for specific performance. Even though strictly speaking, the right to possession accrues only when a suit for specific performance is decreed, indisputably such a decree for possession and/or partition is prayed for in anticipation of the grant of prayer for specific performance of contract (See *Babu Lal v. Hazari Lal Kishori Lal*,." ¹⁷

15. Therefore, merely because the land in question was owned jointly by joint owners, it does not prevent sale by joint owners to the extent of their share and purchaser would become entitled to get partition of such land owned in joint names by stepping into shoes of their vendors. Since this position of law is clear enough, the decree for specific performance could not have been refused by the learned trial Court while deciding issue No.8 against the plaintiff which appears to have been wrongly decided by the learned trial Court against the plaintiff-appellant and contrary to the judgment of Apex Court in the case of P.C. Varghese (supra).

16. It is true that the relief of specific performance is a discretionary relief and it is not

necessary for the trial Court to always decree specific performance of contract and the plaintiff can be compensated in the form of compensation in monetary terms. However, the said discretion has to be fairly used and in accordance with law. The fact that the plaintiff was put in physical possession at the time of agreement dated 09.02.1985 itself and paid major portion of the consideration under agreement in the year 1985 itself, entirely tilts the balance in favor of the plaintiff and in these circumstances, he was entitled to secure the specific performance of the agreement in question itself and mere compensation at double the amount paid by the plaintiff cannot adequately compensate the plaintiff who is in possession of 9 big has of agricultural land since 1985 and is doing agricultural operations thereon since then. This Court also does not find any reason to upset the findings of the learned trial Court on issues decided in favor of the plaintiff.

17. The legal impediment in securing such transfer by proving that he is *bona fide* resident of Rajasthan, is also no longer available to the defendants in view of aforesaid notification dated 22.04.1991 cited by the learned counsel for the plaintiff-appellant. The judgments relied upon by the learned counsel for the respondents-defendants are mostly under the circumstances where the plaintiff was not in possession of the suit property and after long number of years, the Court did not consider it appropriate to award the specific performance of the contract in question, in view of high escalation of the price of the land. Here the situation is different. Under the agreement in question, the plaintiff is in physical possession of the land in question since 1985 and for long number of years he is carrying on his agricultural operations on the land in question, therefore, now denying him specific performance and allowing him only compensation in monetary terms cannot be considered to be justified. As far as question of any compensation to the defendants is concerned, that too is not found to be justified because it is only the rights of parties at the time of entering into the agreement, which will be decided in the litigation and merely because this Court now finds that the decree of specific ought to have been granted in favor of the plaintiff, it cannot be said that the defendants would be entitled to any sort of difference on account of escalation of price or compensation to settle the equities. The defendants had agreed to sell said 9 big has of land for consideration of Rs. 74,250/- and the plaintiff had already paid consideration to the extent of Rs. 66,450/-. This was according to the then prevailing market rate and the, plaintiff is admittedly in possession of the land in question since then. Therefore, now, awarding any extra-compensation in the form of consideration in favor of the defendants cannot be justified and what the defendants are now expected to do is only to execute the sale-

deed in performance of the agreement which they entered into on 09.02.1985 followed by agreement dated 15.02.1985, whereby with some additional payment, the bar of any time limit was agreed to be removed by the parties. However, on the unpaid sum of consideration of Rs. 7,800/-, the defendants would be entitled to get interest @ 9% per annum.

18. Consequently this appeal of the plaintiff is allowed and the defendants are directed to execute the sale-deed in favor of the plaintiff in respect of 9 big has of land situated at 16 GB Tehsil Sri Vijaynagar Dist. Sri Ganganagar to the extent of their share of 9 big has of land and such sale-deed may be executed within a period of 3 months from today and if they do not execute such sale-deed, the learned trial Court shall execute such sale-deed in favor of the plaintiff upon the payment of balance amount of consideration of Rs. 7800/- with simple interest @ 9% P.A. from 09.02.1985 till the date of payment. The decree be made accordingly. Costs easy.

Appeal allowed.

Cases Referred.

1. 2006(1) Apex Court Judgments 553 (S.C): 2006(1) Civil Court Cases 321(S.C): (2005) 8 SCC 486
2. AIR 1964 SC 978
3. AIR 1975 Raj 73
4. 1999(Suppl) Civil Court Cases 528 (S.C): 1999
5. 213 (S.C): AIR 1999 SC 2309
6. AIR 1999 SC 3571
7. 1997(1) Apex Court Journal 423 (S.C): AIR 1997 SC 1751
8. 1999(Suppl.) Civil Court Cases 528 (S.C): 1999(2) Apex Court Journal 213 (S.C): AIR 1999 SC 2309
9. 2001(2) Apex Court Journal 377 (S.C): AIR 2001 SC 2446
10. 2003(1) Apex Court Judgments 520 (S.C): 2003(2) Civil Court Cases 552 (S.C): AIR 2003 SC 1391
11. AIR 2003 SC 1989
12. 2000(1) Apex Court Journal 153 (S.C): AIR 1999 SC 3571
13. 2002(1) RLW SC 1
14. 2008(2) Apex Court Judgments 158 (S.C): 2008(2) Civil Court Cases 101 (S.C): AIR 2008 SC 1378

15. 2008(2) Apex Court Judgments 551 (S.C) 2008(3) Civil Court Cases 153 (S.C):
AIR 2008 SC 1786
16. (AIR 1982 SC 818)
17. (AIR 1982 SC 818)