

In the High Court of Punjab and Haryana at Chandigarh

.....

R.S.A. No.5887 of 2014 (O&M)

.....

Date of decision:24.4.2015

Sakattar Singh

.....Appellant

v.

Simerjit Kaur alias Simar Kaur and another

.....Respondents

.....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. R.S. Sekhon, Advocate for the appellant.

.....

Inderjit Singh, J.

Sakattar Singh-appellant/plaintiff has filed this regular second appeal against Simerjit Kaur alias Simar Kaur and Balwinder Kaur-respondents/defendants challenging the impugned judgment and decree dated 2.7.2014 passed by the learned District Judge, Ferozepur, dismissing the appeal filed by the appellant-plaintiff against the impugned judgment and decree dated 21.7.2012 passed by Civil Judge (Junior Division), Zira, vide which the suit filed by the plaintiff has been dismissed.

The brief facts of the case are that Sakattar Singh-plaintiff filed suit against Simerjit Kaur alias Simar Kaur and Balwinder Kaur for specific performance of agreement to sell dated 14.11.1994 directing defendant No.1 to execute a registered sale deed in favour of the plaintiff in respect of land

measuring 3 Kanals 15 Marlas being 1/4th share of the land measuring 15 Kanals as fully described in the head note of the plaint, as shown in the Jamabandi for the year 1991-92 on payment of ₹7,500/- out of which ₹6,500/- have already been received by defendant No.1 as earnest money at the time of execution of agreement. In the alternative, suit for part performance of agreement dated 14.11.1994 directing defendant No.1 to execute a registered sale deed in favour of the plaintiff of land measuring 2 Kanals 10 Marlas being 1/6th share of the land measuring 15 Kanals as fully described in the head note of the plaint on payment of proportionate price of ₹5,000/-.

The main case of the plaintiff is that defendant No.1 executed an agreement to sell dated 14.11.1994 in respect of suit land for total sale consideration of ₹7,500/- and received ₹6,500/- as earnest money. At that time, husband of defendant No.1 had died and she was staying with her two minor children, namely, Jagroop Singh-son and Balwinder Kaur-daughter. They had inherited the suit property along with some more land in the adjoining Village Sabhrah, Tehsil Patti. Since the title of defendant No.1 was not perfect, she agreed to get the mutation sanctioned in her favour before the stipulated date of execution of sale deed i.e. 30.5.1995. It is further stated that defendant No.1 delivered the possession of the suit property at the time of agreement. On 30.5.1995, the plaintiff approached defendant No.1 with request to execute the sale deed, but she did not come forward nor get the mutation sanctioned. The plaintiff went to Tehsil Compound, Zira along with balance sale consideration and some more

money with 2/3 persons and waited for defendant No.1 till 4.00 p.m., but she did not turn up and the plaintiff got marked his presence there. On inquiry, defendant No.1 expressed her inability to get the mutation sanctioned. However, she promised to get mutation sanctioned and to execute the sale deed. Therefore, the date for execution of sale deed was extended till 30.4.1998 with mutual consent and then to 21.1.2001. Since the mutation was not sanctioned, the date for execution of sale deed was again extended till 28.3.2002 and thereafter till 31.3.2003. The plaintiff inquired from the Circle Patwari and found that mutation was sanctioned on 7.4.2006. Then he got issued a notice through his Advocate on 5.12.2006 through registered post, but the same was returned undelivered. The notice was issued again on 31.1.2007.

The case of defendants on the other hand in the written statement is that the plaintiff has no cause of action. The suit was hopelessly time barred etc. It is stated that defendant No.2 never executed any agreement of sale and defendant No.1 did not take responsibility of defendant No.2 for performance of execution of sale deed. The suit was bad for non-joinder of necessary parties because Jagroop Singh has also inherited the suit land along with the defendants and has 1/3 share. On merits, it was contended that defendant No.1 neither entered into the alleged agreement nor received any amount from the plaintiff. Even she was not competent to execute the agreement. After the death of her husband, she was entitled to succeed 1/4th share only. The remaining 3/4th share was to be succeeded by Jagroop Singh and Buta Singh sons of Bahadur Singh and

Balwinder Kaur daughter of Bahadur Singh. Bahadur Singh died in the year 1987 leaving behind the defendants along with Buta and Jagroop Singh. It is also the case of the defendants that alleged agreement is forged and fabricated.

The learned Civil Judge (Junior Division), Zira vide impugned judgment and decree dated 21.7.2012 dismissed the suit of the plaintiff. The appeal filed by the plaintiff was also dismissed by the learned District Judge, Ferozepur, vide judgment and decree dated 2.7.2014. Aggrieved against the impugned judgments and decrees passed by the Courts below, this regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant argued on one point that orally the defendants agreed to extend the date of execution of sale deed and further as mutation was only effected in the year 2006, therefore, the suit is within limitation.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that agreement was executed on 14.11.1994 and time for execution of the sale deed was fixed as 30.5.1995. There is no written document to show that the date for execution of the sale deed was further extended. There is also no cogent evidence on record in whose presence the date was extended. It is the case of the plaintiff that on 30.5.1995, he appeared before the Tehsildar and got marked his presence. He was ready with the balance sale consideration. As per the case of the plaintiff after the death of husband of defendant No.1, she inherited the

property of her husband. Mutation does not confer title. Defendant No.1 or defendant No.2 became owners on the death of Bahadur Singh. In no way, it can be held that the sale deed could not be got executed without mutation nor it was the condition precedent for execution of the sale deed. The cause of action arose to the plaintiff in May 1995 and this suit has been filed in 2007, which is hopelessly time barred. The concurrent findings recorded by the Courts below are correct and as per evidence and law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed.

April 24, 2015.

(Inderjit Singh)
Judge

hsp