

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4611 of 2010 (O&M)

Date of Decision: April 12, 2016

Ravinder Kumar

...Appellant

Versus

Amit Kumar Aggarwal

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Hawa Singh Hooda, Senior Advocate with
Mr.R.A.Sheoran, Advocate,
for the appellant.

Mr.Amit Shivrain, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree of the Lower Appellate Court, whereby the judgment and decree of the trial Court granting the specific performance of the agreement to sell dated 26.11.1992, have been set-aside.

Mr.Hawa Singh Hooda, learned Senior Counsel assisted by Mr.R.A.Sheoran, Advocate, appearing on behalf of the appellant-plaintiff, in the first instance, submits that the entire pith and substance of the suit was for claiming the specific performance. However, the court fees regarding the same had not been paid as the entire sale consideration was paid. The appellant-plaintiff is willing to pay the court fees vis-a-vis specific relief as parties to the lis, who were aware of the situation, led

evidence as it was a suit for specific performance. Even the trial Court framed the issue regarding readiness and willingness and granted specific relief. On merits, it has been addressed that the trial Court, on the basis of the oral and documentary evidence, decreed the suit. Both the attesting witnesses and scribe qua the execution and payment of the earnest money had been examined, who proved the same. Time was not the essence of the agreement to sell and the suit was filed in 2006 when the breach was being alleged. However, the Lower Appellate Court reversed the findings on the ground that ownership, at the instance of the plaintiff, of Mahabir Prasad has not been proved, much less no explanation has come forth in filing the suit in 2006. The cause of action accrued to the plaintiff on 15.2.2006 when the defendant made fervent attempts to commit mischief with the shop of the plaintiff and, therefore, as per the provisions of Article 54 of the Indian Limitation Act, 1963, the suit was within limitation as the same was filed on 20.2.2006 on accrual of the cause of action on 15.2.2006 and, thus, urges this Court to allow the amendment of the plaint by affixing ad valorem court fees. He further submits that the following substantial questions of law arise for determination by this Court:-

- 1) Whether the parties were alive to the situation and the trial Court framed the issue as if it was a suit for specific performance?
- 2) Whether the plaintiff can be permitted to seek amendment of the plaint by affixing ad valorem court fees?
- 3) Whether the judgment and decree of the Lower Appellate Court suffers from illegality and perversity as time was not the essence of the agreement to sell?
- 4) Whether the suit can be held to be barred by law of limitation?
- 5) Whether the onus was on the appellant-plaintiff to prove

the ownership of Mahabir Prasad?

Mr.Amit Shivrain, learned counsel appearing on behalf of the respondent-defendant submits that as per the provisions of Section 41(h) of the Specific Relief Act, efficacious remedy was available under the law and, therefore, the suit was, *ex-facie*, not maintainable. The appellant-plaintiff has failed to prove the payment of the earnest money. Even otherwise, the appellant has been ordered to be ejected and lost the litigation upto the Hon'ble Supreme Court. No explanation has come forth in filing the suit immediately after the demise of Mahavir Prasad, who died in 1999. The testimony of the attesting witnesses and scribe is wholly inconsistent vis-a-vis payment of earnest money. All these factors were sufficient to deny the relief of specific performance and rightly so, the suit had been dismissed. No substantial question of law arises for determination, much less at this stage, the appellant-plaintiff should not be permitted to amend the plaint by affixing ad valorem court fees and, thus, urges this Court for affirmation of the judgment and decree of the Lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the relief clause and the issues framed leave no manner of doubt that the parties are alive as if it was a suit for specific performance of the agreement to sell and led evidence in this regard. For the sake of brevity, relief clause and the issues framed are reproduced as under:-

“It is, therefore, prayed that the suit of the plaintiff for permanent injunction (Prohibitory and mandatory) restraining the defendant from interfering into peaceful possession of the plaintiff over the shop shown in the site plan in red and green colour by letters A B C D bounded as in the East:-shop of Harnarain Nakipuria, in the West:-Shop of Mahesh Kumar, in

the North:-Plot of the plaintiff (earlier Nohra of Babu Lal Modi) and in the South:-Public road leading Suraj Garh-Loharu road, situated near Railway Station, Surajgarh Road, Ward No.7, Loharu, Tehsil Loharu, District Bhiwani and further dispossessing the plaintiff from the shop detailed above through illegal and forcible means, as the plaintiff has already acquired the right and title in the shop vide agreement to sell dated 26.11.1992 executed by Mahabir Pershad father of the defendant and received the entire sale consideration of Rs.1,50,000/- from the plaintiff and handed over the possession of the said shop and only formalities for execution and registration of the sale deed are to be completed at the end of defendant and the plaintiff is ready and willing for the same and further restraining the defendant from alienating the shop detailed above, except the plaintiff by way of sale, mortgage, lease or through any other mode and further directing the defendant by issuing mandatory injunction to complete the formalities for execution and registration of sale deed in respect of the shop in dispute in favour of the plaintiff, may kindly be decreed with costs in favour of the plaintiff and against the defendant.”

ISSUES:

- 1) Whether Mahabir Parshad, father of the defendant agreed to sell the shop in question to the plaintiff on executing an agreement dated 26.11.1992 on receiving entire sale consideration to the tune of Rs.1,50,000/-? OPP*
- 2) Whether the plaintiff is still ready and willing to perform his part of contract? OPP*
- 3) If the above issues are decided in favour of the plaintiff, whether he is entitled to enforce the said agreement specifically? OPP*
- 4) Whether the plaintiff has no cause of action or locus standi to file and maintain the present suit? OPD*
- 5) Whether the plaintiff has concealed the true and material facts from the court? OPD*

6) *Whether the plaintiff is liable to be estopped from filing the suit by his own act and conduct? OPD.*

7) *Relief.*

Vis-a-vis proving of the agreement to sell, the appellant-plaintiff has examined both the attesting witnesses, namely, Ramdhari (PW-2) and Lakhi Ram Draftsman (PW-5) and PW-1 Mulak Raj Stamp Vendor. On the contrary, the respondent-defendant has not been able to rebut the aforementioned evidence by leading any cogent evidence, much less any expert to disbelieve the signatures of Mahabir Prasad on the agreement to sell. The aforementioned witnesses were cross-examined at length and stuck to the stand as submitted in the examination-in-chief. It is a matter of record that the appellant-plaintiff, who was earlier inducted as tenant, is in possession of the property and perhaps it was in these circumstances the owner had agreed to sell the property by way of agreement to sell.

Article 54 of the Indian Limitation Act envisages the invocation of the cause of action from the date of alleged breach as recurring cause of action to file the suit accrued on 15.2.2006 and the suit was filed on 20.2.2006 and, therefore, the suit cannot be said to be barred by law of limitation. However, since the appellant-plaintiff has not been able to pay the ad valorem court fees for seeking specific performance of the agreement, he is required to pay the same. Accordingly, two months' time is granted to him to pay the ad valorem court fees and the suit shall be treated as suit for specific performance.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the Lower Appellate Court is hereby set-aside and that of the trial Court is restored with the aforementioned rider. The amendment sought in the plaint is allowed and the appellant-plaintiff is

allowed to pay ad valorem court fees within two months and thereafter the appellant shall be at liberty to seek the execution and registration of the sale deed in accordance with law.

With the aforementioned modification, appeal stands allowed.

April 12, 2016
ramesh

(AMIT RAWAL)
JUDGE