Before G. C. Mital, ACJ & H. S. Bedi, J.

HARNAM KAUR (SMT.) AND OTHERS,—*Appellants.*

versus

JAGTAR SINGH,—*Respondents.*

Letters Patent Appeal No. 627 *of* 1983.

23*rd July*, 1991.

Specific Relief Act (47 *of* 1963)—*S.* 12—*Suit for specific performance—Plaintiff not entitled to decree for whole of the property under the agreement—Plaintiff relinquishing his claim for that part—Averments regarding relinquishment not made in plaint—Offer of relinquishment made during trial—Validity of such offer.*

Held, that the relinquishment envisaged under S. 12 of the Specific Relief Act can be made at any stage of the suit or appeal. This interpretation is not only equitable but flows from the nature of the relief that is available to a party, who is aggrieved on account of the default of the other party on a contract. To confine a reading of the pleadings into a strait jacket and to construe them rigidly and mechanically would defeat the ends of justice and limit artificially the scope of S. 12 of the Act. It is to be borne in mind that a plaintiff seeking the benefit of S. 12 of the Act is already a substantial sufferer, inasmuch as he has agreed to take a smaller portion of the property while paying the full amount and if the Court has to hold that the pleadings must be strictly construed (where even the acceptance of a truncated portion must be pleaded in the plaint) would be to add insult to injury.

(Para 7)

DEVI DAYAL *V.* MANOHAR LAL 1982 CLJ (C & Cr.) 83.

(*OVERRULED*)

Letters patent appeal from the order of the Court of the Hon'ble Mr. Justice J. V. Gupta, dated the 31*st day of May,* 1983 *whereby reversing that of Shri H. K. Malik, PCS, Sub Judge,* 1*st Class, Zira dated* 26*th February,* 1964 *and decreeing the plaintiffs suit with costs for a sum of Rs.* 20,000 *as claimed by him in the plaint itself and further ordering that the defendant had taken under advantage of the amount of Rs.* 15,200 *paid by the plaintiff as earnest money on* 23*rd March,* 1962, *the plaintiff will be entitled to the interest at the rate of* 6 *per cent on that amount from the date of decree of trial Court till its realisation.*

Claim:—Suit for specific performance of a contract of sale of land mentioned below executed by the defendant in favour

of the plaintiffs in the alternative for the recovery of Rs. 20,000 as damages.

(A) Land measuring 305 K-15 M Khewat No. 74 Khasra No.

11M		11M		15M					
17	18	23	24	3	7	8	12	13	14
8—0	0—8	8—0	8—0	7—7	8—0	8—0	8—0	8—0	8—0

15M					20	31	42/2—0
17	18	19	22	24	4/1	18/3	
8—0	8—0	8—0	3—11	8—0	1—0	2—11	6—19

43				42		
14	15	16	17	9/2	10/1	10/2
8—0	8—0	8—0	8—0	6—3	2—10	8—12

43M									
6/1	6/2	7/1	9/2	12/1	8	6/2	7/1	9/1	2/2
1—4	3—8	0—18	1—11	6—13	8—2	3—8	0—18	6—19	2—11

14				42		43	
1	2	9	10	11	12	15	7/2
7—7	7—7	8—0	8—0	8—0	2—8	4—0	6—4

15					43M	
4	5	6	15	16	13	18
7—7	7—7	8—0	8—0	8—0	8—0	8—0

Vide *Jamabandi* 1955-56 *alongwith trees and shamlat Deh.*

(B) *House No. 77, 7M-5 Sarsahi, Vide Plan attached with the Plaint shown in red bounded as follows situated in Rataul Bet North. House of the Defdt. South : House of Kapura Singh, East: House of Natha Singh, West : House of Karnail Singh, (Jim) House No 78, 3M, I Sarsahi,*—vide *Map attached with the plaint shown as red bounded as follows; North : Ihata of Defendent. South : House of Defd. No. 77, East House of Natha Singh, West House of Hazara Singh situated in Rataul Bet, (Dal) Ihata No. 15, 18M-O Sarsahi,*

Vide *shown in the plan attached with the plaint as red. North Thoroughfare, South House of the defendant, East Kasta Street, West House of Hazara Singh situated at Rataul Bet.*

Viney Mittal, Raman Walia & Inderjit Pipat, Advocate, *for the Appellant.*

Nemo, *for the Respondent.*

JUDGMENT

Harjit Singh Bedi, J.

