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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3149-2010 (O&M)
Date of decision : 03.08.2016

Nishan Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parveen Chauhan, Advocate
for the appellant.

Mr. P.S. Bajwa, DAG, Punjab.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the non-granting of the relief of mandatory injunction seeking direction to the respondent(s)-defendant(s) for allowing him to deposit the remaining installments, but has been granted injunction qua only the forcible interference and dispossession.

Mr. Parveen Chauhan, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant-plaintiff vide allotment dated 30.01.1990 was allotted an agricultural land for a sum of ₹ 1,39,750/- The entire amount of the land was to be paid in ten years by way of equal installment. The first and second installment amounting to ₹ 7,212/- each was deposited on 20.04.1990 and 05.11.1990 respectively, thereafter, the

respondent(s)-defendant(s) stopped accepting the installments, thus, having left with no other option sought the indulgence of the Court. Since, the appellant-plaintiff had been put into possession, the Courts below only granted injunction qua forcible interference and dispossession, but declined the relief of mandatory injunction on the ground that the suit filed in the year 1996 in respect of allotment was barred by law of limitation. He submits that installments had to be paid within 10 years, suit for mandatory injunction could not have been thrown out on this ground and urges this Court for formulation of the following substantial question of law arises for determination.

Whether the relief of mandatory injunction can be said to be barred by law of limitation or not?

Mr. P.S. Bajwa, DAG, Punjab, submits that no interference is warranted to the concurrent findings of fact viz-a-viz declining of the relief of mandatory injunction. If at all the appellant-plaintiff was aggrieved, he could have invoked his legal right well within the period of limitation. As two installments stated to have been paid in the year 1990, but no explanation has come forth to filing the suit beyond the limitation of three years and prays for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book. The suit for mandatory injunction is filed by invoking the provisions of Section 39 of the Specific Relief Act which reads thus:-

“39. Mandatory injunction.—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach

complained of, and also to compel performance of the requisite acts.”

The aforementioned provisions give a cause of action to the party, when there is breach of obligation. Once, the appellant-allottee was not permitted to deposit the installment, he had no other option, but to seek the vindication as indicated above. In my view, once, the installments had to be paid within 10 years, the relief of mandatory injunction could not have been said to be barred by law of limitation.

For the foregoing reasons, the findings rendered by both the Courts below are perverse and fallacious and the same are hereby set aside. Relief of mandatory injunction is granted. The substantial question of law as noticed above is answered in favour of the appellant-plaintiff and against the respondent(s)-defendant(s).

The respondent(s)-defendant(s) is directed to accept the installment along with damages, if any, due and interest thereon in accordance with law.

With the aforesaid observation, the appeal is allowed.

03.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

Whether Reportable

Yes/ No