

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.1681 of 2013 (O&M)

Date of decision: 6.9.2016

Deepak Saini

... Appellant

Versus

Joginder Gir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Rajesh Sethi, Advocate,
for the appellant.

Mr.Rajinder Goyal, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower appellate court whereby the discretion exercised by the trial Court while decreeing the suit seeking specific performance of the agreement to sell dated 21.1.1997 has been dismissed.

Mr.Rajesh Sethi learned counsel appearing on behalf of the appellant submits that the aforementioned agreement to sell was entered into in respect of the suit land i.e. 13K-14M for total consideration @ ₹ 23 lacs which ultimately increased to ₹ 25 lacs. Initially the target date for execution and registration of the sale deed was 31.8.1997. The earnest money of ₹ 3,90,000/- had been paid. On 23.8.1997, there was an extension to 7.12.1997 and on amount of ₹ 1.5 lac was paid. However, the aforementioned period was extended, on 7.12.1997, on payment of another

done to 30.4.1999 and on 24.10.1998, a sum of ₹ 85,000/- was paid and extensions continued up to 18.7.2000. These were two extensions i.e. of 18.7.2000 to 27.12.2001 and thereafter up to 31.12.2001 and from 27.12.2001 to 31.8.2002 had been disbelieved by the courts below, whereas, this fact was brought to the notice of the respondent-defendant one of the co-owner, vide legal notice Ex.P8 sent by the respondent. However, there was no rebuttal to the aforementioned extensions. The property aforementioned stood in the name of four brothers including the respondent-defendant. All the three other brothers during the pendency of the present suit executed sale deed except the defendant. Since 1.9.2002 was holiday, the appellant marked his presence before the office of Sub Registrar on 2.9.2002 and sent legal notice on 23.9.2002. In between, the respondent had a suit for permanent injunction against the other brothers qua execution of the sale deed. The appellant was also impleaded as party.

During the pendency of the aforementioned litigation, the other brothers as submitted executed the sale deed, it is in these circumstances, they could not file the suit. The court below decreed the suit by exercising discretion under Section 20 of Specific Relief Act. The appellate court has assigned no reasons in erroneously holding that appellant failed to examine the witnesses Lakhwinder Singh and Sunil Saini and payment of a sum of Rs.2.5 lacs on the extension of December, 2001 and drew adverse inference of non-appearance of Lakhwinder Singh and accordingly, dismissed the suit.

He submits that the judgment and decree of the lower appellate court suffers from illegality and perversity as it has not referred to the reply to the legal notice dated 18.4.2002 and thus urges this Court that judgment

and decree of the lower appellate court be set aside.

Per contra, Mr.Goyal learned counsel for the defendants submits that two witnesses namely Sunil Saini and Lakhwinder Singh have been examined in the essence the plaintiff has not discharged the onus except self-serving statement nor there is direct and corroborative evidence whereas on the other hand, the defendant specifically answered question put in the cross-examination and ignorance to two extensions surfaced. The readiness and willingness is conspicuously absent. The aforementioned extensions are perpetuated as an outcome of fraud having been played on the defendants. Even the payment of ₹ 2.5 lacs allegedly paid to Sunil Saini has been proved. The extensions aforementioned which are held seriously disputed have been rightly discarded thus the suit has rightly been held to be barred by limitation and urges this Court to affirm the findings of lower appellate court.

I have heard the learned counsel for the parties and perused the paper book. The questions of law which arises for consideration are : -

1. Whether the appellant-plaintiff has been able to discharge onus vis-a-vis two extensions noticed above or not and if yes, whether the judgment and decree of the lower appellate court suffers from illegality and perversity or not?

The answer is in favour of the appellant plaintiff. In my considered opinion, the respondent-defendant vide legal notice dated 15.3.2002 called upon the appellant-plaintiff to execute the sale deed within one month i.e. up to 14.4.2002, failing which the agreement stood cancelled but the fact remains that the aforementioned legal notice was replied vide reply dated 18.4.2002 Ex.P3. There is categoric averments with regard to

the extension of 27.12.2001 and up to 31.8.2002. Had there been any truth

in the aforementioned averments, nothing prevented the defendant to rebut the same by filing a rejoinder. This aspect has escaped the notice of the lower appellate court being the last court of fact and law which is enjoined power to refer to each and every documents.

As regards readiness and willingness, I am of the view that the injunction suit amongst the brother was pending and during the pendency of the suit, sale deed qua their share had been executed in favour of the appellant plaintiff. It is only the defendant who is contesting the suit qua his share. In my view, there is no force in the submission of Mr.Goyal of having not challenged for cancellation of the agreement as reflected in the legal notice dated 15.3.2002 as extension was up to 31.8.2002. The circumstances have been explained in rebutting alleged cancellation of the alleged agreement, in the notice Ex.PM. During the course of hearing, I have been shown copy of signatures of other co-owners. If it was so, nothing prevented the defendant to examine the other property owners, much less, through the testimony of expert. Except the bald statement in the cross-examination, there is no other cross-examination of the plaintiff vis-a-vis the fraud having been played with regard to two extensions. Having not noticed all these facts, the appellate court committed illegality and perversity. Accordingly, the judgment and decree of the lower appellate court is set aside and that of the trial court is restored. Suit stands decreed.

RSA stands allowed.

(AMIT RAWAL)
JUDGE

September 6, 2016

Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No