

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.4409 of 2013 (O&M)

Nachhattar Singh

... Appellant

Versus

Nachhattar Singh and another

... Respondents

2. RSA No.4414 of 2013 (O&M)

Nachhattar Singh

... Appellant

Versus

Gurnaib Singh and others

... Respondents

Date of Decision: 20.07.2015

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashish Verma, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This order will dispose of RSA # 4409 of 2013 titled Nachhattar Singh vs. Nachhattar Singh and another & RSA # 4414 of 2013 titled Nachhattar Singh vs. Gurnaib Singh and others as common questions of law and fact are involved and both the appeals are thus decided by a common judgment. Reference to facts is from RSA # 4409 of 2013.

The only two issues raised in this appeal by the defendant against whom the suit for specific performance stands decreed by the both the

courts below are firstly, that the defendant still remains in possession of the suit property and secondly, there was a delay of 9 years on the part of the plaintiff vendee in bringing the suit in the year 1999 while the sale agreement was executed between the parties on May 25, 1990. Though the sale agreement has not been placed on the record of the paper book but the learned counsel has supplied a copy and read out in court the single page document written in the Punjabi language from where it is confirmed that the when the sale agreement was executed, the entire sale consideration of Rs.17,000/-agreed upon had been paid to the vendor by the vendee and nothing remained in balance.

On a reading of the contents of the sale agreement, it is apparent that no date was fixed in it for registration of the sale deed and this, obviously, was for the reason that the entire sale consideration have been paid on the agreement. In the face of this covenant both the courts below have rightly held that time was not the essence of the contract since no date was agreed upon or specified in the agreement and thus registration of the sale deed remained a continuing obligation on the vendor which was not curtailed by time. Therefore, the court of first appeal found that the suit was within limitation, the cause of action being a continuing one. Moreover, the suit was filed soon after the legal notice dated February 02, 1999 (Ex.P-13) was served upon the defendant calling upon him to come forward to execute the agreement in the registration office. The receipt of which notice could not be refuted by producing evidence to the contrary.

Thus, the so called delay could have become a relevant factor in declining discretionary relief, even if prices of similar property had risen

steeply during the long interregnum. Even if the defendant was a defaulter or not in performing his part of the contract in the office of the Sub Registrar to facilitate the registration of the sale deed, which is not the case, even then relief was admissible to plaintiff in the facts and circumstances, the total amount having been paid to the common seller. But this, if it were to happen, would have postulated that a target date is agreed upon and has been skipped by default by the intending seller.

If the appellant claims he has remained in possession of the suit property and physical possession was not delivered to the vendee despite his assertion in the plaint that possession was given on the spot on the date of the agreement even then I do not think this has a material bearing affecting the merits of the case. Possession or not possession, the trial court was called upon to adjudicate whether discretionary relief of specific performance ought to be granted or not in a case of the present kind.

Learned counsel informs that the sale agreement comprises corpus of 10 Marlas of land in the present appeal and 2 Kanals in the accompanying appeal i.e. RSA # 4414 of 2013.

In the connected appeal also the entire amount of sale consideration stands paid up front on the date of the agreement itself and, therefore, both the appeals fall within the same parameters of determination on facts and on law.

The court of first appeal has re-appreciated the evidence adduced by the parties on record and has taken a view on the material available that the suit deserves to be allowed which cannot by any stretch of imagination be classed as improbable on the oral and documentary evidence discussed.

I find no merit in this appeal warranting interference in the second appeal side and would dismiss both the appeals. Since the appeals have been dismissed, the pending applications, if any, also stand disposed of.

**(RAJIV NARAIN RAINA)
JUDGE**

20.07.2015
manju