

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6379 of 2014 (O&M)
Date of Decision: July 02, 2015

Dharamvir

...Appellant

Versus

Smt.Surasti Devi (deceased) through legal heirs

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kanwaljeet Singh, Senior Advocate with
 Mr.Sandeep Punchhi, Advocate
 for the appellant.

INDERJIT SINGH, J.

CM No.15239-C of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 42 days in re-filing the appeal is condoned.

RSA No.6379 of 2014

Appellant-plaintiff Dharamvir has filed this regular second appeal against respondent-defendant Smt.Surasti Devi through her legal heirs, challenging the impugned judgment and decree dated 12.03.2012 passed by learned Addl. Civil Judge (Senior Division) Abohar, vide which the suit filed by the plaintiff-appellant for specific performance was dismissed and also the judgment and decree dated 17.04.2014 passed by learned Addl. District Judge, Fazilka vide which the appeal filed by the appellant was dismissed.

The brief facts of the case are that plaintiff-appellant filed a suit against defendant-respondent for specific performance of agreement dated 18.05.1993. It is stated in the plaint that on 18.05.1993, the defendant on the basis of an undertaking arrived at through a family settlement, agreed to sell land measuring 150 kanals 9 marlas for a sum of ₹19 lacs and after receiving total sale consideration, executed an agreement to sell in favour of the plaintiff and undertook to execute the sale deed as and when desired by the plaintiff. The possession of the suit land was delivered and continuous to be with the plaintiff. It is further stated that defendant filed a civil suit titled as 'Smt.Surasti vs. Dharamvir etc.' concerning an area measuring 139 kanals 3 marlas, which included the land measuring 80 kanals, out of the suit land seeking restraint order and that was abandoned by the defendant. Thereafter, plaintiff approached the defendant to execute sale deed but she kept putting him off on one pretext or the other, though the plaintiff had always been ready and is still ready to perform his part of the said agreement. It is further pleaded that the defendant, who is more than 90 years of age, at the instance of Ram Singh, Karni Singh and Ganpat Rai, had refused to execute the sale deed. The plaintiff filed a suit for permanent injunction on 02.06.2004 in good faith, which is still pending. As there was defect in that suit for the reason of not asking for grant of correct relief, present suit has been filed.

Upon notice, defendant pleaded that plaint is barred under Order 2 Rule 2 CPC and is not within limitation. The alleged

agreement is false and fictitious document. The suit of the plaintiff is barred under Section 11 of the Indian Contract Act. It is further pleaded that plaintiff has no cause of action or locus standi to file the present suit. The suit of the plaintiff is also not maintainable. The main averments of the suit are denied by the defendant. It is further stated that the suit property is in occupation of the defendant.

Issues were framed. Both the parties led evidence. Learned Addl. Civil Judge (Senior Division), Abohar , while discussing the evidence on record, dismissed the suit of the plaintiff. Appellant-plaintiff filed appeal and learned Addl. District Judge, Fazilka, also upheld the findings given by learned Addl. Civil Judge and dismissed the appeal vide judgment and decree dated 17.04.2014.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant argued that the findings given by the Courts below are against the evidence on record. The agreement has been duly proved. He further argued that the suit is neither time barred nor it is barred under Order 2 Rule 2 CPC. He next argued that the judgments given by the Courts below are against the evidence and law

