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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2750-2015

Date of decision : 14.01.2016

Bhajan Kaur (deceased) through her legal representatives

... Appellants

Versus

Harbhajan Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms.Bhupinder Kaur, Advocate
for the appellants.

REKHA MITTAL. J.

The present appeal has been directed against the concurrent findings recorded by the courts below whereby the suit filed by the respondents for specific performance of the agreement dated 16.10.1992 in respect of suit land has been decreed by the learned trial Court and the judgment and decree passed by the learned trial Court has been affirmed in appeal.

The facts relevant for disposal of the present appeal are that respondent Harbhajan Singh and others filed suit for specific performance of the agreement dated 16.10.1982 executed by Bhajan Kaur and Buta Singh, predecessor in interest of defendants No.2 to 5. Further prayer has been made for restraining the appellants and their co-defendants from interfering in peaceful possession of the respondents, dispossessing them

illegally and forcibly and alienating the suit property. It is averred that Smt.Harbans Kaur agreed to purchase the suit property from Smt. Bhajan Kaur and Buta Singh vide agreement to sell dated 16.10.1982. Smt.Harbans Kaur died in the month of September 2005 leaving behind Harbhajan Singh (husband), Parminder Singh, Jaspal Singh (sons) and Paramjit Kaur, Sharanjeet Kaur, Balwinder Kaur (daughters) (respondents herein). Buta Singh has passed away leaving behind defendants No.2 to 5 as his legal heirs. Des Raj and Gurdev Singh, attorney of Smt.Bhajan Kaur are running the business of property dealer under the name and style of M/s Dhamotia and Company, Rahon Road, Basti Jodhewal, By pass Chowk, Ludhiana. Bhajan Kaur and predecessor in interest of defendants No.2 to 5 agreed to sell the property in dispute to Smt.Harbans Kaur on installments @ ₹30/- per square yard total amounting to ₹6000/-. The entire sale consideration was received by Bhajan Kaur and Buta Singh and they agreed to get the sale deed executed and registered within one month when the sale deeds are to be allowed by the Government of Punjab. The possession was delivered to the vendee at the time of agreement and since then the respondents are in possession of the suit property. They have raised construction over the plot in dispute as was allowed by the defendants.

The appellant and her co-defendants filed the written statement and, in turn, challenged the suit being not maintainable in the present form; barred by time; not properly valued for the purpose of court fee and jurisdiction; locus standi of the respondents to file the suit and the

suit is bad for mis-joinder and non-joinder of necessary parties. They have denied execution of the agreement in question and all other material averments in the plaint with a prayer for dismissal of the suit.

The learned trial Court bestowed its thoughtful consideration to the rival submissions made by counsel for the parties in the light of their pleadings, issues framed for determination and the evidence adduced on record but eventually decreed the claim of the respondents/plaintiffs by directing the appellant and her co-defendants to get the sale deed executed and registered in favour of the respondents regarding plot No.137-A bearing Municipal Corporation No.B.XXXI-11490 of the house measuring 200 square yards depicted in red colour in the site plan attached, on the basis of agreement dated 16.10.1982. As has been noticed hereinbefore, the judgment and decree passed by the learned trial Court came to be affirmed in appeal by the Additional District Judge, Ludhiana.

Feeling dissatisfied with the consistent findings recorded by the courts below, the present appeal has been preferred only by the legal representatives of Bhajan Kaur (since deceased).

Counsel for the appellants has assailed the judgments passed by the Courts primarily on two counts. The first submission made by counsel is that both the courts failed to consider that the suit filed on 07.11.2006 in regard to alleged agreement dated 16.10.1982 is hopelessly time barred, therefore, the respondents are not entitled to any relief much less that of specific performance of the agreement to sell. Another submission made by counsel is that there is no material on record to prove

that the respondents always remained ready and willing to perform their part of the agreement when otherwise no specific issue in this regard has been framed by the trial Court.

I have heard counsel for the appellants, perused the records and find no merit in the appeal.

The respondents have raised a categorical plea that at the time of agreement, the entire sale consideration was paid to Smt. Bhajan Kaur and Buta Singh and possession of the plot was delivered to Smt. Harbans Kaur, the predecessor-in-interest of the respondents/plaintiffs. Another plea raised by the respondents is that the vendors under the agreement permitted Smt. Harbans Kaur to raise construction on the plot in question and the construction was completed by the year 1983 as shown in the site plan. Counsel for the appellants has not challenged the findings in regard to the respondents having raised construction of a house on the plot in question and the property bears Municipal No.B.XXXI-11490. There is also no denial of the fact that as per the agreement executed by Smt. Bhajan Kaur and Buta Singh in favour of Smt. Harbans Kaur, it was agreed between the parties that the sale deed would be executed as and when permission is granted by the State of Punjab in regard to execution of sale deed for the property in question. Though there is no evidence on record as to when the Government of Punjab permitted the owners of the property in the said area to execute the sale deeds but in view of the recital in the agreement coupled with the conduct of the parties that the proposed vendee was permitted to raise construction of a house on the suit

plot, it can be safely inferred that time was not essence of the contract in the circumstances of the present case. In this view of the matter, I do not find any merit in the contentions of the appellants that the suit filed by the respondents seeking specific performance of the agreement is barred by limitation.

This brings the Court to the second contention in regard to failure of the respondents to prove their readiness and willingness to perform their part of the agreement. Firstly, as the appellant and her co-defendants have denied execution of the agreement in question, it is not open for them to raise any issue in regard to readiness and willingness of the purchaser under the agreement. Even otherwise, it has been proved by the respondents that they had already paid the entire sale consideration to Smt.Bhajan Kaur and Buta singh and possession of the suit plot was delivered to them on which they raised construction after seeking necessary permission from the Municipal Corporation, Ludhiana and the property has been allotted municipal number B.XXXI-11490 in the name of Smt.Harbans Kaur. As the respondents had already paid the entire sale consideration, they were left with no obligation to be discharged except to get the sale deed executed and registered on payment of expenses required for registration of the sale deed. In view of the above, there is no merit in the contentions of the appellants that either the Courts below committed any illegality or the appeal raises any substantial question of law for adjudication.

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For the reasons aforestated, finding no merit, the appeal is dismissed in limine with no order as to costs.

(REKHA MITTAL)
JUDGE

January 14, 2016.
Davinder Kumar