

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.2530 of 2015 (O&M)

Date of decision: 28.7.2015

Gurdev Singh

... Appellant

Versus

Jora Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagdish Manchanda, 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 is plaintiff's second appeal against the judgment and decree of the learned Civil Judge, Junior Division, Rajpura dated 3rd September, 2014 and the appellate decree dated 23rd February, 2015 passed by the learned Additional District Judge, Patiala.

2. The plaintiff instituted a suit on 19th December, 2008 for possession by way of specific performance of an agreement to sell dated 18th May, 1993. In the alternative, the prayer was for recovery of ₹ 34,000/- and ₹ 29,000/- paid in advance towards earnest money and ₹ 5,000/- on account of damages etc. with interest @ 18% per annum till realization by deducting the amount of ₹ 5,000/- already paid. The suit was dismissed qua specific performance and instead the alternative prayer has been granted refunding ₹29, 000/-.

3. In order to cover up the inordinate delay in presentation of the suit, the plaintiff pleaded that it was only on 5th December, 2008 that he

came to know on obtaining a copy of the Jamabandi of the suit land that mutation of inheritance has been sanctioned in the name of the defendant despite a covenant in the sale agreement that execution of the sale deed was dependent on a contingency of defendant becoming owner of the suit property over which he had no rights on the date of making contract. The contract breached, the plaintiff called upon the defendant to admit his claim which met refusal and led to the lawsuit. Learned trial court found no clarity in the pleadings in the plaint explaining delay as to how and from where the plaintiff gained knowledge of the mutation of inheritance recorded in the Jamabandi or why he woke up so late. The mutation of inheritance was sanctioned in the defendant's name in the year 2000. The trial court has held the suit to be hopelessly time barred. However, while declining the discretionary relief of specific performance, learned trial Judge granted the alternative relief of recovery of money to the extent of ₹ 29,000/- from the defendant @ 12% per annum from the date of filing of the suit till the passing of the decree with 6% per annum interest from the date of decree till its actual realization.

4. Aggrieved by the order of the court of the learned Civil Judge, Junior Division, Rajpura, both the parties appealed to the court of learned Additional District Judge, Patiala. The plaintiff again pressed for grant of specific performance of contract by setting aside of the partial decree granting alternative relief by refund payment of ₹ 29,000/- with interest while on the other hand the defendant argued for maintaining the judgment of the court of first instance. Both the appeals have been decided by a common judgment dated 23rd February, 2015 from which the present appeal arises preferred by plaintiff Gurdev Singh. The suit has been decreed by

granting specific performance.

5. The facts are that the agreement to sell did not stipulate any date for execution of the agreement and registration of the sale deed which was kept open since on the date of signing the agreement the defendant was not a declared owner of the property and had no right to sell it but it was provided in the agreement that when he is declared owner, then the defendant would come forward and notify the plaintiff and get the sale deed executed. Therefore, in the absence of any stipulation fixing target date in the agreement time was not the essence of the contract. When the mutation of inheritance was sanctioned in the year 2000 in favour of defendant Jora Singh, he failed to give notice to the plaintiff for getting the sale deed registered and, therefore, the court of first appeal reversed the findings of the trial court on issue No.6 with respect to limitation and held that the suit was within limitation as it was of the view that limitation would run from the failure to notify the contingent event when impediments were removed from the way. This was pegged down to mean the date ascribed by the plaintiff when he exercised due diligence of search of revenue record in the Patwar office.

6. The appeal court found that as per jamabandi for the year 2003-04, defendant-Jora Singh was owner of 16½/340 share whereas he had entered into an agreement to sell land comprised in Khasra No.378 Min [1-0] and now the land has been mutated in favour of Jora Singh and his brothers. There is no doubt that due execution of the agreement to sell has been proved on record and the sale consideration of ₹ 29,000/- passed into the pockets of Jora Singh. The opinion of the Handwriting and Fingerprint

Expert supported the other evidence and the finding that the agreement was

a genuine one. However, unlike the trial court, the first appeal court has not gone into the question of undue hardship to the defendant or whether the discretionary relief of specific performance ought to be granted in a suit filed in 2008 against an agreement to sell executed in 1993. The trial court went into the question with the help of case law and returned an opinion based finding that performance of the present contract would involve such a hardship on the defendant as he did not foresee whereas its non-performance would not involve such hardship on the plaintiff. It was for this reason that alternative relief of recovery of ₹ 29,000/- was granted.

