Supreme Court of India
Kartar Singh vs Harjinder Singh And Others on 21 February, 1990
Equivalent citations: AIR 1990 SC 854, JT 1990 (1) SC 253, 1990 (1) SCALE 276, (1990) 3 SCC 517, 1990 (1) UJ 341 SC
Author: P Sawant
Bench: L Sharma, P Sawant
ORDER P.B. Sawant, J.

1. The admitted facts are that respondent Harjinder Singh and his sister Bibi Nasib Kaur owned some properties, namely, (i) two pieces of land in village Dhora measuring 26 kanals and six marlas, and 33 kanals respectively (ii) a vacant site in village Bighan measuring one kanal, (iii) a kachcha house in village Urapur, and (iv) a Bara in village Urapur measuring about 8 marlas. There is no dispute that the respondent and his sister had each half share in all the said properties. The respondent for himself and on behalf of his sister entered into a written agreement with the appellant Kartar Singh on February 28, 1965, for the sale of all the said properties for a consideration of Rs. 20,000/-. He received a sum of Rs. 20.000/- as earnest amount and agreed to execute the sale deed and get the same registered between May 15 and July 15, 1965. It was specifically mentioned in the agreement that he had agreed to sell not only his entire share in the property but also that of his sister, and that he would be responsible for getting the sale-deed executed from his sister. The agreement also provided that in case the respondent failed to execute the sale-deed as stipulated, he would refund Rs. 2,000/- which he had received as earnest money ad also pay Rs. 5,0007- as damages. His sister, however, refused to sell the property. The respondent, therefore, informed the appellant that since his sister had refused to sell the property it was not possible for him to execute the sale-deed. The appellant, hence, filed the present suit for specific performance of the contract and in the alternative for refund of the earnest money of Rs. 2,000/- and damages of Rs. 5,000/-. The suit was filed against both the respondent and his sister as well as one Smt. Pritam Kaur who was alleged to have purchased about 13 kanals of land out of the suit property from the respondent's sister Nasib Kaur under a registered sale-deed of 31st May, 1965.

2. The suit was contested by respondent and defendant No. 3 Smt. Pritam Kaur. Defendant No. 2, the respondent's sister, did not contest the suit. The Trial Court came to the conclusion that the respondent was liable to sell his half share in the suit property and decreed the suit with respect to the said share on payment of Rs. 8,000/- by the appellant being the balance of the consideration of Rs. 10,000/-, i.e. half of the earlier agreed consideration of Rs. 20,000/- for the entire property. The Triaf Court also decreed a sum of Rs. 5,000/- as damages against the respondent for not completing the sale in time and also Rs. 1,000/- as special costs. The said decree of January 6, 1967, was appealed against, and the learned Judge of High Court partly allowed the appeal. He maintained the decree for specific performance of the contract in respect of the half share of the respondent in the suit property, but set aside the decree for damages of Rs. 5,000/- as well as for the costs of Rs. 1,000/-. This order of November 9, 1973 passed in First Appeal was challenged by the respondent before the Division Bench in the same court in Latent Patent Appeal, and the Division Bench allowed the appeal and dismissed the suit. The Bench, however, passed a decree for Rs. 7,000/- in favour of the appellant being the amount consisting of Rs. 2,000/- as earnest money and Rs. 5,000/- as damages. The Bench took the view that since the case was not covered by any of the

exceptions to Section 12 of the Specific Relief Act (hereafter referred to as the Act),the respondent could not have been directed to sell his share of the property. It is this decision of August 2, 1974 which is in appeal before us.

3. The High Court took the view that the present case was not governed by the provisions of Sub-sections 2, 3 and 4 of Section 12 of the Act because according to the Court it could not be said that respondent was unable to perform the whole of his part of the contract. According to the Court, he could not and he never did contract to sell the whole of the property by himself as neither he had any authority to do so nor did he represent that he was the owner of the whole of the property. He had clearly indicated that he was the owner of half share in the property. He had only represented that he would pursuade his sister to sell her share in the property alongwith him. It cannot, therefore, be said that he was unable to perform the whole of his part of the contract. The Court also held that Sub-sections 2 and 3 of Section 12 of the Act would not be applicable also because the portion to be left out was not a small portion of the whole property. The Court further took the view that even if it is held that Sub-sections 2 and 3 applied to the case, there was no evidence led by the plaintiff that the part of the contract which could not be performed admitted of compensation in money or not. The Court further held that the case was also not covered by Sub-section 4 of Section 12 because before the said provision could be invoked, a specific finding has to be recorded that the part of the contract which is sought to be specifically performed was by itself an independent and separate one from the other part of the contract which could not be performed. To arrive at this conclusion, the Court relied upon the fact that the property in dispute consisted of a house, a vacant site, on agriculture land situated in different places and that the individual shares of the respondent and his sister were not mentioned in the agreement. The price was fixed in lump sum and it could not be ascertained from the agreement as to what was the specific price of each of the different properties. The Court also reasoned that even if a decree for specific performance is passed the decree holder could in the circumstances be put in possession of the property unless and until the property was partitioned. The last reason given by the Court was that it could not be ascertained to what extent the reduction in consideration could be made if the property belonging to the respondent's sister was to be excluded from the decree.

4. We are afraid that the very foundation of the reasoning o the Division Bench of the High Court is defective. It was never disputed that the respondent and his sister has each half share in the suit properties. Hence a mere failure to mention in the agreement that they had such share in the property would not entitle one to come to the conclusion that they did not have that share. When the property is owned jointly, unless it is shown to the contrary, it has to be held that each one of the joint owners owns a moiety of the property. In the present case, there is neither a pleading nor a contention that the respondent and his sister did not own the property in equal shares. Secondly, the agreement of sale clearly mentions that respondent was entering into the agreement both on behalf of himself and his sister, and that he was, under the agreement, selling the whole of his share and also the whole of the share of his sister in the property. Further in the agreement itself he had stated that he was responsible to get the sale-deed executed by his sister and that he would pursuade her to do so. This being the case, the properties agreed to be sold were clearly distinguishable by the shares of the respective vendOrs. In the circumstances when the absentee vendor, for some reason or the other, refused to accept the agreement, there is no reason why the agreement should not be

enforced against the vendor who had signed it and whose property is identifiable by his specific share.

5. We are, therefore, of the view that this is not a case which is covered by Section 12 of the Act. It is clear from section that it relates to the specific performance of a part of a contract. The present is not a case of the performance of a part of the contract but of the whole of the contract so far as the contracting party, namely, the respondent is concerned. Under the agreement, he had contracted to sale whole of his property. The two contracts, viz. for the sale of his share and of his sister's share were separate and were severable from each other although they were incorporated in one agreement. In fact, there was no contract between the appellant and the respondent's sister and the only valid contract was with respondent in respect of his share in the property.

6. As regards the difficulty pointed out by the High Court, namely, that the decree of specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold the vendee has a right to apply for the partition of the property and get the share demarcated. We also do not see any difficulty in granting specific performance merely because the properties are scattered at different places. There is no law that the properties to be sold must be situated at one place. As regards the apportionment of consideration, since admittedly the appellant and respondent's sister each have half share in the properties, the consideration can easily be reduced by 50% which is what the First Appellate Court has rightly done.

7. In the circumstances, we allow the appeal and maintain the decree passed by the Trial Court as modified by the first Appellate Court. There will, however, be no order as to costs.