

PARMINDER SINGH

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v.

GURPREET SINGH

(Civil Appeal No. 3612 of 2009)

JULY 25, 2017

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[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Specific Performance:

Suit for specific performance – Decreed by trial court – Further affirmed by first appellate court as well as second appellate court – On appeal, held: Categorical finding of facts by courts below is essentially in the nature of concurrent findings of fact and hence binding on Supreme Court – More so, such findings are neither perverse, nor against evidence or pleadings or any provision of law – Grant of specific performance is essentially in the discretion of the court – Grant of such relief by courts below in exercise of their respective discretionary powers, cannot be disturbed in exercise of jurisdiction u/Art. 136 of the Constitution – Specific Relief Act, 1963 – s. 20 – Constitution of India – Art. 136.

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Dismissing the appeal, the Court

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HELD: 1. The Courts below recorded categorical finding of fact saying that the genuineness of the agreement was even admitted by the defendant's witnesses. The Courts below also recorded a finding that the respondent was ready and willing to perform his part of the agreement and, in fact, performed his part of the agreement whereas the appellant failed to perform his part of the agreement and thereby committed its breach. [Para 13] [422-F-G]

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2. The findings recorded by the three courts on facts, which are based on appreciation of evidence undertaken by the three Courts, are essentially in the nature of concurrent findings of fact and, therefore, such findings are binding on this Court. Indeed, such findings were equally binding on the High Court while hearing the second appeal. It is more so when these findings were neither found to be perverse to the extent that no judicial person could ever record such findings nor these findings were

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A found to be against the evidence, nor against the pleadings and lastly, nor against any provision of law. [Paras 14, 15] [422-F-H; 423-A-B]

B 3. The question as to whether specific performance of an agreement should be granted or not is essentially in the discretion of the Court. Indeed Section 20 of the Specific Relief Act says so in no uncertain terms. Therefore, once the Trial Court, first and second Appellate Court formed an opinion and decided to grant the specific performance of the agreement to the plaintiff in exercise of their respective discretionary powers, this Court being the last Court in hierarchy, cannot disturb such concurrent findings while exercising power under Article 136 of the Constitution of India. [Paras 16, 17] [423-B-D]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3612 of 2009.

D From the Judgment and Order dated 30.07.2007 of the High Court for the States of Punjab & Haryana at Chandigarh in R. S. A. No. 2039 of 2007.

V. K. Jhanji, Sr. Adv., Ms. Jyoti Mendiratta, Adv. for the Appellant.

E Sudeep Mahajan, Vipin Gogia, Ms. Jaspreet Gogia, Advs. for the Respondent.

The Judgment of the Court was delivered by

F **ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed against the judgment and final order dated 30.07.2007 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 2039 of 2007 whereby the High Court dismissed the second appeal filed by the appellant against the judgment and decree dated 21.03.2007 passed by the Additional District Judge (Fast Track Court), Amritsar in C.A. No. FTC/10 of 2003/2006 by which the appeal filed by the appellant herein was dismissed with costs affirming the judgment and decree dated 12.08.2003 passed by the Additional Civil Judge (Senior Division), Ajnala in Civil Suit No. 95 of 2006.

G 2. We herein set out the facts, in brief, to appreciate the issues involved in this appeal.

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3. The appellant is the defendant and the respondent is the plaintiff in the civil suit out of which this appeal arises. The appellant and the respondent are real brothers. The respondent is elder to the appellant. A

