

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

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RSA No. 1811 of 2011 (O&M)

Date of Decision: January 06, 2016

Balraj Singh (dead) through LRs

-Appellant

Versus

Bhupinder Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S. C. Chhabbra, Advocate
for the appellant.

None for the respondent.

RAJ MOHAN SINGH, J.

{1}. Defendant is in second appeal against the judgment and decree dated 05.01.2011 passed by Additional District Judge, Ferozepur vide which judgment and decree dated 20.08.2010 passed by Additional Civil Judge (Sr. Divn), Ferozepur has been set aside and appeal has been accepted thereby decreeing the suit for specific performance of agreement to sell dated 09.07.1999. Defendant-appellant has been directed to get the sale deed executed and registered in

favour of plaintiff after obtaining balance sale consideration within two months from the date of passing of the decree failing which plaintiff has been entitled to get the sale deed executed through the agency of the Court on depositing the balance sale consideration.

{2}. Plaintiff filed suit for specific performance on the ground that defendant is owner of the suit land measuring 56 Kanals fully detailed in the head note of the plaint situated in village Sultan Wala, Tehsil and District Ferozepur. An agreement to sell dated 09.07.1999 was entered into between the parties @ ₹1,40,000/- per acre for a total sale consideration of ₹9,80,000/-. Defendant received ₹8,30,000/- from the plaintiff as earnest money at the time of execution of agreement to sell dated 09.07.1999 in the presence of marginal witnesses. Possession of the land was delivered to the plaintiff who is now in possession of the same. The date for execution of sale deed was fixed on or before 08.07.2002 on payment of balance sale consideration. Plaintiff alleged that he was and still ready and willing to perform his part of obligation. On the target date, the plaintiff approached the defendant and requested him to come to the office of Sub Registrar for execution and registration of sale deed. He waited for the defendant till 04.55 PM in the office of Sub Registrar and also got his presence marked before the

Sub Registrar. The defendant did not turn up and thereafter, plaintiff served legal notice dated 27.07.2003 upon the defendant which was replied by the defendant on 31.07.2003. Finally, the plaintiff approached the defendant and requested him to get the sale deed executed and registered but the defendant flatly refused to do so. With this background, suit came to be filed.

{3}. Defendant contested the suit on all counts. Defendant denied the receiving of money from the plaintiff and also pleaded that he did not execute any agreement to sell in favour of plaintiff at any point of time. Defendant claimed that he is in possession of the suit property as the grandfather of the plaintiff is a Commission Agent and is carrying on his business in the name and style of M/s Khinda Commission Agents. Plaintiff is grandson and Munim of Charan Singh and defendant used to sell his crop on the Commission Agent Shop to aforesaid Charan Singh and he had dealing with the said firm till 1999 and, thereafter left the Commission Agency Shop of Charan Singh due to some differences. During the dealing, plaintiff might have obtained thumb impressions of the defendant on some blank paper by fraud and thereafter, plaintiff and his grandfather Charan Singh have prepared a forged and fabricated agreement to sell dated 09.07.1999. Defendant

claimed that sometime he used to put his thumb impressions and he used to sign in Punjabi in routine work. The agreement in question is stated to have been scribed by one B.S. Thakur, Advocate, District Courts, Ferozepur against whom Civil Court has already given finding in case titled "Harkirat Singh vs. Chamkaur Singh." The another witness of alleged agreement to sell namely Sohan Lal is claimed to be henchmen of the firm and in this view, the agreement to sell is claimed to be forged and fabricated.

{4}. After filing of replication, trial Court framed the following issues:-

{1}. Whether the defendant executed an agreement to sell dated 09.07.1999 in favour of the plaintiff? OPP.

{2}. Whether the plaintiff remained ready and willing to perform his part of contract? OPP.

{3}. If above issues are proved, whether plaintiff is entitled for specific performance of agreement? OPP.

{4}. If above issue is not proved, whether plaintiff is entitled for recovery of Rs.9,80,000/- alongwith interest as alternative relief? OPP.

{5}. Whether the plaintiff is entitled for

injunction as prayed for? OPP.

{6}. Whether this suit being false and frivolous, is liable to be dismissed with special costs? OPD.

{7}. Whether the plaintiff has concealed material facts from the Court? OPD.

{8}. Relief.