(1) *Vide* agreement to sell dated 23rd March, 1962 (Exhibit P.1) the defendant-respondent (hereinafter called the respondent) agreed to sell the suit property for a sum of Rs. 50,000 and obtained a sum of Rs. 15,200 as earnest money. It was stipulated in the agreement (Ex. P.1) that the sale deed was to be executed on or before 15th June, 1962, and the balance of the sale price was to be paid before the Registrar at the time of the execution of the sale deed. It is, however, alleged, that the respondent did not agree to execute the sale deed in spite of a registered notice dated 5th June, 1962 (Ex. P.4) having been served upon him. Thereafter, the plaintiff-appellant (hereinafter called the appellant) issued another notice (Ex. P.5) to the respondent and thereafter filed the present suit in which a decree for specific performance was sought and in the alternative, the appellant claimed the return of Rs. 15,200 together with Rs. 4,800 as damages, making a otal Rs. 20,000 in all.

(2) In answer to the plaint, various objections were taken by the respondent and a specific plea was raised that the Khasra numbers forming a part of the property were not the same as mentioned in the agreement Ex. P.1, and, further, that some of the Khasra numbers entered in that agreement had gone out of the ownership of the respondent and, as such, they could not be the subject-matter of sale at his instance. On the pleadings of the parties, the trial Court framed the following issues :—

1. Is the suit property the same regarding which agreement of sale took place between the parties ?

2. Did the defendant received Rs. 6,000 at the time of the agreement ?

3. Was the agreement executed under undue influence, if so its effect ?

4. Is the agreement vague, unfair and unconsciousable, if so its effect ?

5. Was not the defendant in his sense when the agreement was executed, if so its effect ?

6. Was the agreement made by mistake between the parties ?

7. Is it necessary for the plaintiff to file plan of the houses in dispute, if so has a proper plan been filed ?

8. Relief.

(3) Under Issue No. 1 the trial Court concluded that 9 Khasra Nos. mentioned in para No. 7 of the plaint which were included therein, were not the property of the respondent at the time of the execution of agreement of sale. The total area of these khasra numbers came to 46 kanals 3 marlas, whereas the property agreed to be sold,—*vide* agreement Ex. P.1 was 305 kanals 9 marlas of the agricultural land and 4 small houses measuring 1 kanal 8 marlas in area. The trial Court accordingly found that the area comprising 46 kanals 3 marlas which was roughly 1/7th share of 305 kanals 9 marlas of land did not belong to the respondent and, as such, could not be sold by him. However, the Court found that 1/7th share being a small portion of the property agreed to be sold, the appellant was entitled to a decree for specific performance on appropriate reduction of the sale price. On issue No. 2, the trial Court found that it was not possible to determine with accuracy as to the actual amount that had been paid towards earnest money. Issues Nos. 3, 4, 5, 6 and 7 were also decided against the respondent. Under issue No. 8, the trial Court granted a degree for specific performance of the suit land and houses except the area of 46 kanals 3 marlas subject to the appellant's paying Rs. 29,605 more to the respondent. Feeling dissatisfied with the same, the respondent filed an appeal before this Court and the same having been allowed, the present Letters Patent Appeal is before us.

