

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1244 of 2013 (O&M)

Date of Decision: May 20th, 2016

Atma Ram

...Appellant

Versus

Charanjit Singh

...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.Lokesh Sinhal, Advocate,
for the appellant.

Mr.Jatin Hans, Advocate,
for the respondent.

AMIT RAWAL, J.

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit for seeking specific performance of the agreement to sell has been dismissed, in essence the judgment and decree of the trial Court decreeing the suit, has been reversed.

Mr.Lokesh Sinhal, learned counsel for the appellant-plaintiff, in support of the grounds of appeal, submits that an agreement to sell dated 12.10.1994 in respect of the disputed property was entered into for a total sale consideration of ₹4,38,000/- against the receipt of earnest money of ₹1,00,000/-. The stipulated date for execution and registration of the sale deed was 7.10.1996. A legal notice was also served on 12.11.1996.

However, suit for mandatory injunction was filed on 13.10.1999, which was converted into suit for specific performance by the trial Court vide order dated 9.8.2003. Thus, the relief of specific performance cannot be said to be barred by law of limitation. It is a categoric averment in the plaint that the appellant-plaintiff had been approaching the respondent-defendant for performance of the agreement to sell and the defendant had been putting off the matter on one pretext or the other. Having left with no other choice, the appellant-plaintiff filed the suit, aforementioned.

He further submits that the vendor had also agreed to sell the land to third party, who had instituted a suit, which was dismissed on 28.5.2002. Prior to the date of agreement, on 8.10.1994 lease deed in respect of the disputed property was entered into between the vendor and the son of the plaintiff. The trial Court, on the basis of examination of the oral and documentary evidence, much less summoning of the file from the concerned HUDA office where the lease deed, aforementioned, was submitted, found that the signatures on the lease deed and the agreement to sell tallied, though both the parties examined Handwriting and Finger Print Experts, but they deposed in favour of the respective parties. Even the trial Court also noticed the conduct of the defendant and called upon him to make a writing in the similar fashion as has been effected on the agreement to sell qua receipt of ₹1,00,000/- as earnest money and after comparing the signatures, found that both are of the same and identical person. Defendant is a practising Advocate and he knew the intricacies of law, yet adopted all possible tactics in thwarting the claim for specific performance. Readiness and willingness was continuous.

The Lower Appellate Court has gone into arena of surmises and

conjectures by laying much emphasis on the execution of the lease deed. He further submits that once lease deed had been admitted, there was no occasion for the Lower Appellate Court to render finding vis-a-vis the same. It is the conceded position on record that by virtue of the lease deed, possession of the disputed property was handed over to the son of the plaintiff and it was agreed that the plaintiff shall be entitled to seek the possession after execution of the sale deed, meaning thereby that the defendant had given all rights to the plaintiff to seek possession in accordance with law. The agreement to sell has been proved through the testimony of attesting witnesses, thus, urges this Court to formulate the substantial questions of law culled out in the memorandum of appeal.

Mr.Jatin Hans, learned counsel for the respondent-defendant submits that the execution of the agreement to sell was emphatically denied as on all the documents, including lease deed, the defendant has been putting complete signatures, whereas agreement to sell bears only initials. Plaintiff has failed to bring on record any document to show that he has been putting his initials and as well as full signatures. One of the attesting witness stated that the agreement to sell was performed in Subzi Mandi and the stamp papers were also brought by him. Neither the scribe nor the stamp vendor has intentionally been examined as plaintiff was afraid of surfacing of the truth. No explanation has come forth in seeking the specific performance after the expiry of the stipulated date as the plaintiff was not arrayed as party in the suit, referred above. The suit is, *ex-facie*, barred by law of limitation as the date of converting the suit for mandatory injunction into specific performance is to be reckoned and the same, as noticed above, was done in 2003, i.e., almost seven years of the expiry of the stipulated

date. In support of his contentions, relies upon the following judgments:-

- 1) **Tarlok Singh Versus Vijay Kumar Sabharwal, 1996**
(8) SCC 367;
- 2) **T.L.Muddukrishana Versus Smt.Lalitha Ramchandra**
Rao, 1997(2) R.C.R. (Civil) 154;
- 3) **Phool Singh Versus Ram Rattan, 2012(4) PLR 366;**
- 4) **Virender Pal Versus Parmod and another, 2012(4)**
PLR 170; and
- 5) **State of Punjab and another Versus Phoola Singh and**
others, 2011 AIR CC 990.

He further submits that the aforementioned facts had not been examined by the trial Court and the Lower Appellate Court, being the last Court of fact and law, after examining the aforementioned facts and the statutory provisions of law, declined the relief and, thus, urges this Court for affirming the findings of the Lower Appellate Court as no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that appeal sans merit, for, no explanation has come forth in seeking the relief of specific performance immediately after expiry of stipulated date. Once the relief of specific performance was available on the expiry of the stipulated date, yet the plaintiff chose to file suit for mandatory injunction on 13.10.1999, whereas the stipulated date was 7.10.1996. It is settled law that the person must claim specific performance as per the ingredients of Section 16(c) of the Specific Relief Act, 1963 (for short “1963 Act”) and should always be ready and willing to perform part of the contract. In the instant case, the readiness and

willingness is conspicuously wanting as no explanation has come forth even in the plaint or in the evidence. Legal notice is also dated 12.11.1996. There is a gap of almost three years in filing the suit. Even if the Court had converted the suit without there being any application seeking amendment of the plaint, but the principle of law of limitation, in such situation, would be same when specific performance is sought to be incorporated. Suit for mandatory injunction has been converted into suit for specific performance on 9.8.2003 and three years taken from the stipulated date expired in October, 1999. Witness Sanjay, in cross-examination, admitted that the agreement to sell was entered into in the Subzi Mandi. No explanation has come forth in not examining the scribe and the stamp vendor to show that who had actually purchased the stamp papers for execution of the agreement to sell. It is matter of common knowledge that the person, who purchases the stamp papers, append his signature on register of stamp vendor. Perhaps the plaintiff was afraid that the cat may not be out of the bag if the register, brought on record, may not be read against him. Against the payment of earnest money of ₹1,00,000/-, period of two years had been fixed for execution and registration of the sale deed. Plaintiff has also failed to bring on record evidence vis-a-vis the practice being adopted by defendant for appending full signature or initials. In the absence of direct and cogent evidence, rightly so, the Lower Appellate Court formed an opinion that the agreement to sell was surrounded by suspicious circumstances, particularly when four days before the agreement to sell, lease deed in respect of the disputed property was executed in favour of the son of the plaintiff, who was handed over the possession thereof, though, it is a matter of record that a suit for ejectment at the instance of the vendor and lessor against the

lessee is stated to be pending. Be that as it may, I am of the view that there is no illegality and perversity in the findings rendered by the Lower Appellate Court as the trial Court had delved on the matters, which were not required. There is no adjudication with regard to the readiness and willingness, much less compliance of statutory provisions of Section 16(c) of 1963 Act.

I am in agreement with the submission of Mr.Jatin Hans duly supported by the ratio decidendi culled out in the judgments cited supra, though in all the cases, application under Order 6 Rule 17 CPC had been moved, but the fact remains that even if the Court converted the suit into specific performance, the amendment shall not relate back to filing of the suit. The reckoning date would be date of conversion which concededly was 9.8.2003, therefore, the suit for specific performance was also, *ex-facie*, time barred.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree of the Lower Appellate Court, much less no substantial question of law arises for determination by this Court. Resultantly, the appeal stands dismissed.

May 20th, 2016
ramesh

(AMIT RAWAL)
JUDGE