7. I think the trial court did not fall in error and rather was fair and equitable in exercise of its jurisdiction and judicial discretion in denying specific performance. The finding of the trial court that the suit was barred by time and the upsetting of which finding by the lower appellate court raises sufficient doubt in my mind as to the correctness of the findings of the learned Additional District Judge, Patiala that the suit was within limitation. The finding of the trial court was reversed. The lower appellate court placed far too much weight on the plea that almost everything depended on Jora Singh being declared owner of the property paving the way for specific performance. Indisputably, the property came to the defendant from his forefathers and was ancestral in nature which was the impediment as succession had not opened in the year 1993. If the defendant failed to serve notice on the plaintiff when his rights in the property were vested, then mutation of inheritance was sanctioned in the year 2000 and even then the plaintiff waited for an unexplained delay of 8 years in presenting the suit. Plaintiff appears to have sat on the fence failing to act promptly as prudent person might. In matters of discretionary relief where

time is not the essence of the contract, the court can well read principles of reasonable time in pursuit of actionable rights. Mutations of inheritance are notice to public and a declaration of rights and constitute sufficient measurement of due diligence as starting points of the beginning of the rigour mortis of limitation setting in extinguishing the remedy. Fifteen years of inactivity of plaintiff and eight years after sanctioning of mutation of inheritance waiting for the go ahead sing is sufficiently long time in passing for the Court not to issue a decree of possession by way of specific performance since the relief lies in domain of equity. Equity is fairness and reigns over all the law but it does not give in to the regime of law where law is absolute but where law is not absolute then equity itself becomes the remedy and the prescription. It would be wholly inequitable to grant relief to the plaintiff except what has been granted by the learned trial court. There is nothing on record to assure this Court that the plaintiff was diligent in keeping abreast of his rights by corresponding with the defendant to disclose the status of his rights in the suit property and whether the clouds had passed and the picture was clear. If the plaintiff slept over his rights for far too long, then I think that limitation had set in more or less by the year 2008 when the suit was presented and therefore the suit appears to me to be time barred. I would rather go with the trial Judge on the point. In the totality of the fact and circumstances obtaining from 1993 to 2008 the gaps appear wide enough not for the Court to step over and avoid a free fall.

8. It would be wholly inequitable not to interfere in this matter against the appellate decree. The appellate decree is not liable to be interfered with as no substantial error of law or fact is present therein or reflected in the record. I would take the whole that the suit was barred

without any valuable evidence as to what the plaintiff was doing all this while. In this, it matters little that the execution of the agreement and the readiness and willingness on the part of the plaintiff to perform his part of the contract is proven.

9. Mr.Jagdish Manchanda appearing for the plaintiff relies on three decisions of the learned Single Judge of this Court in **Ram Lal v. Sunil Kumar**; 2010 Legal Eagle (P&H) 1890, **Vijay Kumar v. Rakesh Kumar and others**; 2010 Legal Eagle (P&H) 3787 and **Swaran Singh v. Swaran Kaur and others**; 2004 Legal Eagle (P&H) 28. None of these three cases presents the angular features of this Court where great distances are involved to do reasonable acts and things in relation to the agreement to sell. In **Swaran Singh's** case [supra] Court relied on the well settled proposition of law that in a suit for specific performance of an agreement with respect to sale of immovable property, the normal rule is to allow the specific performance and it is only in rare circumstances that the said relief can be denied and deviation from this normal rule may give rise to a substantial question of law. Though the principle may guide courts but then I fail to see any close resemblance of that ruling on its facts with the proven facts of this case and therefore the case is clearly distinguishable.

10. For the foregoing reasons, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 28, 2015
Paritosh Kumar