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

From the evidence on record, first of all, I find that plaintiff-appellant Dharamvir is alleging agreement to sell from his maternal grandmother on the basis of family settlement on 18.05.1993 and the

present suit has been filed on 09.06.2004 i.e. after about 11 years. Learned counsel for the appellant-plaintiff stated that at the time of execution of the agreement, the plaintiff was a minor child of 12 years of age. It is admitted at the time of arguments that plaintiff was not present at the time of execution of the agreement. It is the case of the plaintiff that the total consideration amount of ₹19 lacs has been paid to the defendant, who is maternal grandmother of the plaintiff. If the total amount has been paid at the time of execution of agreement and family settlement, then no ground or explanation has been given as to why the sale deed was not got executed on that very day. There is nothing on the record to prove the payment of ₹19 lacs to the defendant. None of the attesting witnesses has come to the witness box as they have already died. The defendant has denied the execution of the agreement. PW-1 Radha, is wife of late Jatinder Kumar and she only identified the signatures of her deceased husband on the writing Ex.P4 at point Ex. P1. Vinod Kumar appeared as PW-2 and he also identified the signatures of his father Mani Ram, former Sarpanch, who has already expired, on the writing Ex.P4 at point Ex.P2. Plaintiff Dharamvir appeared as PW-3 and reiterated all the averments contained in the plaint. PW-4 Laxmi Narain, Stamp Vendor only deposed that he sold the stamp paper for denomination of ₹3/- to Sarswati through Mani Ram. Emrose Masih appeared as PW-5, who has brought the mutation record only. PW-6 Jagdish Kumar has deposed that he has seen the suit land being cultivated by plaintiff for the last 15-20 years. From this evidence on record, only

signatures on the agreement Ex.P4 have been proved by the LR's of the attesting witnesses. Nobody has proved the contents of the document. The execution of the agreement and the payment of consideration amount, has not been proved by bringing any evidence on record. It is settled law that proving signatures on the agreement will not prove the execution of the document and will not prove the contents of the document. Even the deed writer has not been brought to prove the contents of the document. Admittedly, the plaintiff was not present at the time of execution of the agreement. Therefore, the findings given by the Courts below are correct, as per law and evidence.

Further, I find that learned Courts below have correctly discussed that in the suit filed by Surasti for permanent injunction in the year 2000, the present plaintiff has not claimed his right over the suit land on the basis of the agreement in question Ex.P4 and there is no explanation as to why the right has not been claimed. Even if the suit has been withdrawn by Surasti, the withdrawal of the suit will not prove the case of the plaintiff.

Next, I find that the plaintiff admitted during his cross-examination that he has filed an application seeking correction of khasra girdawari before Assistant Collector, Abohar. In the said application also, he has claimed himself to have purchased the suit land. The defendant filed a suit against plaintiff for permanent injunction. The copy of the plaint is Ex.D1 and the copy of the written statement, which was filed by the present plaintiff is Ex.D2. In the

said written statement, the present plaintiff claimed ownership on the basis of family settlement. In the said written statement, plaintiff has not claimed himself to be owner in possession of the suit land on the basis of agreement Ex.P4. In the order passed by the Revenue Authority Assistant Collector Grade-II, Abohar, the plaintiff has claimed himself to be in possession of the suit land on the basis of family settlement. The plaintiff has earlier filed suit for injunction, certified copy of which is Ex.D7 and in the said suit also, the plaintiff only pleaded regarding the family settlement. No reason has been given as to why this agreement to sell Ex.P4 has not been pleaded in the earlier proceedings. Furthermore, it is in the plaint itself that plaintiff filed earlier suit for permanent injunction and when that was still pending, the present suit has been filed. The relief for specific performance has not been claimed in that suit, therefore, this suit is barred under Order 2 Rule 2 CPC. Furthermore, there is nothing on the record to show that as to how this suit is within limitation. The defendant is denying the right of the plaintiff by filing civil suit for permanent injunction in the year 2000. The present suit has been filed in the year 2004, therefore, the suit is also barred by limitation as it has not been filed within three years when the cause of action arose to the present plaintiff-appellant when the defendant denied the plaintiff's right.

In view of the above discussion, I find that the findings given by both the Courts below are correct and as per law. In no way, it can be held that the Courts below have misread the evidence or the

findings are perverse. The findings of the Courts below are concurrent, 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 present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 02, 2015
Vgulati

(INDERJIT SINGH)
JUDGE