



RSA No.3401 of 2014 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3401 of 2014 (O&M)

Reserved on:07.03.2025

Pronounced on: 17.03.2025

Kamal Kumar and others

.....Appellants

Vs.

Bhupinder Singh and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjiv Gupta, Advocate for the appellants.
Mr. Samar Ahluwalia, Advocate and Mr. Akshay Jindal,
Advocate for the respondents.

DEEPAK GUPTA, J.

Defendants of the case are before this Court in the present Regular Second Appeal against the concurrent findings of the Courts below, inasmuch as suit for possession by way of specific performance regarding the property in dispute filed by plaintiffs (*respondents herein*) was decreed by the trial Court on 01.03.2011 and the First Appellate Court upheld the said findings vide judgment dated 07.09.2013, dismissing the appeal of the defendants (*appellants herein*).

2. Trial Court record was called. Same has been perused. In order to avoid confusion, the parties shall be referred as per their status before the trial Court.

3. As per the case pleaded by the plaintiffs, Surinder Kumar (defendant No.1) and his brother Mohinder (*predecessor-in-interest of defendants No.2 to 4*) agreed to sell 24 kanal of their land detailed in the plaint @ ₹4,65,000/- per acre vide an agreement dated 31.05.2005 Ex.P1. They received an amount of ₹2 lakhs as earnest money. Sale deed was agreed to be executed and got registered on or before 26.12.2005 on payment of the balance sale consideration. It was claimed by plaintiffs that they have always been ready and willing to perform their part of contract. Prior to the target date, one of the vendor – Mohinder expired on

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22.10.2005 and his rights were inherited by defendants No.2 to 4. On the target date of 26.12.2005, plaintiffs appeared in the Office of Sub-Registrar, Barara but since it was a holiday, defendants did not turn up. Plaintiffs got an affidavit prepared from the Deed Writer. On the next day, i.e. 27.12.2005, the plaintiffs again visited the Office of Sub Registrar, Barara and waited for the defendants whole of the day but they did not turn up, though plaintiffs were having the balance sale consideration and the remaining amount necessary for execution and registration of the sale deed. Plaintiffs then got their presence marked in the Office of Sub Registrar in this regard. It is submitted that they requested the defendants several times to execute the sale deed and get it registered in terms of the agreement but they refused, compelling the plaintiffs to file the suit.

4. Contesting the suit, defendants in their written statement, denied execution of the agreement to sell. They further denied receipt of any earnest money. They further claimed that suit property was ancestral in nature and that defendants did not have any legal necessity to sell the suit land. The consent of the major members of the family was not taken by Mohinder Kumar & Surinder Kumar before executing the alleged agreement to sell. With the stand and controverting all other averments in the plaint, they prayed for dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court decreed the suit and the Appellate Court upheld the findings, as have been noticed earlier.

6.1 Assailing the afore-said concurrent findings, it is contended by learned counsel for the appellants- defendants that Courts below have failed to properly appreciate the entire facts and circumstances. Both the alleged vendors i.e. Mohinder Kumar as well as Surinder Kumar had expired during pendency of the suit and so, the alleged agreement to sell was not binding on their legal heirs. It is contended that suit property was ancestral in nature and that there was no legal necessity for Mohinder Kumar and

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Surinder Kumar to sell the suit property nor the consent of other legal heirs was obtained. Further contention of learned counsel is that in fact suit property was on lease with the plaintiffs. The lease period had expired. Defendants had even offered an amount of ₹4 lakhs i.e. double the amount as mentioned in the alleged agreement to sell, so as to terminate the agreement by way of legal notice dated 19.12.2005 (Ex.P5). However, plaintiffs did not challenge the said notice Ex.P5 terminating the agreement and to receive double the earnest money and, therefore, the suit itself is not maintainable. Learned counsel has relied upon a judgment of Hon'ble Supreme Court in ***I.S. Sikander (D) By LRs Vs. K. Subramani and others, 2013 (15) SCC 27.***

6.2 It is further the contention of learned counsel that relief of specific performance is a discretionary in nature. Both the vendors have since expired and, therefore, the Courts below were not justified in exercising the discretion for decreeing the suit for specific performance. He relied upon another judgment of Hon'ble Supreme Court in ***Hemanta Mondal and others Vs. Sri Ganesh Chandra Naskar, 2015 AIR (SC) 3757.***

6.3 It is further argued that the Court will not grant the decree of specific performance, if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. Learned counsel for this reasoning has referred ***Bal Krishna and another Vs. Bhagwan Dass (Dead) & others, 2008(2) RCR (Civil) 732.***

6.4 With all these contentions, prayer is made for dismissing the suit as filed by the respondents- plaintiffs by allowing this appeal.

