IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.1479 of 2014 (O&M)
Date of decision: 19.08.2015

Jaswinder Singh

….. Appellant

versus

Dr.Manjit Singh and another

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Kulbhushan Raheja, Advocate for the appellant
Mr.Anil Kshetarpal, Senior Advocate with
Mr.Saurabh Garg, Advocate for respondent No.1
Mr.Ramandeep Singh Pandher, Advocate
for respondent No.2

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh, J. (Oral)

Impugned in this regular second appeal is the judgment dated 28.11.2013, passed by the learned Additional District Judge (Fast Track Court), Ludhiana, affirming that of learned Civil Judge, Junior Division, Ludhiana dated 14.8.2012, whereby the suit of the plaintiff for specific performance of the agreement to sell was dismissed.

Brief facts of the case required to be noticed for the purpose of the disposal of the appeal are that according to the plaintiff, defendant No.1 being the allottee of plot No.705-1, measuring 250 square yards, situated at BRS Nagar, Ludhiana from defendant No.2 – Ludhiana Improvement Trust, agreed to sell the same to the plaintiff through agreement, executed in May 1978 (no date is mentioned). As per terms and conditions of the said agreement, plaintiff paid Rs.8856.64 to defendant No.1 as full and final payment. Plaintiff agreed to deposit the remaining installments of the plot with defendant No.2- Ludhiana Improvement Trust. In the part performance of the agreement, defendant No.1 handed over the vacant possession of the said plot to the plaintiff and delivered all the original documents of allotment and payment receipt. Since then plaintiff is in lawful possession of the said plot. The remaining installments were paid by the plaintiff to defendant No.2. Defendant No.1 was to first get the sale deed executed from defendant No.2- Ludhiana Improvement Trust and thereafter he was to execute the sale deed in favour of the plaintiff. But despite repeated requests defendant denied to comply with the said conditions and failed to execute the sale deed. Plaintiff accordingly served legal notice on 18.5.2006 upon the defendant. Reply thereto was sent by defendant No.2 on 29.9.2006. Another reminder was sent on 22.3.2007 and again defendant No.2 sent a false and frivolous reply to said reminder. Thereafter, the present suit was filed on 28.7.2007.

The stand of defendant No.1 in the written statement is that the suit is time barred and not maintainable. Defendant No.1 denied the agreement to sell and claimed the same as false and fabricated. He further claimed that he had to go to USA. Plaintiff asked defendant No.1 to hand over all the relevant papers to him for completion of all the formalities for the transfer of plot in the name of defendant No.1 as he has links with the officials of defendant No.2. In good faith, defendant No.1 handed over the original papers to the plaintiff. But the plaintiff forged and fabricated the alleged agreement. Till date the vacant possession of the plot has not been handed over to him by the Improvement Trust. Defendant returned to India in 2003 and sent two letters dated 17.11.2003 and 9.12.2003 for the allotment of the plot in the name of the defendant and also deposited Rs.100/- and also sworn an affidavit dated 9.12.2003. From the pleadings, following issues were framed by the lower Court:-

1. *Whether the plaintiff is entitled to specific performance of agreement to sell executed by defendant No.1 in favour of plaintiff? OPP*
2. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
3. *Whether the present suit is not maintainable? OPD*
4. *Whether the present suit is barred by time? OPD*
5. *Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts from this Court? OPD*
6. *Whether the plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD*
7. *Whether no cause of action has arisen to plaintiff to file present suit? OPD*
8. *Relief.*

The lower Court dismissed the suit, holding that the suit is time barred and that the agreement is not proved.

In the appeal, learned Additional District Judge (Fast Track Court), Ludhiana concurred with the findings recorded by the lower Court and held that according to the admission of the plaintiff in cross-examination, defendant had initially refused to perform his part of the contract in the year 1987. Therefore, it was held that the agreement is time barred.

I have heard learned counsel for the parties and have carefully gone through the file.

The perusal of agreement (Ex.P1) shows that there is no date of the agreement. Only month May 1978 is mentioned. No place is mentioned where the agreement was executed. The agreement shows that a plot was allotted to the defendant No.1 by the Ludhiana Improvement Trust (defendant No.2) vide allotment letter dated 14.9.1976 (Ex.P5). As per the conditions of the allotment letter, the plot could not be sold for ten years from the date of allotment. The remaining installments were required to be paid in seven, six monthly installments. Therefore, prima-facie, agreement (Ex.P1), if at all considered, is an agreement of sale of allotment letter. The possession is delivered by the Improvement Trust only when all the installments are paid and the requisite documents are executed. Therefore, both the Courts below rightly held that no possession was delivered to the plaintiff, since defendant No.1 himself was not delivered the possession by Improvement Trust. Therefore, it is primarily a case of sale of allotment letter. The sale of the plot was prohibited for next ten years as per terms and conditions of allotment letter (Ex.P5). Plaintiff never applied before the

Improvement Trust for transfer of the plot in his name nor it is shown that such transfer was permissible. Therefore, the sale of the allotment letter was against the terms and conditions of the allotment letter and in such circumstances, the specific performance of the sale of allotment letter has to be refused being against the public policy, primarily on the ground that such allotment of plot is made to the genuine buyers for providing dwelling units to the allottees and not for the commercial purpose of sale and re-sale. Further the agreement is of May 1978. According to the admission of the plaintiff himself, defendant refused to perform the agreement in the year 1987. Present suit was filed on 28.7.2007 i.e. 20 years after the initial refusal. Therefore, there is no illegality or infirmity in the findings of both the Courts that the suit is time barred. The manner of the execution of the agreement was also doubted by both the Courts below as no place of execution of the agreement is mentioned nor date of the agreement is mentioned. The stamp paper is recorded to have been sold by a Stamp Vendor of Ludhiana on 27.5.1978.

Learned counsel for the appellant has referred to Article 54 of the Limitation Act, 1963 to press that since there was no date for performance of the agreement, therefore, there was no limitation to file the suit. However, under Article 54 itself, the limitation will start when the plaintiff had the notice that the performance is refused, which in the present case, was admittedly refused in the year 1987.

In view of the matter, I am of the view that there are concurrent findings of facts by both the Courts below. No question of law much less substantial question of law arises in the present case. Accordingly, the present appeal is dismissed.

In view of disposal of the appeal, all applications pending also stand disposed of.

19.08.2015 **(Kuldip Singh)**
gk **Judge**