

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9195 OF 2019  
(Arising out of S.L.P.(Civil)No.5680 of 2019)

Jyoti & Anr. ...Appellants

Vs.

Dalbir Singh and Ors. ...Respondents

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 10th August, 2018 passed by the High Court of Punjab and Haryana allowing Regular Second Appeal No.5436 of 2016 (O&M). The facts leading to the filing of the present matter were dealt with in the order passed by this Court on 6th August, 2019 and the facts were noted thus:

"The instant petition arises out of a suit for specific performance filed by the plaintiff in respect of Agreement dated 15.06.2005 pertaining to an extent of 42 acres (348 Kanals 3 Marlas) of agricultural land. The agreed consideration was Rs.70,000/- per acre aggregating to Rs.30,46,313/-. As on the date when the Agreement was entered into between the plaintiff and the defendants No.1 to 5, amount of Rs.4,00,000/- was paid by way of earnest to the defendants no.1 to 5 and the date for executing the sale deed was fixed as 15.12.2005.

The Sale Deed could not be executed by 15.12.2005, for reasons which need not be gone into at this stage.

By three Sale Deeds executed on 12.01.2006 (bearing Vasika No.2945/1 and 2946/1) and 14.03.2006 (bearing Vasika No.3686/1), the defendants No.1 to 5 however sold the entire extent of land to the defendants No.6 and 7.

On 02.06.2006, the present suit seeking specific performance of the Agreement dated 15.06.2005 was filed. The Trial Court declined the relief of specific performance but granted the relief of refund of double the amount of the earnest money with interest @ 12 per cent per annum.

The matter was carried in appeal by the plaintiff as well as by the defendants No. 1 to 5 in Civil Appeal No.241/2015 and 242/2015 respectively. Both the appeals were dismissed by the Appellate Court and the matters reached the High Court by way of two Regular Second Appeals, namely, RSA No.5436 of 2016 filed by the plaintiff and RSA No.1745 of 2016 filed by the defendants No. 1 to 5.

The High Court allowed the appeal preferred by the plaintiff and dismissed the appeal preferred by the original defendants no. 1 to 5.

The challenge in this Court is now at the instance of the defendants no. 6 and 7."

While dealing with the Suit seeking specific performance, on the issue of readiness and willingness the matter was considered by the Trial Court as under:

"Now it is not disputed fact that agreement to sell dated 15.6.2005 Ex.P3 was executed by the defendants no.1 to 5 Rs.4 lacs consideration amount

was also not disputed. But the pleadings and evidence which was led by the plaintiff in regard of another amount of Rs.4 lacs which was given by him on 26.12.2005 and it is pleaded by the plaintiff that no receipt was executed by defendants no. 1 to 5 which does not seem to be true, as date of sale deed was executed on 15.12.2005 and defendant have not appeared before the Registrar to execute the sale deed. It is the allegations of the plaintiff then how the plaintiff could handed over the amount of Rs.4 lacs to the defendants no. 1 to 5 without receiving any receipt. This fact itself shows that plaintiff is not ready and willing to execute or register the sale deed. This court has further gone through the case law submitted by counsel for the plaintiff which are not applicable to the present circumstances of the case. Rather the case law submitted by counsel for defendants No. 6 and 7 1996(1) Apex Court Journal 637 (SC) titled as His Holiness Acharya Swami Ganesh Dassji Versus Sita Ram Thapar and 1997(1) RCR (Civil) page 286 titled as Lourdu Mari Davi Versus Louis Chinnaya Arogiaswamy (Supra) are different to show that mere attendance before the Registrar is not sufficient rather plaintiff is bound to prove on the file that he had the intention to execute the sale deed with substantive evidence as in his cross-examination plaintiff admitted this fact that he is the serviceman and receiving the salary of Rs.40,000/- and during the year 2005 he had Rs.10 lacs in his bank account and in the present case the total consideration amount is Rs.30 lacs. So, it means that Rs.26 lacs was required by the plaintiff and plaintiff had Rs.10 lacs only. The plaintiff nowhere has taken the plea to produce any evidence in

regard of that where from he had collected rests of the amount whether from the bank or whether he had borrowed from his relatives and friends. So, this court has the view that mere attendance before the Registrar is not sufficient to establish that plaintiff is ready and willing to execute the sale deed."

