

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7896 OF 2024
(@SLP (CIVIL) NO.24741OF 2019)

JAI KISHAN GARG **...APPELLANT (S)**

VERSUS

RANDHIR SINGH **...RESPONDENT(S)**

ORDER

1. Leave granted.
2. The appellant is the defendant in a suit for Specific Performance of a contract. The Trial Court had dismissed the suit. The first Appellate Court allowed the appeal of the plaintiff and decreed the suit. The High Court, by the impugned judgment and order has dismissed the second appeal filed by the appellant.

Brief facts:

3. The appellant and the respondent entered into an Agreement to Sell dated 17.10.2005 with respect to a flat/plot/house No. Land Company in Khasra No.31/10 (7-12) situated at V Khanti Majra, Gurgaon for a total sale consideration of Rs.16,25,000/- (Rupees sixteen lakhs twenty five thousand only) out of which Rs.1 lakh was to be paid as advance money and the remaining amount of Rs.15,25,000/- was to be paid within 60 days. The agreement further provided that in case the appellant refuses to transfer the suit property in favour of the respondent, the respondent would have a right to get double the amount of advance money from the appellant and in the event the respondent fails to purchase the suit property by making the full and final balance amount within the time specified the advance/earnest money of Rs.1 lakh would stand forfeited on the expiry of the period of 60 days. Other formal terms and conditions were also mentioned in the Agreement to Sell. The relevant clauses as stated in paras 1, 2 and 5 of the Agreement to Sell are reproduced hereunder:

“1. The FIRST PARTY has received Rs.100000/- (Rupees One Lakh Only) as an Advance/earnest money from the SECOND PARTY vide cash/cheque /Draft No. dated drawn on and the FIRST PARTY HEREBY acknowledges receipt of the same to the SECOND PARTY, and the balance price of Rs.15,25,000/- (Rupees Fifteen Lakhs Twenty Five Thousand Only) of the said Plot/House/Flat shall be paid by the SECOND PARTY to the FIRST PARTY within 60 days.

2. That in case, the FIRST PARTY refuse to get the said Plot/House /Flat transferred in favour to get the said PARTY within the above specified period, for any reasons whatsoever, the SECOND PARTY has right to get DOUBLE the amount of Advance/Earnest Money from the FIRST PARTY. In case, the Second Party fails to take the Plot/House/Flat by making full and final balance payment to the First Party within the above specified period, the Earnest Money of Rs. 100000/- (One Lakh Only) paid by him/her will be forfeited by the First Party within 60 days.

Xx

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5. That in case the Second Party does not make the full and final payment within the stipulated period, the first party shall forfeit the amount of earnest money paid to him.”

4. No sale took place within the stipulated time. As such the respondent instituted a suit on 12th January, 2006 praying that a decree of possession by way of specific performance of contract based on the Agreement to Sell dated 17.10.2005 be granted. According to the plaint allegations the respondent, in order to show his readiness and willingness to

perform his part of the contract stated that he went to the office of the Sub-Registrar on the 60th day i.e. 15th December, 2005 and also got his presence marked, as the appellant failed to appear, he returned disappointed.

5. The appellant filed his written statement and apart from other pleas, he took up the following main objections:

i. The appellant did not have a clear title of the property in question as he was the highest bidder in the auction proceedings and despite he having deposited the entire auction money, the auction had not been confirmed nor sale certificate issued in his favour; he thus did not have a clear title over the property in question to execute the sale deed;

ii. As per the agreement, if the sale deed is not executed within 60 days, the respondent would be entitled to refund of double the amount which the appellant was ready and willing to pay and no decree for specific performance could have been granted in a case where a specific clause of refund of total amount was provided. At best, respondent would be entitled to double the amount.

iii. The issue of readiness and willingness was also raised stating that the respondent never approached the appellant with the balance amount. No notice was given to the appellant regarding the respondent approaching the Sub-Registrar's office on 15.12.2005.

6. The Trial Court framed the following issues on the basis of the pleadings of the parties:

- “1. Whether the defendant had executed the agreement for sale of the disputed land dated 17.10.2005 in favour of plaintiff for a sale consideration of Rs.16,25,000/-? OPP.
2. Whether the defendant received a sum of Rs.1 lac as earnest money from the plaintiff? OPP.
3. Whether plaintiff is ready & willing to perform his part of contract? OPP.
4. Whether the plaintiff is entitled for possession by way of specific performance of the contract dated 17.10.2005? OPD.
5. Whether the plaintiff has no locus standi for filing the present suit? OPP
6. Whether the suit is not maintainable? OPP.
7. Whether the plaintiff is estopped from filing the present suit by his own act & conduct? OPP.
8. Whether the plaintiff has suppressed the true & material facts from the court? OPP.

