IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4976 of 2014 (O&M)
Date of Decision.04.09.2015

Sawinderjit Singh ....Appellant

Versus

Gulzar Singh ......Respondent

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J. (ORAL)

C.M. No.11731-C of 2014

For the reasons stated in the application, delay of 243 days in filing the appeal is condoned.

Application is allowed.

C.M. No.11734-C of 2014

For the reasons stated in the application, permission for making good the deficiency of court fee is granted.

Application is allowed.

RSA No.4976 of 2014

1. The plaintiff's suit was for specific performance of an agreement to sell dated 14.06.2002. The agreement had been preceded by a mortgage which was executed by the defendant in favour of the plaintiff on 24.5.1995. The period mentioned for repayment of the loan was 7 years and the payment must have been made before 24.5.2002

and when it was not done, the plaintiff had obtained an agreement of sale which was sued upon on 14.06.2002. After taking an agreement of sale, the plaintiff himself filed a suit for declaration that the mortgage was supported by consideration and obtained a decree. The suit was filed for declaration relating to mortgage on 15.04.2003. The suit was decreed in favour of the plaintiff. The instant suit was filed on 21.07.2007 and the plaintiff was trying to seek for extension of time by reference to the fact that the suit for declaration relating to mortgage had been filed and that would exclude the period. The trial Court and the Appellate Court both of them held that the truth of genuineness of the mortgage was completely a different cause of action and it had nothing to do with the enforcement of agreement of sale and as per Article 54 of the Limitation Act. The suit should have been filed within a period of three years from the date when the time stipulated in the agreement had expired but the suit had been filed beyond a period of 5 years and consequently, the suit had been found to be barred by limitation.

2. Learned counsel appearing for the appellant states that in the suit filed on the basis of mortgage, the defendant never confronted the plaintiff with any suggestion that there was no agreement of sale and the present contention that the suit agreement was not true or it had been brought about by fraud or coercion could not have been made. The issue that would surely be relevant for a Court to consider before enforcing the agreement is whether the plaintiff was coming within time. The suit was clearly barred by limitation under Article 54 and there was simply no explanation given as to how the bar cannot operate

against the plaintiff when there was no extension of time provided under the agreement. The institution of suit for declaratory relief to mortgage had simply no relevance to consideration for issue of limitation for enforcement of the agreement.

3. The two Courts below have correctly approached the issue and dismissed the suit. I find no substantial question of law is involved in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 04, 2015
Pankaj*