7. Refuting the afore-said contentions, it is argued by learned counsel for the respondents- plaintiffs that there is no scope for interference in the concurrent findings of facts, inasmuch as there is definite finding that suit property was not ancestral in the hands of Surinder Kumar and Mohinder Kumar, as they had got it by way of Will of their

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father. Further, in legal notice dated 19.12.2005 (Ex.P5), which is false and frivolous, defendants had admitted the agreement as well as the receipt of the earnest money and it is for this reason that they had asked the plaintiffs to accept double the amount of the earnest money i.e. ₹4 lakhs and had asked them to return the original deed of agreement to sell dated 31.05.2005. Still further, it is contended that authority in ***I.S. Sikander's case (supra)*** is clearly distinguishable on facts and that in the facts of the present case, it was not required for the plaintiffs to challenge the notice dated 19.12.2005 (Ex.P5). For that, learned counsel has relied upon a judgment of this Court in ***Surinder Mohan Batra and others Vs. Gurbinder Pal Singh Tiwana and another, Law Finder Doc Id # 2506139***. By contending that both the Courts below have rightly appreciated the evidence on record and that there is no scope for interference, prayer is made for dismissal of the appeal.

8. This Court has considered submissions of both the sides and have appraised the record carefully.

9. Although defendants denied the execution of agreement to sell dated 31.05.2005 (Ex.P1) but it is duly proved on record, as has been found by the Courts below. Not only plaintiff - Bhupinder Singh examined as PW2 proved the same, plaintiffs even examined Gian Chand Verma, Deed Writer as PW3 and one of the attesting witness Shish Pal as PW1, who duly proved the execution of the agreement to sell. Counsel for the appellants tried to convince this Court that amount of ₹2 lakhs was not received by Surinder Kumar but the said contention has absolutely no merit. The perusal of the agreement to sell-cum-receipt Ex.P1 would reveal that on the revenue stamp, signatures of both Surinder Kumar and Mohinder Kumar appear. Not only this, the receipt of the earnest money as well as execution of the agreement to sell is duly proved by the testimony of attesting witness PW1-Shish Pal. He has been grilled at length during his cross-examination but withstood the said test. There is no reason to disbelieve him. As such, contention of the counsel for the appellants that agreement to sell or

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receipt of earnest money was not proved, has absolutely no merit.

10. Based on the evidence produced on file, it has been observed by the First Appellate Court that Mutation No.961 Ex.DY/3, Surinder Kumar and Mohinder Kumar had got the land in dispute by virtue of a Will of their father Shri Vidya Parkash and once it is so, by no stretch of imagination, the suit property in the hands of Mohinder Kumar and Surinder Kumar can be said to be the ancestral property. It assumes the character of self-acquired property. Defendants failed to produce any evidence on record to show that Mohinder Kumar and Surinder Kumar had inherited the property from their father and who had inherited it from his father and then his grandfather had inherited it from his father. In these facts and circumstances, Courts below rightly held that suit property was not ancestral in nature.

11. Coming to the next contention, as per the legal notice dated 19.12.2005 (Ex.P5), sent by defendants through their counsel to the plaintiffs, which has been placed on record during evidence by the plaintiffs, it was alleged by the defendants that agreement to sell was got executed under pressure but still they were ready to refund double the amount as per the agreement. The said legal notice was sent prior to the target date of 26.12.2005 and based upon this notice, it is contended by learned counsel for the appellants- defendants that agreement to sell stood terminated and that plaintiffs were required to challenge the said termination.

12. There is no merit in the afore-said contention due to many reasons. Firstly, the contents of the agreement to sell Ex.P1 would reveal that it is clearly stipulated therein that in case of failure of the vendees to get the sale deed executed, the earnest money paid by them shall stand forfeited and the bargain stand cancelled. However, in case the vendors failed to execute the sale deed, in that eventuality, the vendees have been given two options, firstly, to get the agreement enforced through the Court;

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and secondly, to get double the amount of the earnest money. Plaintiffs have opted for the first option i.e. by preferring the suit for getting enforced the agreement through the Court of law.

