

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 6306 of 2010****ATMA SINGH****... APPELLANT****VERSUS****KASHMIRA SINGH & ANR.****... RESPONDENTS****ORDER****S. ABDUL NAZEER, J.**

1. Atma Singh, the appellant herein, was the plaintiff in Civil Suit No.236 of 1991 on the file of the Civil Judge (Jr. Division) Samrala. The respondents herein are defendant Nos.1 and 3 in the suit. The plaintiff filed the said suit against the defendants for specific performance of the agreement to sell dated 16.07.1990 in respect of the suit schedule property. The plaintiff also sought an alternative prayer for recovery of a sum of Rs.10,000/- paid by him towards earnest money. He has further sought for a declaration to the effect that the decree dated 14.09.1991 passed in Civil Suit No. 42 of 1991

in favour of defendant No. 3 be declared null and void and along with this a prayer for permanent injunction was also made seeking to restrain the defendants from alienating the suit schedule property.

2. It was pleaded that defendant No.1 was the owner of the suit land and that he had executed an agreement dated 16.07.1990 to sell the suit schedule property in favour of the plaintiff and agreed to execute and get registered the sale deed on or before 15.06.1991. The plaintiff had paid Rs.10,000/- towards earnest money at that time. However, defendant No.2 had failed to turn up for registration of the sale deed.

3. The suit was contested by the second defendant, the general power of attorney holder of the 1st defendant. He had denied the execution of the agreement dated 16.07.1990 and it was pleaded that the said document is forged, fictitious and without any consideration. It was pleaded that the Civil Suit No. 42 of 1991 had been decreed and the sale deed had been validly executed in favour of the 3rd defendant who has become the owner, in possession of the suit land. The 3rd defendant also filed the written statement denying the plaint averments. He had pleaded that the 1st defendant had no right to execute any agreement to sell in favour of the plaintiff because the 1st defendant had already executed an agreement dated 26.12.1989 to

sell the suit land in his favour. The decree dated 14.09.1991 was passed in his favour and sale deed dated 12.11.1991 had already been executed in his favour on the basis of the agreement dated 26.12.1989.

4. On the basis of the pleadings of the parties, the Trial Court framed relevant issues. The parties have let in evidence. On appreciation on the materials on record, the Trial Court while denying the specific performance of the agreement to sell, granted the alternative relief of recovery of Rs. 20,000/- to the plaintiff.

5. Feeling aggrieved, the plaintiff filed first appeal which was allowed. The First Appellate Court granted the decree of specific performance of the agreement to sell dated 16.07.1990 in favour of the plaintiff.

6. The judgment and decree of the First Appellate Court was reversed by the High Court and the judgment and decree of the Trial Court was restored.

7. We have heard learned counsel for the parties and carefully perused the judgment and decree of the Trial Court, the First Appellate Court and the High Court. The High Court has recorded a finding of fact that the power of attorney executed by the 1st defendant in favour of the 2nd defendant was a valid document and on the

strength of the said power of attorney, the 2nd defendant had executed the agreement in favour of the 3rd defendant. The sale deed was executed pursuant to the decree dated 14.09.1991 in Civil Suit No.42 of 1991. Therefore, the Trial Court granted discretionary relief of refund of Rs. 20,000/- in favour of the plaintiff. The agreement to sell executed by the power of attorney-holder, namely, the 2nd defendant acting for and on behalf of the 1st defendant in favour of the 3rd defendant was earlier to the date of execution of the agreement to sell in favour of the plaintiff. The finding of fact recorded by the High Court is as under:

“Examining this case in the aforesaid perspective, it is clear that in view of the fact that a valid agreement was subsisting in favour of the appellant which had fructified into a valid sale deed pursuant to a decree dated 14.9.1991 of the Court, the agreement to sell in favour of respondent No.1 had been rendered inexecutable. The trial Court was, therefore, right in exercising its power under Section 20 of the Act by granting alternative relief to respondent No.1. There is, thus, no hesitation to set aside the judgment and decree dated 10.9.2002 passed by the learned lower Appellate Court and restore the judgment and decree dated 27.4.1999 of the trial Court.”

8. No doubt, the above judgment of the High Court was set aside by this Court on 17.08.2008 on the ground that the High Court had not framed the substantial question of law as required under Section 100

of the Code of Civil Procedure, 1908 and the matter was remitted back to the Trial Court for disposal in accordance with law.

9. After remand, the High Court framed the following questions of law:

- “1. Whether in the given set of circumstances of the case, agreement to sell dated 16.7.1990 in favour of respondent no.1 was capable of being enforced or the court ought to have resorted to the grant of discretionary relief under Section 20 of the Specific Relief Act, 1963 (for short, ‘the Act’)?”
2. Whether the court was right in refusing to exercise discretion under Section 20 of the Act in the circumstances of the case or not?”

10. The High Court on a detailed consideration of the matter has answered the aforesaid questions of law as under :-

“Because of the detailed reasoning in the earlier order which be read as a part of this order, as also for the reason that this court categorically opined that agreement to sell dated 16.7.1990 executed by Malkiat Singh was incapable of being translated into a sale deed for the simple reason that pursuant to the earlier valid agreement to sell executed by Gurdev Singh, the legal and validly appointed attorney of Malkiat Singh, which had already fructified into a sale on 12.11.1991, the first Appellate Court ought to have exercised its discretion by resorting to the provisions of Section 20 of the Act. In the opinion of this court, further, for the reason that it had already been recorded that the findings of the First Appellate Court were clearly perverse, the same were/are set aside because the sale deed in favour of respondent no.1 is currently inexecutable and the discretion under

Section 20 of the Act refused by the First Appellate Court, but the same was rightly exercise by the trial court.”

11. We do not find any error in the reasoning and the conclusion of the High Court.

12. The appeal is devoid of merit and is accordingly dismissed without order as to costs.

.....**J.**
(S. ABDUL NAZEER)

.....**J.**
(DEEPAK GUPTA)

New Delhi;
December 03, 2019.

ITEM NO.114

COURT NO.13

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6306/2010

ATMA SINGH

Appellant(s)

VERSUS

KASHMIRA SINGH . & ANR.

Respondent(s)

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

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Appellant(s)

Mr.Sukesh Ghosh,Adv.
Mr.Prabhoo Dayal Tiwari,Adv.
Ms. Shashi Kiran, AOR

For Respondent(s)

Mr. Yash Pal Dhingra, AOR

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

The appeal is dismissed in terms of the signed order.

Pending application, if any, stands disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT(RAJINDER KAUR)
BRANCH OFFICER

The Signed Order is placed on the file)