



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9360 OF 2013

Major Gen. Darshan Singh (D) By Lrs. & Anr. ... Appellants

versus

Brij Bhushan Chaudhary (D) by Lrs. ... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. This appeal takes an exception to the judgment of the High Court in the second appeal preferred by the appellants. Appellant no.1 was the first plaintiff, and appellant no. 1(ii), (iii) and (iv), as well as appellant no. 2 were the co-plaintiffs. The original first respondent was the defendant in the suit. For convenience, we are referring to the parties with reference to their status before the Trial Court.

2. The defendant (Brij Bhushan Chaudhary) executed an agreement for sale dated 16th January 1980 (for short, 'the suit agreement') in favour of plaintiff no.1 (Major General (retd) Darshan Singh) in respect of plot of land admeasuring

approximately 2438 sq. yards with structure thereon being residential House no.33, R.P. No. 2829, Sector 2-A, Chandigarh (for short, 'the suit property'). The agreed consideration was Rs.3,50,000/-. A sum of Rs.30,000/- was paid by the plaintiff no. 1 to the defendant by way of earnest money. The sale deed was to be executed on or before 30th April 1980. Clause no.3 in the suit agreement provided that in the event of the failure of the defendant to honour the agreement, his liability will be to refund the sum of Rs. 30,000/- along with damages of Rs.10,000/- without any interest. The clause further provided that plaintiff no.1 will have no right to claim any other damages or to file a suit for specific performance.

3. According to the case of plaintiff no.1, there were further negotiations after the execution of the suit agreement, and it was agreed to reduce the price to Rs.2,90,000/-. Consequently, a draft sale deed was executed between plaintiff no.1 and the defendant on 18th March 1980. We may note here that along with plaintiff no.1, his daughters Raman, Pawan and Narveen were co-plaintiffs. All of them were signatories to the draft sale deed. According to the plaintiffs' case, necessary sale permission under the Urban Land (Ceiling and Regulation) Act, 1976 was granted on 11th August 1980. The plaintiffs claimed that on the date of execution of the draft sale deed, they were put in possession of the suit property. The plaintiffs purchased stamp papers worth Rs.23,200/- on 19th July 1980, as desired by the defendant. According to the plaintiffs' case, the defendant changed his mind as there was a price rise of the

properties in the vicinity of the suit property. Therefore, a telegraphic notice was issued by the plaintiffs to the defendant on 26th August 1980, calling upon him to remain present in the office of the Sub-Registrar at Chandigarh on 29th August 1980 between 10 am and 4 pm for registration of the sale deed. The case of the plaintiffs is that notwithstanding the service of the said notice, the defendant neither replied nor remained present before the Sub-Registrar for registration of the sale deed. Therefore, a suit for specific performance was filed by the plaintiffs. In the alternative, the plaintiffs claimed relief of damages of Rs.40,000/-.

4. The defendant contested the suit by filing a written statement in which he contended that the suit property belonged to his Hindu Undivided Family and the members of the family were in joint possession of the suit property. The defendant denied that the possession of the property was handed over to the plaintiffs. Replication (further pleading) was filed by the plaintiffs dealing with the averments made in the written statement.

5. The Trial Court declined to grant relief of specific performance and passed a decree of damages in the sum of Rs.40,000/- payable to plaintiff no.1. The suit as regards plaintiff nos. 2 to 4 was dismissed. The Trial Court framed eleven issues. The Trial Court held that though there was a clause to the contrary in the suit agreement, it would not bar the plaintiff's remedy to seek a specific performance. The Trial Court held that the suit property was the property of HUF (for

short, 'HUF property') of the defendant's family. The Trial Court held that the theory of the plaintiffs that there was a fresh agreement under which the price was reduced to Rs.2,90,000/- was not established. The Trial Court also held that the possession of the suit property was not handed over to plaintiff no.1. The Trial Court further held that plaintiffs nos.2 to 4 were not parties to the suit agreement and hence, they are not entitled to maintain a suit for specific performance. On the issue of readiness and willingness, the Trial Court held that as the plaintiffs had kept the Demand Draft in the sum of Rs. 2,60,000/- ready, it cannot be held that they were not ready and willing to perform their part of the agreement.

6. The appeal filed by the appellants before the District Court was dismissed. The District Court held that though, even according to the case of plaintiff no.1, the suit property was HUF property, there was no pleading that there was a legal necessity for the sale of the HUF property. Moreover, the co-sharers of the defendant were not made parties, and the plaintiffs had not given up their claim against the co-sharers of the defendant. While dismissing the appeal, the District Court held that the trial court's finding on the issue of readiness and willingness was correct. The High Court, in the second appeal, held that the suit property was the HUF property. Relying upon the decision of this Court in the case of ***Balmukand v. Kamla Wati***¹, the High Court held that the suit property was impartible under the provisions of the Capital of Punjab

¹ AIR 1964 SC 1385

(Development and Regulation) Act, 1952. Therefore, the High Court confirmed the decrees passed by the Trial Court and the First Appellate Court.

