

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

**R.S.A No.1130 of 2016 (O&M)
Date of decision :14.03.2016**

Swaran Kaur (deceased) through LRs.

..... Appellants

Versus

Bachan Lal (deceased) through LRs.

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.A.S.Manaise, Advocate
for the appellants.

DARSHAN SINGH,J

CM No. 3101-C of 2016

There is delay of 23 days in re-filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 23 days in re-filing the appeal is hereby condoned.

CM No. 3102-C of 2016

This application has been filed for bringing on record the legal representatives of appellant no.1 (i) Sarwan Singh son of Sawaran Kaur wife of Piara Singh.

Heard.

For the reasons mentioned in the application, the application stands allowed, subject to all just exceptions and the legal heirs of deceased-Sarwan Singh son of Sawaran Kaur as mentioned in para no. 2 of the application are impleaded and allowed to pursue the appeal.

R.S.A No. 1130 of 2016

This Regular Second Appeal has been preferred by the legal representatives of the plaintiff against the judgment and decree dated 13.07.2015 passed by the learned Additional District Judge, Gurdaspur, vide which the appeal preferred against the judgment and decree dated 11.01.2012 passed by the learned Addl. Civil Judge (Sr. Division), Gurdaspur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff filed the suit for possession by way of specific performance of agreement to sell dated 12.10.1983 executed by Baghu Ram, father of defendants no.1 to 6 and grandfather of defendant no.7 in favour of deceased plaintiff-Swaran Kaur regarding the land measuring 37 Kanals 5 Marlas or in the alternative the suit for recovery of Rs. 12,000/- i.e. Rs.6000/- paid in advance and Rs. 6000/- as liquidated damages with consequential relief of injunction.

4. The plaintiff was in cultivating possession of the suit land for the last more than 40 years. Earlier the land in dispute was Banjar, which was reclaimed by the plaintiff by spending huge amount and hard labour. Previously, the land in dispute belongs to the Central Government. The same was allotted to Bhagu Ram being the member of Scheduled Castes

in restricted auction. However, the possession thereof remained with plaintiff. Said Bhagu Ram entered into an agreement to sell dated 12.10.1984 for a total sale consideration of Rs. 7000/- for the sale of the suit land and received Rs. 6000/- at the time of execution of the agreement. Bhagu Ram was not competent to sell the suit land within 15 years from the purchase of the suit land. It was stipulated in the agreement to sell that Bhagu Ram would deposit all the installments with Tehsildar Sales and then he will inform the plaintiff for execution and registration of the sale deed. However, in the agreement, it was mentioned that Bhagu Ram will execute and get registered the sale deed in favour of the plaintiff on 11.10.1987. Plaintiff was always ready and willing to perform her part of contract. But, Bhagu Ram avoided the matter on one pretext or the other. Two days before 11.10.1987, plaintiff approached Bhagu Ram alongwith remaining sale consideration, stamp and registration charges and requested Bhagu Ram to reach the Teshil Compound, Gurdaspur for execution and registration of the sale deed as per the terms and conditions of the agreement to sell dated 12.10.1984. But, he said that he has not deposited the installments and no conveyance deed has been executed in his favour. He further said that whenever the conveyance deed is issued in his favour, he will execute and get registered the sale deed in favour of the plaintiff. Bhagu Ram died about four years back. Thereafter, plaintiff approached his legal heirs, but of no avail. Hence the suit.

5. The defendants contested the suit on the grounds *inter alia* that Bhagu Ram became the owner in possession of the suit property on

22.08.1997. They further pleaded that Bua Singh, son of the plaintiff is working in the Revenue Department. She with active connivance of her son has procured the false and wrong entries in the revenue record with respect to cultivation. They denied that plaintiff is in physical possession over the suit land. They further pleaded that the alleged agreement to sell dated 12.10.1984 is false, frivolous and bogus. With these pleas, they pleaded for dismissal of the suit.

