IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.5642 of 2014 (O&M).
Date of Decision: 14.12.2015.

Gurpreet Singh ....Appellant.

VERSUS

Gurwinder Singh @ Gurinder Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. M.S. Balianwali, Advocate for the appellant.

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SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by plaintiff-appellant Gurpreet Singh (hereinafter referred to as the "plaintiff") impugning the judgment and decree dated 29.10.2013 passed by learned Additional District Judge, Bathinda whereby the appeal filed by the plaintiff against defendants-respondents Gurwinder Singh @ Gurinder Singh and others (hereinafter referred to as the "defendants") was partly accepted and also the judgment and decree dated 20.12.2012 passed in Civil Suit No.143 of 22.07.2008 by learned Civil Judge (Junior Division), Bathinda whereby the

suit for specific performance, recovery and permanent injunction filed by the plaintiff was partly decreed.

2. The facts which need elaboration are as under:-

The plaintiff filed a suit through his Special Attorney Harjinder Singh for specific performance of agreement to sell dated 28.02.2003 executed by the defendants in respect of property measuring 2 Kanals Barani and 1 Kanal Nehri (fully detailed in the head note of the plaint). In the alternative, prayer for recovery of Rs.20,000/- alongwith interest at the rate of 2% per month and also for a decree of permanent injunction was made.

Originally the suit was filed against Gurwinder Singh, Satnam Singh and Sandeep Singh. During pendency of the suit, Satnam Singh expired and his legal heirs were brought on record. As pleaded by the plaintiff, the sale consideration was fixed as Rs.13,750/- per Kanal for Barani and Rs.18,750/- per Kanal for Nehri. Out of the total sale consideration of Rs.64,250/-, a sum of Rs.10,000/- was received by the defendants as earnest money and they agreed to get the sale deed executed and registered upto 15.06.2005. Also as per the agreement, in case the defendants failed to get the sale deed executed and registered, they were to pay double the amount of the earnest money received by them. Pleading that he appointed Harjinder Singh as his Special Attorney by executing Special Power of Attorney dated 28.12.2007 and that he had always been ready and willing to perform his part of the contract whereas the defendants have been putting of the matter on one pretext or the other and had extended the date upto 15.07.2005 vide writing of Sandeep Singh on behalf of all the three defendants, but on the said date also they did not come in the office of Sub Registrar, Bathinda for execution of the sale deed, the plaintiff prayed for a decree of specific performance of the agreement to sell in his favour.

3. The defendants contested the suit. Besides raising various legal preliminary objections, they submitted that defendant Sandeep Singh was in need of Rs.10,000/- which he had to return to a wine contractor from whom he had been purchasing liquor on credit. The plaintiff agreed to provide money to him subject to the condition that he would receive interest at the rate of 3% per month half yearly but in the paper and as a mark of security he would get an agreement to sell executed at a price suitable to him and also asked for the agreement to be signed by Gurwinder Singh and Satnam Singh, brothers of Sandeep Singh to ensure payment. Sandeep Singh bowed to the demand of the plaintiff and executed an agreement with his brother under the faith that it was merely a security document.

The defendants denied that the agreement to sell was executed with an intention to sell their land. The interest at the agreed rate was paid by Sandeep Singh after every six months and during the month of September-October, 2005 he cleared all the dues of principal and interest in the presence of his brothers and one Sikandar Singh son of Sukhchain Singh, but the plaintiff did not return the agreement to sell on the pretext that it was not traceable with the said pleadings they sought dismissal of the suit.

4. On the rival contentions of the parties, following issues were

framed:-

> (1) Whether the plaintiff is entitled to specific performance of agreement dated 28.2.2003 as prayed for? OPP.
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> (2) Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP.
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> (3) Whether suit of plaintiff is within time? OPP.
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> (4) Whether the suit is bad for non-enclosing of original agreement and special power of attorney, if so its effect? OPD.
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> (5) Whether agreement dated 28.2.2003 is on requisite stamp paper and cause compulsory registrable as alleged? OPD.
>
> (6) Whether the suit is bad for non-joinder of necessary parties? OPD.
>
> (7) Whether the suit is not maintainable? OPD.
>
> (8) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court declining the relief of specific performance against all the respondents, partly decreed the suit for recovery of Rs.3300.33 ps. from defendant No.3 Sandeep Singh alongwith simple interest @ 6% per annum w.e.f. 28.02.2003 till realization.