{5}. Both the parties led evidence. Plaintiff examined B.S. Thakur, Advocate as PW1 as scribe of the agreement to sell. Harjeet Singh and Sohan Lal are shown to be marginal witnesses. Sohan Lal has been examined as PW2. Plaintiff himself appeared as PW3.

{6}. On the other hand, defendant himself appeared as DW1 and closed the evidence after tendering documents Ex.D1 to Ex.D4 which were objected to by the plaintiff.

{7}. Trial Court took issues No.1 to 5 jointly. The agreement to sell is dated 09.07.1999. The date for execution of sale deed has been fixed as 08.07.2002 i.e. after 3 years. The suit has been filed on 18.07.2005 which is clearly after limitation of 3 years. The notice dated 22.07.2003 was served upon defendant about one year after the target date and the said delay has not been explained by the plaintiff. The attesting witness namely Sohan Lal PW2 is admittedly a weight man of

Commission Agent Shop and this fact has been admitted by PW3 plaintiff himself while appearing as a witness. The trial Court referred to the cross-examination of PW3 plaintiff and decided issues No.1 to 5 against the plaintiff. Ultimately, suit was dismissed by the trial Court vide judgment and decree dated 20.08.2010.

{8}. Plaintiff filed appeal before the lower Appellate Court. Lower Appellate Court dealt with issue of limitation by observing that the agreement to sell is dated 09.07.1999 and agreed date for execution of sale deed was fixed as 08.07.2002. On 08.07.2002, plaintiff got his presence marked vide Ex.P2 and thereafter, issued notice on 22.07.2003 Ex.P3 which has been proved by postal receipt Ex.P4. Thereafter, suit was filed on 18.07.2005. From 16.06.2005 to 15.07.2005, Civil Court remains closed and suit was filed on the opening day i.e. 16.07.2005 as per endorsement but as per the trial Court judgment, it is shown to have been filed on 18.07.2005. With this reasoning, the finding of the trial Court on issue of limitation has been reversed.

{9}. So far as issuance of notice Ex.P3 is concerned, the same was issued about one year after the lapse of stipulated date but it was issued prior to filing of the suit. Trial Court has come to the conclusion that defendant Balraj Singh was having dealings with the Commission Agency of Charan Singh who

happened to be grandfather of the plaintiff but this evidence has been demolished by the evidence on behalf of the defendant viz Ex.D2 to Ex.D4 showing that form "J" are in the name of Jugraj Singh brother of the defendant and not in the name of the defendant. Jugraj Singh has not been produced by the defendant. Lower Appellate Court has concluded that if the thumb impressions of the defendant were taken on some blank papers in the year 1999, till filing of suit on 16.07.2005, no application/complaint was ever moved by the defendant to the police or any other authority, alleging fraud at the instance of the plaintiff and his grandfather Charan Singh. The conduct of the defendant has been discussed to the effect that during cross-examination, DW1 was asked to admit thumb impressions or signature on the agreement to sell but stated that he cannot say if Ex.P1 bears his thumb impressions on page No.1 and 2 and does not admit signature on page No.1 and 2. Defendant was not found ready to give specimen signature in the court for comparison with thumb impression on Ex.P1. Page No.1 and 2 of the agreement to sell carry thumb impressions of defendant at two places. Defendant did not get his thumb impressions compared nor admitted thumb impressions. The conduct of the defendant has been discussed to dis-entitle him the plea that his thumb impressions were obtained in the year 1999 and his

conduct has been found to be deplorable where he admitted that he is having "J" forms in his possession but did not produce the same nor he shown his willingness to get his specimen signature compared. Lower Appellate Court found that the defendant after having entered into agreement to sell has now resiled from the same and has taken up a plea of getting thumb impressions on blank paper and he rather refused to get the thumb impressions compared on being given such an offer. Even the plea of his brother having dealing with the said firm has not been proved with reference to production of his brother. If the plaintiff would have taken thumb impressions, he could have taken thumb impressions of Jugraj Singh and not that of the defendant. Since 1999 till date, no complaint in respect of taking thumb impressions on blank paper has been moved by the defendant. Execution of agreement has been proved on record. The testimony of PW1 B.S. Thakur has to be tested at the threshold of the merits of the present case. Evidence led and proved in different case cannot be made subject matter of appreciation of evidence in the present case. Similarly, statement of PW2 cannot be discarded simply because he is a weight man of the plaintiff. The statements of PW1 and PW2 stood the test of judicial scrutiny. In the present case, nothing incriminating could come out from their lengthy cross-

examinations. The non-entering of document in the register of the scribe is not sufficient to demolish the case of the plaintiff.

