

SURINDER KAUR (D) THR. LR. JASINDERJIT
SINGH (D) THR. LRS.

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v.

BAHADUR SINGH (D) THR. LRS.
(Civil Appeal Nos. 7424-7425 of 2011)

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SEPTEMBER 11, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Specific Relief Act, 1963 – s.16(c) – Performance of the essential terms of the contract – Predecessor-in-interest of the appellants entered into an agreement to sell the suit land with predecessor-in-interest of the respondents for total consideration of Rs. 5605/- – Out of this Rs.1000/- was paid as earnest money at the time of execution of agreement to sell – The possession of the land was handed over to the predecessor-in-interest of the respondents (vendee) – Since there was some litigation with regard to the property it was agreed between the parties that the sale deed would be executed within one month from the date of decision of civil appeal – Clauses of the agreement stipulated that in case decision regarding the property in civil appeal is after one year, then the predecessor-in-interest of respondents shall pay customary rent to the predecessor-in-interest of appellants – Litigation referred to in the agreement was decided after about 13 years – Predecessor-in-interest of appellants failed to execute sale deed in favour of predecessor-in-interest of respondents – Suit for specific performance was filed by predecessor-in-interest of the respondents – The suit was decreed by all the Courts below – Appellants contended that since predecessor-in-interest of the respondents failed to pay the rent of the land, he was not entitled to a decree for specific performance – Held: The suit property was handed over to the predecessor-in-interest of the respondents and he had agreed to pay rent at the customary rate – Therefore, the possession of land was given to him only on this clear-cut understanding – This was a reciprocal promise and was an essential part of the agreement to sell – Admittedly, predecessor-in-interest of the respondents did

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- A *not pay rent till the date of filing of the suit – The payment of rent was an essential part of the contract – Equity is totally against him – He by not paying the rent did not act fairly and forfeited his right to get the discretionary relief of specific performance – Thus, judgment and decree of all the Courts below set aside and suit for*
- B *specific performance dismissed.*

Allowing the appeals, the Court

- HELD:1.** The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard and fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case. As far as the present case is concerned, the vendor-predecessor-in-interest of the appellants, who was a lady received less than 20% of the sale consideration but handed over the possession to the vendee-predecessor-in-interest of the respondents, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with the sale of the land. One cannot lose sight of the fact that the land had been handed over to the vendee and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell. [Para 9][143-A-C]

- 2.** Admittedly, predecessor-in-interest of the respondents did not even pay a penny as rent till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if this Court was to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that predecessor-in-interest of the respondents had failed to perform his part of the contract. There can be no manner of doubt that the

payment of rent was an essential term of the contract. Explanation A
(ii) to Section 16(c) clearly lays down that the plaintiff must prove
performance or readiness or willingness to perform the contract
according to its true construction. The only construction which
can be given to the contract in hand is that predecessor-in-interest
of the respondents was required to pay customary rent. [Para B
10][143-D-F]

3. In this case, predecessor-in-interest of the respondents
having got possession of the land in the year 1964 did not pay the
rent for 13 long years and even when he filed the replication in C
the year 1978, he denied any liability to pay the customary rent.
Therefore, he did not act in a proper manner. Equity is totally
against him. In considered view of this Court, he was not entitled
to claim the discretionary relief of specific performance of the D
agreement having not performed his part of the contract even if
that part is held to be a distinct part of the agreement to sell. The
vendee by not paying the rent for 13 long years to the vendor,
even when he had been put in possession of the land on payment
of less than 18% of the market value, caused undue hardship to
her. The land was agricultural land. predecessor-in-interest of E
the respondents was cultivating the same. He must have been
earning a fairly large amount from this land which measured about
9½ acres. He by not paying the rent did not act fairly and, forfeited
his right to get the discretionary relief of specific performance.
[Para 15][144-E-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7424- F
7425 of 2011

From the Judgment and Order dated 06.01.2009 of the High Court
of Punjab and Haryana at Chandigarh in R.S.A. No. 611 of 1982 and
order dated 26.05.2009 in Review Application No. 23-C of 2009. G

Ajay Kumar Talesara, Jamshed Bey, Ekansh Bansal, Advs. for
the Appellants.

Onkar Shrivastava, Divyadeep Chaturvedi, Shashwat Sidhant,
Rameshwar Prasad Goyal, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

1. The question of law arising in these appeals is whether a vendee who does not perform one of his promises in a contract can obtain the discretionary relief of specific performance of that very contract.

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2. Briefly stated the facts are that Mohinder Kaur, predecessor in interest of the appellants entered into an agreement with Bahadur Singh, predecessor in interest of the respondents on 13.05.1964 whereby she agreed to sell the suit land to Bahadur Singh for a total sale consideration of Rs.5605/-. Out of this, Rs.1000/- was paid as earnest money at the time of execution of agreement to sell, and it was agreed that the balance amount would be paid at the time of registration of the sale deed. The possession of the land was handed over to the vendee on the date of agreement to sell itself. Since there was some litigation with regard to the property it was agreed between the parties that the sale deed would be executed within one month from the date of decision of civil appeal pending before the Punjab and Haryana High Court.

