

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

CIVIL APPEAL NO(s). 4644 OF 2006

CHARAN SINGH AND ANR.

Appellant (s)

VERSUS

SAT PRAKASH AND ORS.

Respondent(s)

Date: 21/05/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
[VACATION BENCH]

For Appellant(s)

Mr. Ramesh Gautam, Adv.
Mr. Debasis Misra, Adv. (Not present)

For Respondent(s)

Mr. Sanjeev Anand, Adv.
Mr. Abhas Kumar, Adv.

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

The Appeal stands disposed of in terms of the signed order.

(Parveen Kr.Chawla)
Court Master

(M.S. Negi)
Court Master

[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4644 OF 2006

Charan Singh & Anr.

... Appellants

Versus

Sat Prakash & Ors.

... Respondents

ORDER

1. This appeal has been preferred against the impugned judgment and order dated 15.10.2004 passed by the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No.

2090 of 1983 reversing the judgment of the trial court and the first appellate court in the suit for specific performance.

2. Facts and circumstances giving rise to this appeal are that:

A. The appellant and the respondent no. 1 entered into an agreement to sell dated 22.10.1979 to transfer the suit land comprised in Killa No. 15/2, 9, 12; 20/1, 18, 23 situate in the revenue Estate of Taiyabpur Tehsil, District Kapurthala for a sum of Rs. 17,500/- per acre and the sale-deed was to be executed upto 30.6.1980. A sum of Rs.2,000/- was paid by the appellant to the respondent no. 1 as earnest money. The balance amount was agreed to be paid on or before 22.10.1979. A petty amount of Rs.5,216/- had also been paid by the appellant to others on behalf of the respondent no. 1.

B. Respondent no. 1 executed a sale-deed in favour of the respondent nos. 2 to 6 on 8.5.1980 and got it registered. The appellant filed the suit for specific performance of agreement on 14.6.1980, which was decreed in favour of the appellant vide judgment and decree dated 30.7.1981 passed by the Additional Senior Sub Judge, Kapurthala.

B. Aggrieved, respondent nos. 2 to 6 filed appeal before the District Judge which was dismissed vide judgment and decree dated 4.6.1983 by the District Judge, Kapurthala.

C. Aggrieved, the respondent nos. 2 to 6 filed Regular Second Appeal before the High Court which has been allowed vide judgment and decree dated 15.10.2004. However, the High Court directed the respondent nos. 2 to 6 to make the payment of Rs.28,216/- which had been paid by the appellant to respondent no. 1 as earnest money etc. with 9 per cent interest per annum.

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Hence, this appeal.

3. Shri Ramesh Gautam, learned counsel appearing for the

appellant, has submitted that there was no substantial question of law involved in the second appeal. The High Court committed an error in entertaining the second appeal in a casual manner and allowing the same only on equitable grounds. Therefore, the appellant is entitled for possession of the land after execution of the sale-deed. The sale-deed in favour of respondent nos. 2 to 6 is liable to be cancelled. The appeal deserves to be allowed.

4. Shri Sanjeev Anand, learned counsel appearing for respondent nos. 2 to 6, has vehemently opposed the appeal contending that the High Court has given a large number of reasons for allowing the second appeal. Finding of facts recorded by the High Court are not liable to be set aside being based on basic principle of equity. The said respondents had been in possession of the land for more than 32 years as they had been put in possession as tenants of land much prior to the execution of agreement to sell between the appellant and respondent no. 1 and they are the bonafide purchasers for consideration without notice of the agreement between the appellant and respondent no.1. More so, they have developed the land during this period. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. The High Court has recorded the following findings of facts:

(I) The respondent nos. 2 to 6 were tenants under the respondent no. 1 and had been in cultivatory possession of the suit land from the date prior to the date of agreement between the appellant and respondent no. 1.

(II) Respondent Nos. 2 to 6 have invested a huge amount of money in making improvements in the land.

(III) Respondent Nos. 2 to 6 have got the sale-deed executed without having prior knowledge/notice about the execution of the agreement to sell between the appellant and respondent no. 1.

(IV) Respondent nos. 2 to 6 purchased the land in the year 1980 so a period of several decades has lapsed since then.

(V) The relief of specific performance is discretionary one and can be refused on equitable grounds.

(VI) In the facts and circumstance of the case, it would be inequitable to enforce specific performance of agreement for sale in favour of the appellant at such a belated stage.

7. So far as the law is concerned, the High Court is right to the extent that specific performance is a discretionary relief and may be refused if the equity so demands. While deciding the said issue, the High Court has placed reliance on various judgments of this Court including A.C. Arulappan v. Ahalya Naik (Smt.), (2001) 6 SCC 600; and V. Muthusami (Dead) by Lrs. v. Angammal & Ors., (2002) 3 SCC 316.

The view of the High Court stands further fortified by the judgment of this Court in Her Highness Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel & Ors., (2001) 5 SCC 101, wherein this Court held that the grant of decree for specific performance is a matter of discretion under Section 20 of the Specific Performance Act, 1963. The court is not bound to grant such relief merely because it is lawful to do so but the discretion is not required to be exercised arbitrarily. However, it is to be exercised on sound and settled judicial principles. One of the grounds on which the court may decline the decree of specific performance is where it would be inequitable to enforce specific performance.

(See also: Damacheria Anjaneyulu & Anr. v. Damacherla Venkata Seshaiah & Anr., AIR 1987 SC 1641; Gobind Ram v. Gian Chand, (2000) 7 SCC 548; S. Abdul Khader v. Abdul Wajid (Dead) by Lrs. & Ors., (2008) 9 SCC 522; Vimalleshwar Nagappa Shet v. Noor Ahmed Shariff & Ors., (2011) 12 SCC 658; and Van Vibhag Karamchari Griha Nirman Sahakari Sanstha Maryadit (Regd.) v. Ramesh Chander & Ors., AIR 2011 SCC 41).

8. Be that as it may, admittedly, the respondent nos. 2 to 6 had purchased the land 32 years ago. They had been in cultivatory possession of the same land prior to the date of purchase as tenants. During this long period, they had spent whole of their earnings and savings in development of the said land. In view of the fact that they had no notice of the agreement to sell between the appellant and respondent no. 1, and had purchased the land for consideration, being bonafide purchasers, their interest is to be protected.

9. In such a fact-situation, no interference is called for with the impugned judgment.

The High Court has directed the appellant to refund the sum of Rs.28,216/- which had been received from the appellant by the respondent no. 1 as earnest money with 9 per cent interest per annum.

In order to do justice between the parties, we are of the view that ends of justice would meet if the appellant is paid a lump sum amount of Rs. 5 lakhs. Respondent Nos. 2 to 6 are directed to pay the said amount as a full and final settlement. The said amount shall be paid within a period of 3 months from today. With these observations, the appeal stands disposed of.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(DIPAK MISRA)

New Delhi,
May 21, 2012