6. Plaintiff filed the replication controverting the pleas raised in the written statement.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 20.12.2006:-

1. Whether the plaintiff is entitled for possession by means of specific performance of agreement of sale dated 12.10.1984?
OPP
2. Whether the plaintiff is ready and willing to perform his part of contract?OPP
3. Whether the plaintiff is entitled for injunction as prayed for?
OPP
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD
5. Whether the suit is within limitation?OPP
6. Whether the plaintiff has no cause of action to file the present suit?OPD
7. Relief.

8. The learned trial Court on appreciation of the evidence decreed the suit of the plaintiff-appellant for permanent injunction restraining the defendants from interfering in possession of the plaintiff except in due course of law. However, suit qua specific performance and recovery was dismissed.

9. Aggrieved with the judgment and decree dated 11.01.2012, appellants preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 13.07.2015. Hence this Regular Second Appeal.

10. I have heard Mr. Amandeep Singh Manaise, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

11. Initiating the arguments, learned counsel for the appellants contended that as the land in dispute was allotted to Bhagu Ram in restricted auction, he was not competent to execute the sale deed in favour of the plaintiff for a period of 20 years, which expired only in the year 2004 and the suit was filed by the plaintiff on 21.11.2006. Thus, he contended that the suit of the plaintiff-appellant was within limitation. He further contended that no intimation was given by Bhagu Ram about the execution of conveyance deed in his favour. Thus, he contended that the learned trial Court has wrongly dismissed the suit of the plaintiff for the claim of specific performance on the ground of limitation.

12. I have duly considered the aforesaid contentions.

13. This Regular Second Appeal has been preferred against the concurrent findings of facts recorded by both the learned Courts below. The law is well settled that the scope of interference with the concurrent findings of fact while exercising the powers under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C') is very limited. It is only permissible where the Courts below misdirect themselves in appreciating the question of law, the onus was placed on the wrong party, the material

or relevant evidence was not considered, which if, considered would have led to an opposite conclusion and that the findings have been arrived at by the learned Courts below by placing reliance on inadmissible evidence, which, if, omitted would have led to the opposite conclusion and finally that the judgments passed by the Courts below are perverse. It is also the settled principle of law that in Regular Second Appeal, the High Court cannot indulge in the task of re-appreciating the evidence.

14. This fact is not disputed that earlier the land in dispute was owned by the Central Government, which was allotted to Bhagu Ram, the predecessor-in-interest of the defendant in restricted auction being the member of the Scheduled Caste. He had executed the agreement to sell Ex.P1 in favour of the plaintiff on 12.10.1984 to sell the suit property to the plaintiff for a sum of Rs. 7000/- and had received Rs. 6000/- at the time of execution of agreement to sell Ex.P-1. It is not disputed that as per the stipulation in the agreement to sell the sale deed was to be executed on 11.10.1987. Plaintiff has alleged that she approached Bhagu Ram two days before the stipulated date for execution and registration of the sale deed. But, this is only an oral plea and is not corroborated from any documentary evidence. There is also no material on file to show that the appellant had approached the legal representatives of deceased-Bhagu Ram for the purpose of execution and registration of the sale deed. This fact is not disputed that the conveyance deed/sale certificate was issued in favour of Bhagu Ram on 22.08.1997. The plaintiff has not issued any notice to Bhagu Ram or his legal representatives calling upon them to execute the sale deed after issuance of the conveyance deed/sale

certificate. In the agreement, the date for execution of the sale deed was fixed as 11.10.1987. The period of limitation to file the suit for specific performance had started running from the said date stipulated in the agreement. Even, if we assume that the period of limitation was to start from the date of issuance of the sale certificate that too was issued on 22.08.1997. But, the present suit has been filed by the plaintiff on 22.11.2006 i.e. after 9 years of issuance of the sale certificate. So, the learned Courts below have rightly held that suit of the plaintiff for specific performance and the alternative relief of recovery was hopelessly time barred. Learned counsel for the appellant has not been able to point out any stipulation in the agreement Ex.P-1 that the sale deed was to be executed after 20 years from the date of purchase.

15. Thus, this Court has no reason to differ with the concurrent findings recorded by the learned Courts below that the suit filed by plaintiff-appellant qua specific performance of agreement to sell dated 12.10.1984 and alternative relief of recovery was barred by limitation.

16. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

March 14, 2016

s.khan

(DARSHAN SINGH)
JUDGE