

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2262 of 2015 (O&M)
Date of Decision: May 25, 2015

Ramesh Chander

...Appellant

Versus

Punjab State Agricultural Marketing Board and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.K.Gupta, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Ramesh Chander has filed this regular second appeal against Punjab State Agricultural Marketing Board and Marketing Committee, Pathankot respondents-defendants challenging the impugned judgment and decree dated 12.10.2011 passed by learned Addl. Civil Judge (Senior Division) Pathankot vide which the suit filed by the plaintiff for specific performance of agreement of sale/confirmation of auction was dismissed and also the judgment and decree dated 06.02.2015 passed by learned Addl. District Judge, Pathankot vide which the appeal filed by the appellant-plaintiff was also dismissed.

The brief facts of the case are that plaintiff-appellant Ramesh Chander filed a suit against defendants-respondents Punjab State Agricultural Marketing Board and Marketing Committee,

Pathankot for specific performance of agreement of sale/confirmation of auction conveyed through letter No.4416 dated 19.03.1993 sent by defendants by which the defendants confirmed the sale and receipt of 1/4th of the sale consideration of ₹1,47,000/- and agreed to issue allotment letter in respect of land measuring 10 marlas with room and well as described in the headnote of the plaint and suit for recovery of ₹92,000/- i.e. ₹36,750/- paid as earnest money plus ₹55,250/- towards interest.

The case of the plaintiff is that defendants sold the land measuring 10 marlas in open auction on 16.03.1993 and plaintiff gave highest bid of ₹1,47,000/- and declared the successful bidder and as per the terms of the sale, he deposited ₹36,750/- with defendant No.2 being 1/4th of the total sale price. The defendants confirmed the sale by auction for a consideration of ₹1,47,000/- vide letter No.4416 dated 19.03.1993 issued by Secretary, Market Committee, Pathankot. Plaintiff approached time and again to release the allotment letter but of no avail. Plaintiff served notices dated 29.08.1996 and 17.05.1999. Defendant No.2 vide letter dated 30.03.1993 requested the Executive Engineer to assess the market rate of the property. Another letter dated 12.04.1993 was sent by defendant No.2 to defendant No.1 seeking approval of the sale by auction. Defendant No.2 sent further letter dated 26.10.1993 to defendant No.1 with a request to accord approval, so that remaining amount may be received. The matter regarding transfer of the property was kept pending from 19.03.1993. Plaintiff offered to deposit remaining amount with the defendants

through written request dated 12.08.1998. Plaintiff earlier filed a civil suit, in which Kewal Krishan, Accountant of the defendants made statement in the Court of Addl. Civil Judge, Pathankot. It is further stated that after withdrawal of the earlier suit, the defendants acted with close mind and cancelled the auction and informed the plaintiff vide letter dated 17.11.2006. The plaintiff again sent notice to defendants to execute the sale deed.

On the other hand, the case of the defendants is that plaintiff has concealed the material facts from the Court. Plaintiff filed a suit for mandatory injunction against the defendants on 04.12.1999 and the same was withdrawn in the Lok Adalat on 03.06.2000. Suit is time barred. The plaintiff has also not challenged the order of Punjab State Agricultural Marketing Board dated 12.07.2000 in the previous suit. The suit is barred by principle of res-judicata. Suit is barred under Order 23 Rule 3 CPC. It is admitted that defendant No.2 also held an open auction for sale of plot with the permission of defendant No.1 and plaintiff participated in the auction and being highest and successful bidder, he deposited ₹35,750 with defendant No.2. It is further admitted that when the auction was not approved by defendant No.1, the plaintiff during the pendency of the previous suit, made representations to defendant No.1 to give approval. The statement was given by Kewal Krishan, Accountant. Mandi Board has rejected the approval vide order dated 12.07.2000.

Plaintiff examined himself as PW-1 whereas defendants examined DW-1 Bishan Dass.

Learned Addl. Civil Judge (Senior Division) Pathankot, after appreciating the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 12.10.2011. An appeal was filed by the plaintiff before learned District Judge, Pathankot and the appeal was also dismissed by learned Addl. District Judge, Pathankot vide judgment and decree dated 06.02.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

At the time of arguments, learned counsel for the appellant argued that the findings given by the Courts below are not as per law and evidence. He argued as per the case of the plaintiff.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the findings given by the Courts below are concurrent. Both the Courts have appreciated the evidence in right perspective. No evidence has been misread. The findings are as per evidence on record and law. No substantial question of law arises in this regular second appeal. It is admitted fact that auction has taken place on 16.03.1993. As per the plaint, plaintiff served notice first time on 29.08.1996 and then on 17.05.1999. It is clear from the record that approval was not given by the defendant-Punjab State Agricultural Marketing Board vide order dated 12.07.2000. The plaintiff has nowhere challenged this order dated 12.07.2000 in this suit. Again, plaintiff has been conveyed vide letter dated 17.11.2006 regarding cancellation of the auction as per the case of the plaintiff

himself. This suit has been filed in the year 2006. Nowhere any declaration has been sought against these orders. The plaintiff has simply filed suit for specific performance of the agreement to sell dated 19.03.1993. This suit has been filed after about 13 years and the suit is clearly time barred.

Further, I find that the first suit has been withdrawn by the plaintiff in the Lok Adalat on 03.06.2000 as stated by the defendants. Learned counsel for the appellant argued that appellant-plaintiff again filed a suit, which was also withdrawn by making a statement. The withdrawal of the suit, even with the permission of the Court, will not extend the period of limitation. The present suit is clearly time barred. The cancellation orders have not been challenged. This plea regarding specific performance has not been taken in the first suit, which was filed for mandatory injunction.

In view of above facts, I find that the findings given by both the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. Moreover, no substantial question of law arises in this present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 25, 2015
Vgulati

(INDERJIT SINGH)
JUDGE