{10}. So far as plea of possession of the plaintiff is concerned, the lower Appellate Court found the same to be exaggerated version in the light of cross-examination of the plaintiff himself where he has stated that the possession of 56 Kanals of land at the time of execution of agreement to sell was taken by him but later on possession was taken by the defendant. The Lower Appellate Court found readiness and willingness in favour of the plaintiff-appellant in view of Ex.P2 to Ex.P4 and accepted the appeal by setting aside the judgment and decree dated 20.08.2010 passed by trial Court. That is why the present appeal came to be filed.

{11}. I have considered the submissions made by learned counsel for the appellant and have also perused the material on record.

{12}. Admittedly, an agreement to sell dated 09.07.1999 has been proved with reference to scribe and attesting witnesses. The target date for registration of sale deed was fixed as 08.07.2002. Earnest money to the tune of ₹8,30,000/- is shown to have been paid out of total sale consideration of ₹9,80,000/-. Possession has not been taken as per statement of PW3. Even after expiry of target date i.e. 08.07.2002, legal

notice is shown to have been issued by the plaintiff only on 22.07.2003 i.e. much after the expiry of one year from the date of execution of the sale deed. Thereafter, the suit came to be filed on 16/18.07.2005 i.e. after more than 3 years. Firstly, there is delay in fixing the date for execution of sale deed i.e. on the last date of expiry of 3 years from the date of agreement to sell. Registered notice was issued by the plaintiff even after one year from the date of registration of target date i.e. 08.07.2002. The notice was issued on 22.07.2003 i.e. after more than one year from the target date. The suit ultimately came to be filed on 16/18.07.2005 which is beyond period of 3 years from the target date. All these things are sufficient to infer that plaintiff is not ready and willing to perform his part of agreement despite the fact that an amount of ₹8,30,000/- was given as earnest money on date of execution of agreement to sell on 09.07.1999. Out of total sale consideration of ₹9,80,000/-, substantial amount to the tune of ₹8,30,000/- is shown to have been paid on the very first day of execution of agreement. An amount of ₹1,50,000/- remained as balance sale consideration and the date for registration of sale deed was postponed for 3 years at the first instance and, thereafter, the suit came to be filed more than 3 years thereafter i.e. on 16/18.07.2005. The original limitation cannot be extended in the manner as suggested by the lower

Appellate Court even if it is presumed that summer vacations started during the period of limitation and Court opened only on 15.07.2005, still the suit came to be filed on 16/18.07.2005 which is beyond limitation. Even during summer vacations, registry is functioning for the purposes of criminal cases and there was no impediment in filing the suit. Even, if, it is presumed that Civil cases are not to be entertained during vacations, still on the opening day i.e. 15.07.2005, the suit could have been filed but the filing of the suit as per trial Court judgment is 18.07.2005 which is again three days after the opening of Civil Court on 15.07.2005 after the holiday.

{13}. From the aforesaid evidence on record, in considered opinion of this Court, trial Court has rightly concluded that the suit filed by the plaintiff is beyond limitation. Lower Appellate Court cannot extend the period of limitation by any stretch of imagination. Even the plaintiff has tried to introduce falsehood in alleging that the possession of the land was delivered to him pursuance to the payment of earnest money and execution of agreement to sell. The fallacy in the statement of the plaintiff has been admitted by the plaintiff himself while appearing as PW3 and possession was not found to be with the plaintiff. Therefore, plaintiff has tried to introduce falsehood in the case. Even if agreement to sell is proved, the readiness and willingness on

the part of the plaintiff remain discrepant throughout and even suit is barred by limitation. Even, if a specific plea has not been taken in the suit and no issue has been framed on limitation, still Court is obligated in terms of Section 3 of the Limitation Act to see whether suit is barred by limitation or not.

{14}. After having considered the issue in detail, this Court finds that filing of suit on 16/18.07.2005 is patently barred by limitation, and, therefore, impugned judgment and decree passed by lower Appellate Court dated 05.01.2011 is hereby set aside and judgment and decree of the trial Court dated 20.08.2010 is restored. Appeal is allowed, dismissing the suit throughout.

January 06, 2016

Jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**