

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

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RSA 1546 of 2015 (O&M)
Date of decision: 25.01.2016

Lakha Singh and another

..... Appellants

Versus

Balwinder Kaur and another

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Premjit Kalia, Advocate
for the appellants

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

CM 390-C of 2016

Allowed as prayed for and document Ex.P5 is taken on record.

RSA 1546 of 2015

The present regular second appeal has been directed against the judgment and decree dated 16.09.2013 passed by the learned trial Court and judgment and decree dated 07.10.2014 passed by the appellate Court whereby the suit filed by the appellants has been dismissed by the learned trial Court and findings recorded by the trial Court have been affirmed in appeal.

The appellant and *pro forma* respondents filed a suit for specific performance of the agreement to sell dated 03.01.1983, purported to

be executed by Gurnam Singh, the predecessor-in-interest of the contesting respondents in favour of S Gurmej Singh, the predecessor-in-interest of the appellants. It was pleaded that Gurnam Singh received an amount of Rs.2000.00 towards earnest money and agreed to execute sale deed in favour of Gurmej Singh. At the time of agreement, Gurnam Singh was allottee of the land which was subsequently conveyed to him by the Punjab Government vide Conveyance Deed dated 07.03.1988. Gurmej Singh earlier filed a suit for specific performance against Gurnam Singh which was dismissed by the trial Court vide judgment and decree dated 15.05.1992. The appeal preferred by Gurnam Singh was dismissed by the first appellate Court vide judgment and decree dated 21.03.1997.

Counsel for the appellant contends that earlier suit seeking specific performance of the agreement to sell dated 03.01.1983 was dismissed on the premise that Gurnam Singh, the predecessor-in-interest of the contesting respondents was not competent to sell suit land for a period of 20 years in the light of embargo created as per terms and conditions of the allotment/conveyance deed made in his favour. It is argued that as said period of 20 years has expired, the appellant and *pro forma* respondents (plaintiffs) got a fresh cause of action to enforce the agreement to sell dated 03.01.1983. It is further argued that the Courts below have committed a serious error in non-suited claim of the appellants, in view of decision in the earlier litigation.

I have heard counsel for the appellants and perused the records.

The learned trial Court dismissed the suit of the appellants

primarily on the ground that the same is barred by principle of *res judicata* envisaged in Section 11 of the Code of Civil Procedure (in short, CPC)

The learned appellate Court has affirmed the findings of the trial Court by referring to the provisions of Section 11 CPC. There is nothing on record to suggest that while disposing of earlier suit, any permission was granted to the appellant to file a fresh suit on the same cause of action on expiry of a period of 20 years with effect from the date, restriction imposed upon Gurnam Singh against alienation of the suit property would expire. In the circumstances of the present case, the appellant can neither get a fresh period of limitation nor a fresh cause of action to file the suit claiming same relief of specific performance on expiry of aforesaid period of 20 years.

Counsel for the appellants is not in a position to cite any provision in law or a precedent which entitles the appellant to initiate the proceedings afresh in the face of the earlier suit filed for the same relief having been dismissed and the decree passed in those proceedings has attained finality. That being so, neither any substantial question of law, as has been sought to be raised or otherwise, arises for consideration nor there is any error much less illegality in the concurrent findings recorded by the Courts below.

For the reasons aforesaid, finding no merit, the appeal is dismissed *in limine*. No order as to costs.

(Rekha Mittal)
Judge

25.01.2016
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