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3. To decide the appeals, it would be necessary to refer to Clauses 2 and 3 of the agreement to sell which read as under:-

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2) That an appeal in respect of the above-mentioned land is pending in the High Court and after decision in the said appeal, the First Party shall execute and register Sale Deed in favour of the Second Party in the month of July, 1965.

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3) That the possession of the land has been handed today and in case the decision by the High Court in the appeal is after one year, then the sale deed shall be executed and registered after one month from the date of decision and in the circumstance, the Second Party shall pay to the First party the customary rent for the said land.

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xxx xxx xxx ”

4. It is not disputed that the litigation referred to in the agreement was decided on 17.01.1977, i.e., about 13 years after the agreement to sell was entered into. Bahadur Singh requested Mohinder Kaur to execute the sale deed but since she failed to do so, a suit for specific performance

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of the agreement was filed by Bahadur Singh. In the alternative, it was prayed that a decree be passed for a sum of Rs.5605/-, i.e. Rs.1000/- paid as earnest money and Rs.4605/- as damages. This suit was contested on various grounds but we are concerned with only one wherein the defendant raised the plea that since Bahadur Singh had admittedly failed to pay the rent of the land in terms of Clause 3 of the agreement, he was not entitled to a decree for specific performance.

5. The suit has been decreed by all the courts below. There is no dispute with regard to the factual aspects. The only issue is whether the vendee Bahadur Singh who admittedly did not pay the rent is entitled to a decree of specific performance of the agreement dated 13.05.1964. The courts below have held that the agreement contained several promises which may be reciprocal, contingent or separate. Section 51¹ of the Contract Act, 1872 provides that when a contract consists of reciprocal promises to be simultaneously performed, no promisor need to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

6. The aforesaid provisions have to be read along with Section 16(c)² of The Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.

¹**51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.**—When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

²**16. Personal bars to relief.**—Specific performance of a contract cannot be enforced in favour of a person –

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.

A 7. We shall also have to take into consideration that the specific performance of contract of an immovable property is a discretionary relief in terms of Section 20³ of The Specific Relief Act as it stood at the time of filing of the suit.

B 8. Section 20 of The Specific Relief Act lays down that the jurisdiction to decree a suit for specific performance is a discretionary jurisdiction and the court is not bound to grant such relief merely because it is lawful.

³20. Discretion as to decreeing specific performance.—

C (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

D (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

E (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

F *Explanation 1.*—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

G *Explanation 2.*— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

H (4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

9. The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard and fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case. As far as the present case is concerned, the vendor, who was a lady received less than 20% of the sale consideration but handed over the possession to the defendant, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with the sale of the land. One cannot lose sight of the fact that the land had been handed over to Bahadur Singh and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell.

10. Admittedly, Bahadur Singh did not even pay a penny as rent till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if we were to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that Bahadur Singh had failed to perform his part of the contract. There can be no manner of doubt that the payment of rent was an essential term of the contract. Explanation (ii) to Section 16(c) clearly lays down that the plaintiff must prove performance or readiness or willingness to perform the contract according to its true construction. The only construction which can be given to the contract in hand is that Bahadur Singh was required to pay customary rent.

11. It has been urged that no date was fixed for payment of rent. Tenancy can be monthly or yearly. At least after expiry of one year, Bahadur Singh should have offered to pay the customary rent to the vendor which could have been monthly or yearly. But he could definitely not claim that he is not liable to pay rent for 13 long years.

12. Learned counsel for the respondents urged that in case of non-payment of rent the plaintiff was at liberty to file suit for recovery of rent. We are not impressed with this argument. A party cannot claim

- A that though he may not perform his part of the contract he is entitled to specific performance of the same.

13. Explanation (ii) to Section 16(c) of The Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do in so far as payment of rent is concerned.

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14. A perusal of Section 20 of The Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub clause(c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the Court can refuse to grant such discretionary relief. Explanation (2) to the Section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff.
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- E 15. In this case, Bahadur Singh having got possession of the land in the year 1964 did not pay the rent for 13 long years and even when he filed the replication in the year 1978, he denied any liability to pay the customary rent. Therefore, in our opinion, he did not act in a proper manner. Equity is totally against him. In our considered view, he was not entitled to claim the discretionary relief of specific performance of the agreement having not performed his part of the contract even if that part is held to be a distinct part of the agreement to sell. The vendee Bahadur Singh by not paying the rent for 13 long years to the vendor Mohinder Kaur, even when he had been put in possession of the land on payment of less than 18% of the market value, caused undue hardship to her. The land was agricultural land. Bahadur Singh was cultivating the same. He must have been earning a fairly large amount from this land which measured about 9½ acres. He by not paying the rent did not act fairly and, in our opinion, forfeited his right to get the discretionary relief of specific performance.
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SURINDER KAUR (D) THR. LR. JASINDERJIT SINGH (D) THR. LRS. v. 145
BAHADUR SINGH (D) THR. LRS. [DEEPAK GUPTA, J.]

16. In view of the above, we allow the appeals, set aside the judgment and decree of all the courts below and dismiss the suit for specific performance. As far as the alternative plea of refund is concerned, we are clearly of the view that since the respondents enjoyed the land for 55 long years without payment of any rent they are not entitled to any relief. No order as to costs.

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Ankit Gyan

Appeals allowed.