SUBMISSIONS

7. The learned counsel appearing for the appellants pointed out the concurrent findings on the issue of readiness and willingness in favour of the plaintiffs. Therefore, the plaintiffs satisfied the test laid down by Section 16(c) of the Specific Relief Act, 1963 (for short, '1963 Act'). He relied upon several decisions of this Court in support of the proposition that a decree for specific performance can be passed concerning an undivided share of the defendant in the suit property. He relied upon the decision of this Court in the case of **Hardeo Rai v. Sakuntala Devi**². The learned counsel relied upon another decision of this Court in the case of **Surinder Singh v. Kapoor Singh**³ and submitted that in view of Clause (a) of Section 22 (1) of the 1963 Act, a decree for partition and separate possession can be granted in addition to a decree for specific performance. He urged that, as held by this Court in the case of **Rachakonda Narayana v. Ponthala Parvathamma**⁴, a direction can be issued to the defendant to perform specifically so much of his part of the contract as he can perform. Therefore, the Trial Court ought to have moulded the relief by granting a decree of specific performance concerning the undivided share of the defendant. He submitted that a part of

² (2008) 7 SCC 46

³ (2005) 5 SCC 142

⁴ (2001) 8 SCC 173

the contract can always be ordered to be performed based on the principles laid down in Section 12 of the 1963 Act. He submitted that the suit property can always be subjected to a partition. If it cannot be subjected to a partition, the shares of the co-sharers can be auctioned. Therefore, the Trial Court ought to have passed a decree for specific performance limited to the undivided share of the defendant.

8. The learned senior counsel appearing for the defendant invited our attention to the conduct of the first plaintiff and submitted that the conduct, as seen from the record, requires the Court to exercise discretion under Section 20 of the 1963 Act against the plaintiffs. He submitted that three Courts have held against the plaintiffs, and therefore, no interference is called for.

OUR VIEW

9. Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity.

10. The suit agreement does not refer to the defendant's status as the Karta of the family. However, in the draft sale deed dated 18th March 1980 relied upon by the plaintiffs, the defendant was described as a vendor representing HUF as its Karta. Apart from plaintiff no.1, the other three plaintiffs also

signed the sale deed. Clause (2) of the draft sale deed records that the defendant has delivered the vacant possession of the suit property to the plaintiffs. In the plaint, the plaintiffs have relied upon the draft sale deed of 18th March 1980, which specifically records that the defendant, in his capacity as the Karta of HUF, had agreed to sell the property of HUF. However, in the plaint, the plaintiffs have not disclosed that the defendant executed the suit agreement in his capacity as the Karta of HUF and that the suit property was HUF property. This is very relevant as in the draft sale deed relied upon by the plaintiffs themselves; the defendant has been described as the Karta of HUF. In the written statement filed by the defendant, in paragraph 3, specific reliance was placed on the fact that the suit property was HUF property. In fact, it is specifically pleaded that as partition was not permissible, three members of HUF were in joint possession thereof. The plaintiffs pleaded in paragraph no. 3 of the replication that the suit property was an individual property of the defendant, and he was under obligation to sell the same to the plaintiffs. Thus, in the pleadings, the plaintiffs maintained that the suit property was the individual property of the defendant. However, in his cross-examination, the first plaintiff accepted that the suit property belonged to HUF, and it was accordingly mentioned in the draft sale deed. Though the first plaintiff knew that the suit property was HUF property, this fact was suppressed in the plaint.

11. In paragraph 4 of the plaint, the plaintiffs have pleaded that after the suit agreement was executed, there were further

negotiations, and the price was agreed to be reduced to Rs.2,90,000/- from Rs.3,50,000/-. In the written statement, there is a specific denial of the case of novation. In the replication, the plaintiffs reiterated that on 18th March 1980, when the draft sale deed was executed, the parties agreed to reduce the price of the suit property to Rs.2,90,000/-. However, in his examination-in-chief, the first plaintiff asserted that the terms and conditions of the suit agreement at Exhibit P-4 were never varied after its execution. Therefore, he did not come out with the case in his evidence that there was a further agreement under which the price of the property was reduced to Rs.2,90,000/-. Thus, to the knowledge of the first plaintiff, the case pleaded in the plaint regarding the price reduction was factually incorrect.

12. The conduct of the first plaintiff does not stop here. In paragraph 4 of the plaint, there is a specific assertion that after the draft sale deed dated 18th March 1980 was executed, the possession of the suit property was delivered to the plaintiffs. This assertion has been specifically denied in the written statement. In paragraph 2 of replication, the plaintiffs reiterated that the suit agreement was superseded and the novated contract of 18th March 1980 exists between the parties. In paragraph 3, the plaintiffs reiterated that they were put in possession. However, in the cross-examination, the first plaintiff specifically admitted that he never took possession of the suit property on 18th March 1980. He was confronted with his affidavit dated 18th October 1980. He explained the

statements in the affidavit to mean he could get possession whenever he liked. He admitted that though he had not received possession, he stated in the affidavit that he had received possession of the suit property. He also accepted that an application for temporary injunction filed by him in the suit was dismissed on the ground that the plaintiffs were not in possession.

13. Though the first plaintiff gave up his case of novation and reduction of the price of the suit property, he pleaded that he had kept a balance consideration of Rs.2,60,000/- ready in the form of a Demand Draft. Admittedly, the plaintiffs had paid only a sum of Rs.30,000/- by way of earnest money. Therefore, the balance consideration was Rs.3,20,000/-.

14. As observed earlier, the relief of specific performance is discretionary and equitable. Considering the plaintiffs' conduct of making false and/or incorrect statements in the plaint, which were very material, we hold that the plaintiffs are disentitled to relief of specific performance. It is pertinent to note that plaintiff No. 1 admitted in the examination-in-chief that the suit property was HUF property. Even after that, the plaintiffs continued to prosecute the suit by seeking a decree in respect of the entire suit property. The plaintiffs did not give up their case concerning the shares of other co-sharers who were not parties to the suit. Therefore, the Trial Court, Appellate Court and High Court were justified in denying discretionary relief of specific performance to the plaintiffs.

15. However, we find that on the damages of Rs.40,000/-, the Trial Court has not granted interest post the decree. We, therefore, modify the decree of the Trial Court by directing that the sum of Rs.40,000/- will carry interest @ 6% per annum from the date of the decree of the Trial Court till its payment or realisation.

16. Only to the above extent, the appeal is party allowed. There will be no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Sanjay Karol)

**New Delhi;
March 1, 2024.**