The Appellate Court while dealing with the appeal preferred by the plaintiff, however, did not consider the factual aspects of the matter in detail not did it upset the finding that as on the date on which the transaction was to be completed, there was no bank balance on the basis of which the sale deed could have been effected in favour of the plaintiff. The Appellate Court however observed as under:

"So by applying the above-said case law to the facts and circumstances of the present case and keeping in view the aforementioned discussion, it is established that the appellant-plaintiff was ready and willing and is still ready and willing to perform his part of the contract. However, as it is not disputed that the land has already been sold by respondents-defendants No.1 to 5 in favour of respondents-defendants No.6 & 7 and even it is an admitted fact that respondents-defendants No.6 & 7 are in possession over the suit property, as such, the findings recorded by the learned Trial Court for decretal of the suit for recovery of the double of the earnest money alongwith interest, were well reasoned and stands affirmed."

Thus without upsetting the finding of fact, it was observed by the Appellate Court that the plaintiff was ready and willing to perform his obligations under the agreement. It however declined to grant decree for specific performance considering the fact that the land in question was already sold in favour of original defendants No. 6 and 7.

The High Court however in second appellate jurisdiction came to a different conclusion and decreed the suit for specific performance. It principally went into the question whether *bona fides* of defendant Nos. 6 and 7 were proved or not on record.

It therefore emerges that the finding rendered by the Trial Court was not expressly set aside by the Appellate Court as well as by the High Court. It was not found by either of those two courts that the finding was wrong on any count. A mere declaration that the plaintiff was ready and willing as observed by the Appellate Court would not be sufficient. It is evident from the record that the transaction had to be completed by 15.12.2005 by which time as found by the Trial Court, the plaintiff did not have sufficient money to complete the transaction. It was in these circumstances that the transactions in favour of defendants No. 6 and 7 were entered into well after the period within which the transaction had to be completed as between the original plaintiff and defendants No. 1 and 5. It cannot therefore be said that the specific transaction with defendants No. 6 and 7 was entered into by original

defendants No. 1 to 5 solely with the object to defeat the claim of the original plaintiff.

In our view the lower Appellate Court was right in rejecting the relief of specific performance to the original plaintiff. It is well settled that the decree for specific performance may in certain cases be refused, and in our view the present case definitely falls in that category.

However the fact remains that the original plaintiff had paid a sum of Rs.4,00,000/- (Rupees four lakhs) by way of earnest on the date when the agreement was entered into i.e. 15th June, 2005 and the money has remained with the original defendant Nos. 1 to 5. At this stage since defendants No. 6 and 7 have finally received the land by way of transfer from defendants No. 1 to 5, in our view ends of justice would be met if we direct defendants No. 6 and 7 to make over a sum of Rs.20,00,000/- (Rupees twenty lacs) to the original plaintiff by way of full and final satisfaction of all the claims that the plaintiff has in respect of transaction in question.

In these circumstances, we allow this appeal, set aside the High Court judgment and order under appeal and restore the decree passed by the Trial Court as affirmed by the lower Appellate Court except to the extent as modified herein above. The sum of Rs.20,00,000/- (Rupees twenty lacs) shall be deposited by the defendants No. 6 and 7 within six months with the Trial Court and after such deposit of money, the original plaintiff shall be entitled

to withdraw the sum after furnishing sufficient proof of identification.

Appeal allowed in aforesaid terms. No costs.

.....J.  
[UDAY UMESH LALIT]

.....J.  
[INDU MALHOTRA]

New Delhi;  
December 3, 2019.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 5680/2019

(Arising out of impugned final judgment and order dated 10-08-2018 in RSA No. 5436/2016 passed by the High Court of Punjab &amp; Haryana at Chandigarh)

JYOTI &amp; ANR.

Petitioner(s)

VERSUS

DALBIR SINGH &amp; ORS.

Respondent(s)

(FOR ADMISSION and I.R. and  
IA No. 23519/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No. 101342/2019 - EXEMPTION FROM FILING O.T.

IA No. 73641/2019 - EXEMPTION FROM FILING O.T.

IA No. 27176/2019 - EXEMPTION FROM FILING O.T.

IA No. 130806/2019 - MODIFICATION

IA No. 27174/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURESIA No. 23522/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURESIA No. 101338/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

Date : 03-12-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. P. V. Saravana Raja, AOR  
Mr. Sachin, Adv.  
Mr. Abhinav Srivastava, Adv.For Respondent(s) Dr. J. P. Dhanda, AOR  
Mrs. Raj Rani Dhanda, Adv.  
Mr. Vineet Dhanda, Adv.  
Mr. N.A. Usmani, Adv.  
Mr. Gopi Chand, Adv.  
Mr. Ashok Kumar Vasishtha, Adv.  
  
Mr. Jasbir Singh Malik, Adv.  
Mr. Manish Kumar Tirthpuria, Adv.  
Ms. Usha Nandini. V, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel for the parties.

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications shall also stand disposed of.

(ANITA MALHOTRA)  
COURT MASTER

(SUMAN JAIN)  
COURT MASTER

(Signed order is placed on the file.)