

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

RSA No.4410 of 2016 (O&M)

Date of Decision.14.09.2016

Sh. Pitambar Dayal

.....Appellant

Vs

Shri Sukh Ram Yadav and others

.....Respondents

2. RSA No.4411 of 2016 (O&M)

Sh. Pitambar Dayal

.....Appellant

Vs

Smt. Saroj and others

.....Respondents

Present: Mr. A.S. Chadha, Advocate
for the appellant in both appeals.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Aditya Jain, Advocate
for respondent-caveator No.1 in RSA No.4410 of 2016.

Mr. Puneet Bali, Senior Advocate with
Mr. Ranjit Saini, Advocate
for respondent Nos.2 to 6 in RSA No.4411 of 2016.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing Nos.4410 and 4411 of 2016. The appellant-plaintiff on 20.02.2007 had filed the suit for specific performance of agreement to sell dated 29.1.1993 executed in respect of land measuring 4 kanals 12 marlas as well as challenging the sale deed dated 07.02.2007 executed by defendant Nos.2 to 6 in favour of defendant Nos.9 to 13 on the premise that Lal Chand was exclusive owner in possession of land measuring 23 kanals 11 marlas. Lal Chand appointed Bijender Singh as his general power of attorney to deal

with 8 kanals of land vide attorney dated 30.03.1992.

As per the case set out by the plaintiff, he had rightly been put in possession of the land and entire sale consideration i.e. ₹8,39,500/- had been paid. Lal Chand through his attorney Bijender Singh had entered into agreement to sell with the plaintiff on 29.01.1993 in respect of land measuring 4 kanals 12 marlas. Since time was not essence of the agreement, the terms of the agreement envisaged that vendor Lal Chand and his legal heirs would be bound by the terms and conditions of the agreement to sell. Lal Chand died on 03.02.1993 and the legal representatives of Lal Chand refused to execute or register the sale deed. In this backdrop of the matter, the suit aforementioned was filed. It has also been stated that during the currency of the agreement, the defendants sold the property to defendant Nos.9 to 13 vide sale deed dated 07.02.2007, which is sought to be set aside. The suit of the plaintiff was decreed by the trial Court but the Appellate Court reversed the judgment and decree passed by the trial Court, hence, the plaintiff is in second appeal before this Court.

Mr. A.S. Chadha, learned counsel appearing on behalf of the appellant-plaintiff submits that the agreement to sell as per the finding rendered by the Civil Judge (Senior Division), Faridabad had been proved, in essence, the suit was not found to be barred by limitation as it conforms to the provisions of Article 54 of the Limitation Act, 1963. The lower Appellate Court had misdirected itself and erroneously arrived at the finding that on death of Lal Chand, who died on 03.02.1993, the agreement had come to an end. In fact, the lower Appellate Court misread the contents of the agreement which clearly indicate that legal heirs of Lal Chand would also be bound by the terms and conditions of the agreement to sell. The trial Court, after examining the oral and documentary evidence, found that

the general power of attorney Bijender Singh had executed as many as 13 sale deeds Ex.PW2/A to Ex.PW2/O and received consideration from various purchasers which were neither objected to nor challenged by the legal heirs. The agreement to sell was duly proved by producing witnesses and scribe of the agreement. The trial Court further held that Mala Malhotra, stamp vendor had sold the stamp paper for agreement to sell and alleged illegality in the stamp paper as was tried to be projected by the defendants was meaningless because enquiry conducted by the SDM was one sided and with regard to the alleged cutting in the register, the trial Court came to the conclusion that there was no overwriting or cutting in the register maintained by the stamp vendor and therefore, it was not a case of fraud and forgery. The possession has also been proved through testimony of Khajan Singh, DW3 and Sukh Ram, DW6. DW3 and DW6 deposed that house was constructed over the land in possession, thus, the construction of the house and possession of the plaintiff cannot be discarded whereas the stand of the defendant was that it had been a vacant plot. The lower Appellate Court has failed to consider the fact that death of Lal Chand did not tantamount refusal to perform the agreement to sell and that the suit is totally in contradiction to the mandate of Section 19 of the Specific Relief Act. The contents of the agreement to sell have been totally misread by the lower Appellate Court. The period of limitation would not start from the death of Lal Chand but it would start on refusal to perform the agreement to sell which has been specifically pleaded in the plaint. The approach of the lower Appellate Court is totally fallacious in arriving at a finding that the agreement to sell was entered in the year 1993 but the appellant-plaintiff had not been able to get the same executed and the suit filed in the year

2007 was barred by limitation. The cause of action accrued only when the defendants sold the land to the subsequent vendees vide sale deed dated 07.02.2007, thus, urges this Court for setting aside the judgment and decree rendered by the lower Appellate Court by formulating the substantial questions of law as drawn in the memorandum of appeal.

Caveat has been filed on behalf of the original vendors and the subsequent vendees, who have been called upon to render assistance to this Court.

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Aditya Jain, Advocate appearing on behalf of the subsequent vendees submits that the lower Appellate Court being the last court of fact and law, after examination of the entire evidence, formed an opinion that the suit was hopelessly barred by limitation and a result of fraud and cheating, as the agreement to sell is a forged and fabricated document, which has been created after the execution of the sale deed in their favour, which is evident from the perusal of the stamp paper in question and as well as stamp register, Ex.D11. The alleged entry in the register apparently looks to be inserted later on and a complaint was lodged with the SDM, Faridabad who found that the stamp vendor had indulged into selling of ante-dated documents and FIR in this regard had been registered whereas the subsequent vendees are the bona fides purchasers for the valuable consideration.