7. Feeling aggrieved by the judgment and decree dated 20.12.2012 passed by learned trial Court, the plaintiff filed an appeal which vide judgment and decree dated 29.10.2013 was partly accepted by learned first appellate Court. The suit was decreed for recovery of Rs.10,000/-

against all the defendants with costs. The plaintiff was also held entitled to interest @ 12% per annum from the date of execution of agreement dated 28.2.2003 till the passing of the judgment dated 20.12.2012 and future interest @ 6% per annum and all the defendants were held jointly and severally liable to pay the decretal amount.

8. Feeling aggrieved by the judgment and decree dated 20.12.2012 passed by learned trial Court and 29.10.2013 passed by learned first appellate Court, the plaintiff has filed the instant Regular Second Appeal.

9. The submissions made by Mr. Malkeet Singh Balianwali, learned counsel representing the plaintiff-appellant have been considered.

10. Learned counsel for the plaintiff argued that the defendants admitted execution of the agreement to sell dated 28.02.2003. Otherwise also, the agreement was scribed by Surjit Singh Brar, Advocate who stepped into the witness box as PW1 and proved the same. The attesting witness of the agreement to sell Mithu Singh also appeared as PW3 and proved due execution of the document. The defendants admitted execution of the agreement to sell but stated that it was executed merely to secure repayment of loan of Rs.10,000/- taken by Sandeep Singh from the plaintiff. However, no substantive evidence could be led by them in support of their contention.

11. Learned counsel further asserted that apart from proving due execution of the agreement to sell the plaintiff also proved that the period for execution of the sale deed was extended from 15.06.2005 to 15.07.2005

and the writing recorded in that regard was signed by Sandeep Singh on behalf of all the vendors. It was not the plea of the defendants that they had been ready and willing to perform their part of the contract either on 15.06.2005 or on 15.07.2005 and therefore the plaintiff is entitled to specific performance of the agreement to sell under law.

12. Indeed, learned trial Court as well as learned first appellate Court consistently held that by examining PW1 Surjit Singh Brar, scribe and PW3 Mithu Singh the attesting witness, the plaintiff had proved due execution of the agreement to sell. As per the agreement to sell, the date for execution and registration of the sale deed was fixed as 15.06.2005. The plaintiff pleaded that the date was extended upto 15.07.2005. Since the writing regarding extension of time was signed only by defendant Sandeep Singh, learned trial Court passed a decree for specific performance of the agreement to sell to the extent of 1/3rd share of Sandeep Singh in the land that is subject matter of the agreement to sell. However, the learned first appellate Court held that as per original agreement the sale deed was to be executed upto 15.06.2005. The suit was filed on 14.60.2008 and therefore even if the writing regarding extension of date for execution and registration of sale deed is ignored, the suit is still within limitation against all the defendants.

13. Setting aside the observation of learned trial Court that the suit against other defendants had become infructuous, the findings of learned first appellate Court on the contentious issue whether the plaintiff is entitled to the execution of the agreement to sell are as under:-

> *"Now it is to be seen whether despite proof of execution of agreement, the plaintiff is entitled to decree for specific performance. This agreement is for total land measuring 3 kanals. 2 kanals is mentioned as Barani and one Kanal is mentioned as Nehri. The other particulars of the land agreed to be sold are not mentioned to pin point exact identification of the land. It is also case of the plaintiff that this land is out of Khata No.647/1410. Copy of jamabandi of this Khata is on the file as Mark X. The total area of this Khata is 248 kanals 14 marlas. In these circumstances, from the agreement as well as jamabandi, the identity of the land is not established. As such, the plaintiff is not entitled to relief of specific performance of agreement.*

14. Learned counsel for the plaintiff failed to demonstrate any adversity or misappreciation of evidence on part of learned first appellate Court in recording the above findings. When admittedly identity of the land agreed to be sold is not established from the agreement to sell, a decree for specific performance of such agreement to sell cannot be passed. It is a settled principle of law that no such decree which cannot be executed under law can be passed.

Accordingly, learned first appellate Court rightly allowed the alternative plea of the plaintiff and passed a decree for recovery of Rs.10,000/- against all the defendants with costs and interest at the rate of 12% per annum from the date of execution of the agreement to sell till the passing of the judgment dated 20.12.2012 and future interest at the rate of 6% per annum. The said findings are affirmed and there being no merit in the appeal, it is hereby dismissed.

<u>CM-13398-C-2014</u>

This appeal was filed much after expiry of the limitation period i.e. after a delay of 251 days. Alongwith the appeal, an application under Section 5 of the Limitation Act for condonation of delay was filed, but since there is no merit in the appeal, there is also no ground for condoning such long delay in filing the appeal and the application is dismissed.

(SNEH PRASHAR)
JUDGE

14.12.2015
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