(4) The learned Single Judge found that the respondent had no proprietory rights over the area of 46 kanals 3 marlas at the time of the execution of the agreement to sell Ex. P.1 and, as such, was

not competent to sell that particular portion. Reliance was placed by the learned Single Judge on Section 12 of the Specific Relief Act, 1963 (hereinafter called the 'Act') to hold that if the appellant was to succeed in the suit for specific performance of the area agreed to be sold minus the area of 46 kanals 3 marlas, then it was for him to specifically plead in the plaint that he was willing to accept the truncated area on the full agreed sale price and in the absence of these pleadings, a decree for specific performance could not have been ordered in his favour. It was also noticed by the learned Single Judge that when confronted by the above situation, counsel for the appellant stated at the Bar that his client was prepared to make the statement that his claim be deemed to be relinquished qua 46 kanals 3 marlas and a decree be passed accordingly. The learned Single Judge, however, found that such a relinquishment at the stage of appeal could not be accepted as at the time of filing of the suit, it was clear to the parties that the area of 46 kanals 3 marlas was not available to be sold as it did not belong to the respondent. It was also held by the learned Single Judge that it was obligatory on the part of the appellant to plead at the stage of the filing of the suit that he was prepared to relinquish his claim as aforestated and having failed to do so, no decree for specific performance could be ordered out of the agreement Ex. P.1.

(5) We have heard Mr. Viney Mittal, learned counsel appearing for the appellants, who has based his claim on the interpretation of Section 12 of the Act. Section 12, in so far as is relevant, is reproduced hereunder :

"12. Specific Performance of part of contract :—

(1) Except as otherwise hereinafter provided in this section, the Court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance, of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either —

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party —

(i) x x x x
x x x x x.

(ii) in either case, relinquishes all claims to the performanance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) x x x x
x x x x
x x x x x.'

A reading of the aforesaid section provides various situations where the parties to the agreement are not in a position to execute or have defaulted in the execution of the contract on the complete and full terms as set out in the agreement and sub-clause (ii) of sub-section 3 of Section 12 specifies that a decree for a specific performance can be obtained where the plaintiff relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation or damage sustained by him through the default of the defendant. The question that would arise for determination in the present case is as to the stage at which the relinquishment has to be made by the plaintiff and in what form. As already mentioned above, the learned Single Judge found that no plea in terms of Section 12 of the Act having been raised in the plaint, the relinquishment at the stage of argument before him was not tenable. It was argued before us by the learned counsel for the

appellant that the relinquishment envisaged under section 12 of the Act could be made at any stage of the suit or in appeal and no formal application or pleading to that effect was necessary. He relied upon *Waryam Singh* v. *Gopi Chand* (1), *Kalyanpur Lime Works* v. *State of Bihar* (2), and *Balmukand* v. *Kamla Wati* (3). He also brought to our notice a Single Bench decision of this Court reported as *Devi Dayal* v. *Manohar Lal* (4), which was pitted against him but argued that in view of the aforementioned judgments this was wrongly decided and required to be overruled.

(6) We have gone through the judgments cited with the help of the learned counsel for the appellant and find that the arguments raised by him on the question of the applicability and scope of section 12 are of substance. An identical matter came up before the Lahore High Court in Waryam Singh's case (supra) in which interpretation of section 15 of the Specific Relief Act, 1877 (corresponding to section 12 of the Act) was specifically involved. In that case also a prayer was made before the trial court by way of an application that the Court should direct the defendant who was in default to execute the sale deed in respect of the portion of the agricultural land which belonged to them as the plaintiff had expressed their willingness and also made a prayer in the memorandum of appeal that they were willing to relinquish the claim with regard to the balance land. The Court found as under :

> "I cannot find anything in Section 15, Specific Relief Act, or any other provision of the law limiting action under Section 15 to any particular stage of the proceedings. It seems to me that it is open to the plaintiff to relinquish his claim to any part of the property in suit on the conditions specified in Section 15, *at any time before the suit is finally decided by the Court of appeal.* In the present case the prayer appears to me to be perfectly just and reasonable and I can see no valid reason to refuse to accede to it. The plaintiffs have actually performed the contract in the main and have expressed their readiness and willingness to perform what still remains to be done by them."