Mr. Puneet Bali, learned Senior Counsel assisted by Mr. Ranjit Saini, Advocate appearing for respondent Nos.2 to 6 in RSA No.4411 of 2016 submits that after the death of Lal Chand even Ram Wati widow of Lal Chand had also died on 16.03.2001. All these facts were in the

knowledge of the plaintiff who was none else but the brother of attorney Bijender Singh. In fact, the alleged sale consideration has also not been proved, much less, there is no averment that the sale consideration was ever passed on to Lal Chand, thus, urges this Court upholding the findings under challenge by dismissing the second appeal.

Per contra, Mr. A.S. Chadha, learned counsel appearing for the appellant relies upon various case laws i.e judgment rendered by Hon'ble Supreme Court in **Gunwantbhai Mulchand Shah and others Vs. Anton Elis Farel and others 2006(2) RCR (Civil) 251** to contend that suit for specific performance filed after 29 years of agreement cannot be dismissed on the ground that it was barred by limitation as the suit would be governed by the second limb of Article 54 of the Limitation Act. The judgments referred to by the counsel in **Mst. Sugni Vs. Rameshwar Dass and another 2006(4) RCR (Civil) 319** and **Babu Ram Vs. Indra Pal Singh (D) by LRs 1998(4) RCR (Civil) 1** are also on the same lines. He also relies upon judgment of Hon'ble Supreme Court in **Ram Baran Prasad Vs. Ram Mohit Hazra and others AIR 1967 SC 744** to contend that as per provisions of Section 23(b) and 27(b) of the Specific Relief Act, 1877 and Section 37 and 40 of the Contract Act, 1872, the contract in the absence of a contrary intention, express or implied, is enforceable by and against parties thereto and their legal heirs and legal representatives including assignees and transferees. The judgment of Karnataka High Court in **Munisetappa and others Vs. Krishnappa and another AIR 1992 Karnataka 375** and judgment of Madras High Court in **Kabridass Vs. Vinothambal and others 2002(4) RCR (Civil) 685** are on similar lines.

He further submits that once agreement to sell has been proved,

discretionary relief under Section 20 of the Specific Relief Act, 1963 was liable to be granted. In this regard, he relies upon judgments of this Court in **Jiwan Kumar Vs. Simar Sain 2015(5) RCR Civil 682; Krishan Kumar Verma VS. Narender Prabhakar 2009 (4) PLR 109** and **Abhay Singh Vs. Ramesh Kumar 2009 Vol. III 490**. He refers to judgment of this Court in **Bahadur Ram Vs. Lakhwinder Singh and others 2008(3) RCR (Civil) 457** to contend that once possession has been proved, he would have interest in the property and therefore, failure of the subsequent vendee to make enquiry cannot take the benefit of Section 41 of the Transfer of Property Act. He submits that at least the Court could have granted the benefit of Section 53-A of the Transfer of Property Act as there is recital in the agreement to sell that the appellant-plaintiff had been put in possession. In this regard he relies upon judgment of Madhya Pradesh High Court in **M/s Chetak Constructions Limited, Indore Vs. Om Prakash and others AIR 2003 Madhya Pradesh 145** and Full Bench judgment of Bombay High Court in **Sadashiv Chander Bhamgare Vs. Eknath Pandharinath Nangude AIR 2004 Bombay 378**.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding arrived at by the lower Appellate Court is perfectly legal and justified and in consonance with the oral as well as documentary evidence, for, the appellant-plaintiff has miserably failed to prove passing of the sale consideration to Lal Chand or his agent, as the power of attorney Bijender Singh is none else but his brother. Ex.D11, copy of the register of stamp vendor, leads an irresistible doubt that stamp paper dated 29.01.1993 had been sold by inserting into the gap between the two transactions whereas the other transactions are in normal routine. It is

evident from the aforementioned document that not only the stamps were purchased in the name of Indian Oil Corporation but the entry regarding the purchase of stamp paper bearing No.66851 was inserted later on. Even the ink on the stamp paper was different and the stamp vendor had already been charge-sheeted by the concerned court and facing trial. No doubt 13 sale deeds were executed and registered during the life time of Lal Chand by the attorney Bijender Singh in favour of other persons but it cannot be stated that Bijender Singh had executed agreement to sell in favour of plaintiff, who was real brother of the attorney holder. In fact, purchasing of the stamp paper, Ex.D11, was surrounded by suspicious circumstances as noticed above. The factum of death of Lal Chand was in the knowledge of the appellant-plaintiff in view of the relationship between the him and the attorney Bijender Singh. The appellant-plaintiff did not take any steps to get the sale deed executed, thus, it cannot be stated that second limb of Article 54 of the Limitation Act would come to his rescue. Even after the death of Lal Chand, the property was mutated in the name of the legal heirs and after demise of his wife, again entries were made, which were never challenged. Even in the revenue record, the appellant-plaintiff has not been shown to be in possession of the suit property. Neither electricity nor water bill has been produced on record to show that he is in possession of the house allegedly constructed on the basis of agreement to sell. The factum of possession of Lal Chand over the suit property and after his death, legal heirs of Lal Chand had been admitted by the plaintiff in his cross-examination. All these facts weighed in the mind of the lower Appellate Court to disagree with the judgment rendered by the trial Court.

For the aforementioned reasons, I do not intend to differ with

the finding rendered by the lower Appellate Court as the same is based upon correct appreciation of oral as well as documentary evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The regular second appeals are devoid of merit and accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No