

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 4738 of 2014 (O&M)
Date of decision: 30.6.2015

Dayal Singh

.. Appellant

v.

Manjit Singh and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurpreet Singh Dhillon, Advocate for the appellant.

...

Rajesh Bindal J.

The plaintiff is before this court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by him for possession by way of specific performance of agreement to sell, was dismissed.

In the case in hand, the appellant filed suit on 28.4.2000 for possession by way of specific performance of agreement to sell dated 20.4.1987. It was alleged that plot measuring 400 square yards bearing No. 41-B, situated in the revenue estate of village Jawaddi, Tehsil and District Ludhiana was purchased for a total sale consideration of ₹ 80,000/- from its original owner-Inder Pal Singh. As the entire sale consideration was paid, even the possession was also delivered to the appellant. In the suit, besides claiming possession by way of specific performance of agreement to sell, sale deed dated 1.7.1993 execution by respondent No. 1 in favour of respondent No. 2 pertaining to the suit property was also challenged.

The courts below found that original of the agreement to sell, on the basis of which the suit was filed, was not produced on record. Merely a photo copy was produced. No permission was taken to lead secondary evidence. Though the agreement to sell contained acknowledgement of sale consideration by the vendor, but no such acknowledgement was proved on record. It is claimed that the agreement to sell was executed way back on 20.4.1987, but the suit was filed 13 years thereafter on 28.4.2000. There was no explanation available on record as to why the suit was not filed immediately. In the suit, sale deed dated 1.7.1993 pertaining to the property in dispute is also sought to be challenged, but the claim pertaining to the same was clearly beyond limitation. To justify that challenge to the sale deed was within limitation, it was claimed that the appellant came to know about the execution of the sale deed on 21.10.1998, when notice was published in local newspaper regarding transfer of ownership of the property, however, that fact was found to be wrong, as prior to filing of the suit in question pertaining to the same property, the appellant had earlier filed a suit for permanent injunction on 9.4.1994, which was dismissed as withdrawn on 12.4.1994. The factum of sale deed dated 1.7.1993 was mentioned in the aforesaid suit. Meaning thereby, the appellant had knowledge of the aforesaid sale deed in the year 1994, but still the same was not challenged for about 7 years, hence, the claim to that extent was time-barred. Not only this, the claim of the appellant was further falsified by the fact that in the earlier suit filed by him, he claimed that he had taken the suit property on a monthly rent of ₹ 100/- from Inder Pal Singh about 8 years prior to the filing of the suit in the year 1994. Though in the present litigation, it is sought to be claimed that Inder Pal Singh had executed agreement to sell in favour of the appellant on 20.4.1987, but no such plea was raised in the suit filed in the year 1994. This also falsified the claim made by the appellant in the present suit regarding alleged sale of property by Inder Pal Singh to the appellant.

With this material on record, in my opinion, no illegality has been committed by the courts below in dismissing the suit filed by the appellant. No substantial question of law arises in the present appeal. The

same is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

30.6.2015
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