9. Whether the suit is bad for non joinder of necessary parties? OPP.

10. Whether the court fee paid by the plaintiff is not sufficient? OPP.

11. Whether the impugned agreement is an outcome of fraud, if so its effect? OPP.

12. Relief.”

7. Issue nos.1,2 and 3 were decided in favour of the plaintiff by holding that the Agreement to Sell had been validly executed, the advance amount of Rs.1 lakh had been paid and that the plaintiff-respondent was ready and willing to perform his part of the contract. With respect to issue no.4, the Trial Court held that as the defendant-appellant did not have a clear title, no relief of specific performance could be granted. Government Department which had held auction and allowed the land to the defendant were not parties and as such no direction could be issued to them and, accordingly, decided the issue against the plaintiff and in favour of the defendant. Issue nos.5-11 were decided in favour of the plaintiff and against the defendant. Accordingly, the Trial Court declined to grant a decree for specific performance of contract.

However, in view of the terms of the agreement, a money decree in the sum of Rs.2 lakhs to be paid by the defendant along with interest @ 12% p.a. from the date of advance till payment of the decretal amount was awarded in favour of the plaintiff against the defendant.

8. The respondent preferred an appeal before the District Judge, Gurgaon which was registered as Civil Appeal No.154/2013. The said appeal was allowed vide judgment dated 13.11.2014 by the Additional District Judge, Gurgaon. The Appellate Court was of the view that the defendant-appellant could not take up a plea regarding defect in his title in order to frustrate the Agreement to Sell once he has received the earnest money and, accordingly allowed the appeal and decreed the suit for specific performance. The appellant preferred a Second Appeal which has since been dismissed by the High Court by the impugned judgment.

9. Heard Shri Siddharth Bhatnagar, learned Senior Counsel for the appellant and Shri Manoj

Swarup, learned Senior Counsel for the respondent and perused the material on record.

10. It is not in dispute that the plaintiff-respondent was aware of the fact that defendant-appellant was the highest bidder in the auction proceedings wherein the sale had not been confirmed and no sale certificate had been issued. Apparently, later on the authorities had cancelled the auction proceedings with respect to which some litigation was pending. Once this was the situation, the plea taken by the defendant appellant regarding non-execution of the sale deed on the ground that he did not have a clear title cannot be said to be without any basis. The Trial Court was right in holding that in the absence of a clear title no relief of specific performance of a contract could have been granted.

11. We are further of the view that once the Agreement to Sell clearly provided that on the failure of the defendant appellant to execute the sale deed within 60 days, the plaintiff respondent would be entitled to refund of double the amount, the Trial Court had rightly granted the money

decree which the first Appellate Court and the High Court failed to appreciate.

12. The relief of decree of specific performance is a discretionary relief and where an alternative was already provided in the Agreement itself and there was a valid reason for the defendant to not execute the sale deed, alternative relief ought to have been granted.

13. Another aspect of the matter is that no readiness and willingness apparently has been proved by the plaintiff respondent. Apart from a bald statement that he was ready and willing and that he went to the office of the Sub-Registrar on the 60th day i.e. 15.12.2005 and marked his presence, there is no other evidence or pleading for establishing readiness and willingness. This was without any prior notice to the defendant appellant or without even offering him the balance amount before the said date. The readiness and willingness was clearly lacking and, therefore, the suit would also be hit by Section 16(c) of the Specific Relief Act.

14. For all the reasons recorded above, the appeal deserves to be allowed and the suit was liable to be dismissed.

15. Shri Sidharth Bhatnagar, learned senior counsel for the appellant has fairly submitted that the appellant is ready and willing to return the amount of Rs.2 lakhs i.e. the double amount at any higher rate of interest or any reasonable fixed amount which this Court may determine to suitably compensate the plaintiff respondent.

16. Considering the facts and circumstances of the case and the fact that the amount of Rs.1 lakh has remained with the appellant for almost 19 years, we deem it appropriate that a lumpsum of Rs.20,00,000/- (Rupees Twenty lakhs only) would suitably compensate the plaintiff respondent and also adjust the equities between the parties.

17. Accordingly, the appeal is allowed. The impugned judgment and order is set aside and the decree of the Trial Court dismissing the suit is restored, however, with a modification that instead of the money decree, Rs.2 lakhs with 12% interest per annum would stand substituted by a

lumpsum amount of Rs.20,00,000/- (Rupees twenty lakhs only) to be paid within a period of three months from today, failing which this amount would carry interest at the rate of 12% per annum.

18. There shall, however, be no order as to costs.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASANNA BHALACHANDRA VARALE)

NEW DELHI
JULY 22, 2024