IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.5192 of 2012 (O & M)
Date of Decision: *December 07, 2015*

Narain Singh & another

..... APPELLANTS

VERSUS

Kartar Singh & others

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Mr. B.S. Mann, Advocate, for the appellants.

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Jaspal Singh, J

1. The instant appeal has been preferred by plaintiffs, challenging judgment and decree dated June 10, 2009 passed by the trial court as well as judgment & decree dated August 18, 2012 passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiffs against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for execution and registration of sale deed on the basis of agreement to sell dated March 20, 2007, has been dismissed while holding that since the suit is barred by limitation, alternative relief for refund of earnest money alongwith interest cannot be granted to the plaintiffs.

2. While assailing the findings returned by the trial court on all the issue Nos.3 to 7 and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. It is an undisputed fact that the appellants – plaintiffs purchased the 1 ½ share each in the property measuring 45 kalan 13 marlas from Inder Singh for a sale consideration of ₹ 6,000/- vide registered sale deed dated 2477/1 dated December 28, 1966. They purchased the remaining half share owned and possessed by Gurcharan Singh (since deceased) for a sum of ₹ 10,000/-. The sale consideration was paid and a writing i.e. agreement to sell –cum- receipt dated March 20, 1970 was reduced into writing in favour of appellants – plaintiffs in the presence of respectables of the village. Thus, appellants – plaintiffs became owner and in exclusive possession of 45 kanal 13 marlas, and they have been in continuous possession of the property in suit without any interruption from the side of the defendants. However, sale deed on the basis of agreement to sell –cum- receipt dated March 20, 1970 could not be executed and registered as defendant Gurcharan singh did not come present to execute and get sale deed registered in terms of agreement to sale dated March 20, 1970 and kept on putting off the matter on one pretext or the other. When defendant Gurcharan Singh flatly refused to execute and get sale deed registered in favour of the plaintiffs in terms of aforesaid agreement to sell – cum – receipt Ex.P1, appellants – plaintiffs were constrained to approach the civil court by way of filing a suit for specific performance. Learned trial court has illegally and without any cogent and convincing reasons has declined the decree for specific performance. It is well settled proposition of law that when execution of the agreement to sell

is proved, it follows the decree for specific performance but in the case in hand, learned trial court has declined the relief of specific performance on flimsy grounds. Even the lower appellate court did not take into consideration the fact that on the basis of agreement to sell –cum- receipt, the appellants – plaintiffs have become owners who are otherwise in continuous possession of the same since 1970. The possession was also delivered at that time which was incorporated in the revenue record. Moreover, the mere fact that sale deed has not been got executed and registered does not *ipso facto* mean that plaintiffs are not entitled to get the decree for specific performance, especially when they are in possession of the disputed property under Section 53-A of the Transfer of Property Act, 1882 (for short, 'TP Act') i.e. part performance of the agreement to sell Ex.P1.

3. Learned counsel for the appellants further contends that suit of the plaintiffs is also within limitation from the date of their knowledge. They only came to now from the villagers when someone had been enquiring about the price of the suit land. Moreover, defendant – respondent Gurcharan Singh, during his life time, never agitated or refused to execute the sale deed. He also did not execute any writing, title or interest in the suit land after execution of the agreement to sell –cum- receipt dated March 20, 1970. Even the appellants – plaintiffs are not aware of the death of defendant – respondent and only came to know about the same from the report on the summons issued by the court to him. Thus, the impugned judgments & decrees are not sustainable in the eyes of law and deserve to be set aside by way of acceptance of the appeal and suit of plaintiffs merits decretal in toto, that too, with special costs.

4. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellants but find the same to be without any legal and factual substance.

5. No doubt agreement to sell –cum- receipt dated March 20, 1970 (Ex.P1) is proved on record. There is nothing on the record to suggest that plaintiffs have been ready and willing to perform their part of agreement. Admittedly, plaintiffs never approached Gurcharan Singh during his life time with the request to get the sale deed executed and registered in their favour. Though, during the course of arguments, learned counsel for the appellants has contended vehemently that appellants – plaintiffs came in possession of the suit property in part performance of the agreement to sell Ex.P1 in the year 1970 but this contention is not at all established on record. Even the appellants – plaintiffs are not aware about the death of Gurcharan Singh. No notice was also issued to Gurcharan Singh during his life time asking him to get the sale deed executed and registered in their favour.

6. Here, it would be pertinent to mention that Gurcharan Singh was taken away by nature in the year 1999 and the suit was filed seeking specific performance by the appellants – plaintiffs on February 26, 2002 i.e. after a period of three years of death of Gurcharan Singh. It is also important to note that in the plaint, plaintiffs have alleged that they approached Gurcharan Singh about a year back when he refused to get the sale deed executed and registered in their favour. The said contention of the plaintiffs is unacceptable simply on the ground that defendant had already expired in the year 1999. Thus, question of approaching him a year prior to filing of suit does not arise. Similarly, there is nothing on the record to suggest that the appellants – plaintiffs ever came into possession of the suit property owned and possessed by Gurcharan Singh in part performance of agreement

to sell Ex.P1. From the close scrutiny of the documentary evidence, it is evident that Gurcharan Singh and plaintiffs have been recorded to be in joint possession of the property to the extent of 1 ½ share each. There is nothing on the record to show that plaintiffs ever came in exclusive possession of the property in question. They can be said to be, indeed, owner to the extent of 1 ½ share which has been purchased by them vide sale deed dated December 28, 1986 from Inder Singh.

7. It is also pertinent to mention here that suit of the plaintiffs also cannot be said to be within limitation. Though, it has been averred by the appellants – plaintiffs that suit has been filed by them within 3 years from the date of refusal of Gurcharan Singh to get sale deed executed and registered but is absolutely against the evidence on file. The suit for specific performance is governed by Section 54 of the Limitation Act. In the case in hand, the time is not the essence of the contract. The agreement to sell Ex.P1 is dated March 20, 1970 but the suit was filed in the year 2002 i.e. after expiry of a period of more than three decades. In such a situation, it cannot be said that the court can exercise its discretionary jurisdiction under Section 20 of the Specific Relief Act. Moreover, in the case in hand, defendant No.2 stands proved to be a bonafide purchaser of the suit land for the value consideration without any adverse title or notice. Mutation of inheritance of Gurcharan Singh was incorporated and sanctioned in favour of his sister Tej Kaur who transferred the suit land vide registered sale deed in favour of Amarjit Kaur, defendant No.2. Neither Tej Kaur nor Amarjit Kaur were aware of the pendency of the suit for specific performance on the aforesaid date. It would not be out of place to mention here that Amarjit Kaur was impleaded as party to the present suit on August 16, 2003 whereas Tej Kaur was brought on record as the legal heir of Gurcharan Singh in the month of

September 2002. The revenue record depicts Tej Kaur to be owner in possession of the suit land. Thus, without any hesitation, it can be said that defendant No.2 stands protected under Section 41 of the TP Act. Taking into consideration, the case of plaintiffs from any of the angles, this Court is of the considered view that the appellants have failed to establish that suit is within limitation and further that, they had been ready and willing to perform their part of agreement. The suit has been rightly dismissed by the trial court which has also been upheld by the lower appellate court.

8. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts below. Consequently, impugned judgments & decrees passed by both the courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

(Jaspal Singh)
Judge

December 07, 2015
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