13. The defendants were not entitled to cancel the bargain unilaterally by sending a notice to the plaintiffs. In *I.S. Sikander's case (supra)*, relied by counsel for the appellants, the seller terminated the agreement. Suit for specific performance was filed by the purchaser. It was held that plaintiff was first required to seek declaratory relief to declare the termination of the agreement to sell as bad in law. However, facts of *I.S. Sikander's case (supra)*, are quite distinguishable from the facts of the present case.

14. Similar contention was dealt in at length by a Co-ordinate Bench of this Court in *Surinder Mohan Batra's case (supra)*, wherein also contention was raised that communications dated 21.05.2005, 23.05.2005 and 24.05.2005, whereby vendors had pressed their desire to back out from the agreement was raised. It was held by this Court as under:-

“16. The second argument of the learned counsel is with respect to failure of the plaintiffs to challenge the alleged communications dated 21.05.2005, 23.05.2005 and 24.05.2005. In fact, this issue has been examined in detail by this Court in *Suksham Lata @ Kusum Lata and another vs. Jagdish Ram, (RSA No.1783 of 2014, decided on 10.12.2018)* and *Ashok Kumar and others vs. Purshotam Bansal (Regular Second Appeal No.4201 of 2012, decided on 02.02.2018)*, in the following manner:-

"Secondly, the facts in the case of *I.S.Sikandar (supra)* are entirely different. In that case, within the stipulated period, the plaintiff did not come forward to execute the sale deed, despite this fact, the defendants got issued a notice, calling upon the plaintiff to come and execute the sale deed but the plaintiff did not come forward. Plaintiff in reply admitted his fault in performing his part of the contract and sought extension. The defendants once again sent a

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notice to the plaintiff, extending time and asking him to pay the sale consideration amount and get the sale-deed executed and on failure to comply with the same, the agreement to sell would stand terminated/cancelled. The plaintiff did not even come forward to perform his part within the extended time. Under these circumstances, the Hon'ble Supreme Court has held that the plaintiff was required to seek a declaration that the cancellation/termination of the agreement to sell was illegal while filing a suit for specific performance of the agreement to sell.

17. Additionally the attention of the Supreme Court was not drawn to the distinction between the suit filed for the cancellation of an instrument and the suit filed for declaration. The first category of the suits are governed by [Section 31](#) of the Specific Relief Act, 1963 (hereinafter referred to as 'the 1963 Act'), whereas the second category of the suits are governed by [Section 34](#) of the 1963 Act. [Section 31](#) of the 1963 Act envisages a written instrument. The question of a notice sent, cancelling the agreement to sell would not fall within the purview of a written instrument. The expression "written instrument" has been used in the context of an agreement, gift deed, mortgage deed, sale deed etc. which are signed by the parties and if such instrument is void or voidable, the court is required to cancel the instrument. Whereas, in the second category of cases, a person entitled to any legal declaration or as to right to any property may file a suit for grant of decree of declaration. This distinction has been drawn by the Hon'ble Supreme Court in ***Suhrid Singh alias Sardool Singh vs. Randhir Singh and others***, (2010) 12 SCC 112, in context of liability to pay ad-valorem court fee.

18. This matter can be examined from yet another angle. [Section 22](#) of the 1963 Act enables the court to grant relief for possession, partition and refund of earnest money etc. Clause (b) of sub-Section (1) of [Section 22](#) enables the court to grant any other relief to which any person suing for specific performance is found entitled to. No doubt, sub-Section (2) provides that such relief shall not be granted by the Court unless it has been specifically prayed for. However, the mandatory nature of sub-section



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(2) is taken away by the proviso which has been explained in a recent judgment passed by the Supreme court in [Manickam @ Thandapani and another vs. Vasantha, 2022 \(2\) RCR \(C\) 862](#). Moreover, in [Mrs. A.Kanthamani vs. Mrs. Nasreen Ahmed, 2017\(4\) SCC 654](#), the Supreme Court distinguished the judgment passed in [I.S. Sikander\(dead\) by LRs vs. K. Subramani and others, \(2013\) 15 SCC 27](#).