(1) A.I.R. 1930 Lahore 34.
(2) A.I.R. 1954 S.C. 165.
(3) A.I.R. 1964 S.C. 1385.
(4) 1982 C.L.J. (C&Cr) 83.

The passage quoted above was approved by the Supreme Court in Kalyanpur Lime Works' case (supra) in the following terms :

> "This statement only shows that the Lime Company initially put forward its claim to full specific performance under section 18, but in the alternative confined it to the period from 1st April, 1949 to 31st March, 1954, with compensation. The last portion of the application, however, leaves no doubt whatever that all claims to further performance were relinquished and compensation period to 1st April, 1948 was also given up. The plaintiff's learned counsel has asked for that relief in the course of his arguments and he has made it clear that he insists on no further performance, nor does he claim any compensation for any period prior to the execution of the leases. Relinquishment of the claim to further performance can be made at any stage of the litigation. See *Waryam Singh* v. *Gopi Chand* AIR 1930 Lah 34(B). We think, therefore, that subject to what we are going to say on the last point, the plaintiff can claim relief under section 15 of the Specific Relief Act."

(7) From a reading of the above-quoted passage it is clear that the Lahore High Court as also the Hon'ble Supreme Court have pointedly held that the relinquishment envisaged under Section 12 of the Act can be made at any stage of the suit or appeal. We find that this interpretation is not only equitable but flows from the nature of the relief that is available to a party, who is aggrieved on account of the default of the other party on a contract. We find that to confine a reading of the pleadings into a strait jacket and to construe them rigidly and mechanically would defeat the ends of justice and limit artificially the scope of Section 12 of the Act. It is to be borne in mind that a plaintiff seeking the benefit of Section 12 of the Act is already a substantial sufferer, inasmuch as he has agreed to take a smaller portion of the property while paying the full amount and if the Court has to hold that the pleadings must be strictly construed (where even the acceptance of a truncated portion must be pleaded in the plaint) would be to add insult to injury. We have considered the other two judgments cited before us i.e. Balmukand's case and Devi Dayal's case (supra). The question as to the stage at which the relinquishment can be made was not specifically raised before the Supreme Court in Balmukand's case (supra). In Devi Dayal's case the question was specifically raised

but the judgments reported as Waryam Singh's case and Kalyanpur Lime Works' case (supra) were not cited before the learned Single Judge. We, therefore hold that the relinquishment under Section 12 of the Act can be made at any stage of the suit or appeal and it is not necessary to incorporate the plea specifically in the pleadings.

(8) In view of what has been stated above, we are of the opinion that the judgment of the learned Single Judge in Devi Dayal's case does not lay down the correct law and the same is accordingly overruled. Having held in favour of the appellant on the question of law posted before us we now come to the facts of the case and find that the present case is one in which a decree for specific performance should not be granted. It has been repeatedly held that a decree for specific performance is a discretionary relief and section 20 of the Act specially provides that the Court is not bound to grant this relief in all cases. It is to be borne in mind that the suit was filed by the appellant in the year 1962, wherein no prayer for relinquishment was made. The matter was decided by the learned Single Judge on May 31, 1983, and it was for the first time before him that the prayer for relinquishment *qua* claim of 46 kanals 3 marlas was made. We, are, therefore, of the view that by the efflux of time and on the basis of default committed by the appellant, he has forfeited his right to the discretionary and equitable relief of specific performance.

(9) Mr. Mittal has cited *Prakash Chander* v. *Angadlal and others* (5), in order to contend that a decree for specific performance is the rule and its refusal an exception. We are of the view that the aforesaid judgment is based on a totally different set of facts. The learned Single Judge had, however, thought it fit to grant a decree to the appellant for a sum of Rs. 20,000 in view of the alternative prayer made by him in the suit. Certain amounts towards payment of interest have also been permitted by the learned Single Judge. These benefits are also maintained by us in the present appeal.

(10) With the observations made above, the present Letters Patent Appeal is dismissed, but with no order as to costs.

S.C.K.

(5) A.I.R. 1979 S.C. 1241.