4. The appellant (defendant) is the co-sharer of the land to the extent of 55/118, which comes to 84 Kanals, in the joint Khata of total land measuring 177 kanals 10 Marlas situated in Village Vachhoa, Tehsil Ajnala, District Amritsar. The appellant entered into an agreement on 02.07.1995 with the respondent (plaintiff) whereby he agreed to sell his share of 55/118 of the entire land to the respondent for a total sale consideration of Rs.5 lakhs. The agreement, *inter alia*, recited that out of Rs. 5 lakhs, the respondent has paid Rs.4 lakhs in cash at the time of execution of agreement (02.07.1995) to the respondent and has agreed to pay the balanced amount to the appellant at the time of registration of the sale deed. It was agreed that the sale deed would be executed on or before 13.12.1995. B
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5. Since the appellant did not execute the sale deed in favour of the respondent in terms of the agreement, the respondent filed a civil suit against the appellant seeking specific performance of the agreement dated 02.07.1995 in relation to the suit land. The plaint, *inter alia*, contained necessary averments as required under Section 16(c) of the Specific Relief Act, 1963 for claiming specific performance of the agreement in question. D
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6. The appellant while denying the averments mainly averred that, (i) the agreement in question is a forged document; (ii) he had only signed on blank paper on request from the respondent; (iii) he never intended to sell the land to the respondent; (iv) his signature was taken by the respondent on blank paper for being used in one pending litigation in which both were parties; and (v) since the appellant at that time was staying away from the respondent for pursuing his studies, he sent the blank paper, which was converted by the respondent in the form of an agreement in question without his knowledge. In substance, this was the defense taken by the appellant while opposing the suit. F
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7. Parties adduced evidence. The Trial Court, vide judgment/decree dated 12.08.2003 decreed the respondent's suit. It was held that, (i) the agreement in question is real and genuine; (ii) it bears the signature of appellant; (iii) the appellant did not execute the sale deed in terms of agreement; (iv) the respondent was ready and willing to perform his H

A part of the agreement; (v) he also performed his part; and (vi) the appellant breached the agreement and did not execute the sale deed in terms of agreement.

8. The appellant (defendant) filed first appeal before the Additional District Judge, Amritsar being C.A. No.FTC/10 of 2003/2006.

B The first appellate Judge, vide his judgment dated 21.03.2007, affirmed all the findings of the Trial Court and dismissed the appellant's appeal.

9. The appellant pursued the matter to the High Court in Second Appeal. The High Court, by impugned judgment dated 30.07.2007, dismissed the second appeal and affirmed the judgment/decreed of the first Appellate Court.

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10. The appellant, felt aggrieved of the judgment of the High Court, preferred this appeal by way of special leave to this Court.

11. Heard Mr. V.K. Jhanji, learned senior counsel for the appellant and Mr. Sudeep Mahajan, learned counsel for the respondent.

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12. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

13. Here is a case where all the three Courts, namely, Trial Court, first Appellate Court and the High Court concurrently held in favour of the respondent (plaintiff) and accordingly decreed his civil suit. In other words, all the three Courts, on appreciating the evidence in their respective jurisdiction and discretion, held that the defense taken by the appellant (defendant) was not proved. On the other hand, it was held that the respondent was able to prove that the agreement was real, *bona fide* and genuine and was thus capable of enforcement. Indeed,

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we find that the Courts below recorded this categorical finding of fact saying that the genuineness of the agreement was even admitted by the defendant's witnesses. The Courts below also recorded a finding that the respondent was ready and willing to perform his part of the agreement and, in fact, performed his part of the agreement whereas the appellant failed to perform his part of the agreement and thereby committed its breach.

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14. In our considered opinion, the findings recorded by the three courts on facts, which are based on appreciation of evidence undertaken by the three Courts, are essentially in the nature of concurrent findings of fact and, therefore, such findings are binding on this Court. Indeed,

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such findings were equally binding on the High Court while hearing the second appeal. A

15. It is more so when these findings were neither found to be perverse to the extent that no judicial person could ever record such findings nor these findings were found to be against the evidence, nor against the pleadings and lastly, nor against any provision of law. B

16. In our considered opinion, the question as to whether specific performance of an agreement should be granted or not is essentially in the discretion of the Court. Indeed Section 20 of the Specific Relief Act says so in no uncertain terms.

17. Therefore, once the Trial Court, first and second Appellate Court formed an opinion and decided to grant the specific performance of the agreement to the plaintiff in exercise of their respective discretionary powers, this Court being the last Court in hierarchy cannot disturb such concurrent findings while exercising power under Article 136 of the Constitution of India. As mentioned above, these findings are binding on this Court. C D

18. Learned counsel for the appellant, no doubt, made sincere attempt to urge that the agreement in question is a forged document which, according to him, is apparent on its mere perusal. Learned counsel also urged that all the three Courts committed an error in granting specific performance of such agreement to the respondent. E

19. We are afraid that we can accept this submission in the light of what we have held supra. Indeed this very argument was considered and repelled by the three Courts after appreciating the evidence adduced by the parties. It is, therefore, not permissible for this Court to again appreciate the evidence in appeal and reverse any of the findings. F

20. In view of foregoing discussion, we find no merit in this appeal. The appeal thus fails and is accordingly dismissed.