19. In these circumstances, it would not be appropriate to non-suit the plaintiff on a hyper-technical objection which does not affect the merits of the case. Moreover, it is a well settled principle that the Court in the facts and circumstances of the case is entitled to mould the relief keeping in consideration the peculiar facts of the case.

20. Additionally, the attention of the Supreme Court in [I.S.Sikander's case \(supra\)](#) was not drawn to [Order VII Rule 7 CPC](#) which provides that it shall not be necessary to ask for general or other relief which may always be given as the court may think just and proper. In common parlance, this is called the moulding of relief. In [Neelawwa vs. Shivawwa, ILR 1988 KAR 2761](#), a Division Bench of the Karnataka High Court explained the scope of [Order VII Rule 7 CPC](#) to hold that the Court even in absence of a specific prayer for partition and separate possession should have passed a preliminary decree for partition. In this judgment, the Division Bench relied upon a previous judgment passed in [Rangappa vs. Jayamma , ILR 1987 Karnataka 2889](#), to the same effect. In fact, this issue was also examined in a different context by the Supreme Court in [Kidar Lal Seal and another vs. Hari Lal Seal , AIR 1952 SC 47](#), it was held as under:-

"The Court would be slow to throw out a claim on a mere technicality of pleading when the substance of a thing is there and no prejudice is caused to the other side and it is always open to a Court to give the plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs."

21. Similarly, other High Courts have also taken the same view.

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Furthermore, the judgment passed in *I.S.Sikander's case (supra)*, it was held that the aforesaid judgment has been passed on the facts involved therein and is thus distinguishable. Reliance in this regard can be placed on a judgment passed in *Mrs.A.Kanthamani vs. Mrs. Nasreen Ahmed, 2017(40) SCC 654*. In such circumstances, it will not be appropriate to dismiss the suit filed by the plaintiffs only on a hyper technical objection which does not affect the merits of the case.”

15. In the facts and circumstances of the present case, *I.S. Sikander's case (supra)* is absolutely not applicable to this case. Rather, it is the legal position explained by co-ordinate Bench of this Court in *Surinder Mohan Batra's case (supra)*, which shall be applicable and by relying upon the same, it is held that plaintiffs cannot be non-suited for not seeking any declaration regarding the legal notice dated 19.12.2005 (Ex.P5).

16. The last contention of learned counsel for the appellants is that both the vendors Mohinder Kumar and Surinder Kumar had expired during pendency of the suit, therefore, Court should not have exercised its discretion to grant relief of specific performance. It may be noted that though Mohinder Kumar expired prior to filing of the suit but as far as Surinder Kumar is concerned, he filed the written statement and contested the suit. It is only on 01.03.2011, when the case was fixed for arguments before the trial Court that it was brought to the notice of the Court that Surinder had expired and so amended title was filed by impleading his legal representatives as parties.

17. In *Hemanta Mondal's case (supra)*, on which counsel for the appellants has placed reliance, the possession had not been given to the plaintiff at the time of execution of the agreement nor the area of the land agreed to the sold was clear and it was in these circumstances that it was held that plaintiff had not done substantial acts or suffered any losses due to expenditure in construction etc., in consequence of the contract capable of specific performance and so, the relief of specific performance was declined.



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18. However, in the present case, defendants- appellants could not point out any act, which was required to be done by the plaintiffs- vendees and which they did not do prior to filing of the suit. Whatever they were required to do, as per the agreement to sell, they did. They appeared before the Sub Registrar along with the balance sale consideration and expenses required for execution and registration of the sale deed, but defendants did not turn up. Counsel for the appellants could not point out any such hardship, which would be caused to the appellants in case of grant of relief of specific performance.

19. In the afore-said facts and circumstances and the entire discussion as above, this Court does not find any ground whatsoever so as to interfere in the well-reasoned concurrent findings as recorded by the Courts below, decreeing the suit of the plaintiffs- respondents for grant of specific performance. There is no scope calling for any interference, as there is neither any mis-appreciation of evidence nor any misreading of evidence nor any such evidence has been pointed out by counsel for the appellants, which has not been taken into consideration. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

March 17 , 2025
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No