

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1030 of 2009 (O&M)

Date of Decision: October 01, 2015

Mangat Ram & another

...Appellants

Versus

Satish Chand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Vishwajeet Singh, Advocate,
for Mr.Keshav Pratap Singh, Advocate,
for the appellants.

Mr.J.S.Hooda, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present Regular Second Appeal is to the impugned judgment and decree dated 6.8.2003 of the Lower Appellate Court , whereby the suit for specific performance of the agreement to sell dated 24.10.1991, has been decreed and the appellant-defendants have been called upon to execute and register the sale deed on receipt of the balance sale consideration within a period of two months from the date of the judgment and decree.

Mr.Vishwajeet Singh Advocate for Mr.Keshav Pratap Singh,
Advocate, appearing on behalf of the appellant-defendants submits that the

trial Court, on the preponderance of the evidence, dismissed the suit, whereas the Lower Appellate Court not only misdirected, but committed an illegality and perversity in decreeing the suit for the reason that the respondent-plaintiff had filed a suit for permanent injunction in the year 1996 against the appellant-defendants on the basis of some family settlement vis-a-vis seeking a restraint for not interfering into his peaceful possession. During the subsistence/pendency of the previous suit, the present suit bearing No.83 dated 6.6.1998 was filed taking the complete somersault by setting-aside the agreement to sell dated 24.10.1991. The previous suit was withdrawn on 14.9.1998.

In view of the amendment caused in the Civil Procedure Code by the Punjab Government w.e.f. 15.3.1991 in Order 7 Rule 1, sub-clause (j) has been introduced, wherein it has been specifically mentioned that no suit between the same parties, or between the parties under whom they or any of them claim or had been litigating on the same grounds in the previously instituted suit, or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results.

He further submits that in case the agreement to sell did not envisage any target date, much less, any contingency as to how and when or on account of which act the cause of action would accrue in favour of the vendee to seek the specific performance, therefore, the suit filed in the year 1996 was, *ex-facie*, time barred, much less, hit by the provisions of Order 2 Rule 2 CPC as in case there was a breach on the part of the appellant-defendants, nothing prevented the plaintiff to seek the specific performance.

Mr.J.S.Hooda, learned counsel appearing on behalf of

respondent No.1 submits that there is no illegality and perversity in the judgment and decree rendered by the Lower Appellate Court. The Lower Appellate Court, being the last court of fact and law, has appreciated the evidence and exercised the discretion under Section 20 of the Specific Relief Act. He further submits that the dispute is between the brothers and the plaintiff is willing to part with the money and get the sale deed executed and registered. It is the defendants, who have turned dishonest as the prices of the property have increased manifold.

I have heard the learned counsel for the parties and appraised the paper book.

Noticing the contentions/rival contentions of the parties, aforementioned, the undisputed facts are that the respondent-plaintiff had instituted a suit for permanent injunction in the year 1996. The same was withdrawn on 14.9.1998, i.e., during the pendency of the present suit bearing No.83 dated 6.6.1998. The provisions of Order 7 Rule 1 (j) were not complied with. The parties in the previously instituted suit and the present suit were/are the same. In case the plaintiff had any grievance with regard to the non-performance of an act by the appellant-defendants, he could have easily sought the specific performance of the agreement to sell in the year 1996 as the agreement to sell is of 1991. The plaintiff had, in the previously instituted suit, set up a family settlement and did not disclose about the existence of the alleged agreement to sell. Such assiduous act on the part of the plaintiff, in my view, would not entitle him a discretion under Section 20 of the Specific Relief Act. There is no observation of the trial Court for the refund of the earnest money. A plain language of the provisions of Order

2 Rule 2 CPC leaves no manner of doubt that a party, which has omitted to claim a relief owing to accrual of cause of action, cannot be permitted to seek the same subsequently. Plaintiff was not prevented to seek the specific performance in the year 1996 when the suit for permanent injunction was filed. It is not a case where the date for execution and registration of the sale deed had not reached. The plaintiff was prevented from seeking the specific performance as he would have faced the wrath that the suit was prematurely instituted.

In my view, the findings rendered by the Lower Appellate Court are not sustainable as the aforementioned facts have gravely been ignored, much less, appreciated.

Keeping in view the aforementioned observations, following substantial questions of law would arise for determination by this Court:-

- 1) Whether the suit for specific performance filed by the plaintiff confirms the requirement of Order 2 Rule 2 and Order 7 Rule 1(j) of CPC?
- 2) Whether the plaintiff is estopped by his own act and conduct in view of his non mentioning of earlier litigation in which claim on the basis of family settlement was alleged and now, after having been withdrawn the same, has come on the basis of agreement to sell?

The aforementioned findings of mine squarely fall within the substantial questions of law framed and, therefore, the impugned judgment and decree passed by the Additional District Judge, Faridabad reversing the well reasoned judgment and decree of the trial Court dated 31.1.2002 passed

by the Civil Judge (Junior Division), Palwal suffers from illegality and perversity and is hereby set-aside. Accordingly, the questions of law are answered in favour of the appellant-defendants and against the respondent-plaintiff.

The appeal accordingly stands allowed.

October 01, 2015
ramesh

(AMIT RAWAL)
JUDGE