

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

102

Regular Second Appeal No.1746 of 2014 (O&M)

Date of Decision: February 25, 2016

Shamsher Lal

...Appellant

Versus

Jai Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rahul Sharma, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.4260-C of 2014

Prayer in this application is for exemption from filing the certified copy of the judgment and decree dated 13.12.2012 passed by the Court of Additional Civil Judge (Senior Division), Sirsa.

Application is allowed subject to just exceptions.

Exemption from filing the certified copy of the judgment and decree dated 13.12.2012 passed by the Court of Additional Civil Judge (Senior Division), Sirsa, is granted.

RSA No.1746 of 2014

Challenge in this appeal is to the judgment and decree dated 13.12.2012 passed by the Additional Civil Judge (Senior Division), Sirsa, whereby the suit filed by the appellant-plaintiff for symbolic possession of ownership by way of specific performance of the contract/sale agreement dated 03.04.2004 executed by deceased Smt. Rajjo Bai according to which physical possession stands delivered to the appellant-plaintiff in respect of land measuring 22 kanals 4 marlas i.e. remaining half share of the land measuring 44 kanals 8 marlas as detailed in the suit, situated in village

Bhamboor, Tehsil and District Sirsa, as per the jamabandi for the year 1998-99 along with other consequential benefits, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Sirsa, on 10.12.2013.

2. It is the contention of learned counsel for the appellant that an agreement to sell dated 03.04.2004 was executed by deceased Smt. Rajjo Bai with the appellant-plaintiff in respect of land measuring 44 kanals and 8 marlas for a total sale consideration of ₹12,21,000/-. ₹2,00,000/- were given as earnest money and ₹6,00,000/- were to be paid on 15.06.2004. The date fixed for execution of the sale deed was 31.03.2005. A dispute had arisen and a Panchayat was convened on 15.06.2004, whereby the date was extended to 16.06.2004 for payment of ₹6,00,000/- and execution of the sale deed qua half of the land i.e. 22 kanals and 4 marlas. On 16.06.2004, these ₹6,00,000/- were paid and the sale deed qua half share of the land as per the initial agreement to sell, was executed in favour of the appellant-plaintiff. Apart from that, possession of complete land i.e. 44 kanals and 8 marlas was delivered to the appellant-plaintiff.

3. The appellant-plaintiff proceeded on the assumption that the date for execution of the sale deed is 31.03.2005, however, a writing was made on the agreement to sell, whereby the date for execution of the sale deed was mentioned to be 31.07.2004. This, the counsel states, was without the knowledge of the appellant-plaintiff. The appellant-plaintiff, when came to know about the writing preponing the date of execution of the sale deed from 31.03.2005 to 31.07.2004, served a legal notice dated 14.07.2004 upon the respondents stating that the said writing was a result of fraud and without knowledge to the appellant-plaintiff and, therefore, would not be

binding upon him to which no response was received. Thereafter a suit for permanent injunction was filed by the appellant-plaintiff on 26.07.2004 restraining the respondents-defendants from alienating and executing sale deed of the remaining portion of the land as per the agreement to sell till the expiry of the initial date fixed for the said purpose i.e. 31.03.2005. Injunction was granted on 14.09.2004.

4. Rajjo Bai filed a suit on 07.08.2004 asserting that the agreement to sell dated 03.04.2004 was not binding on her nor was it enforceable after 31.07.2004 as the date for execution of the sale deed as per the writing dated 16.06.2004, has expired. The said suit ultimately was dismissed on 14.10.2010.

5. In the meanwhile, on 01.10.2007, the present suit was filed for symbolic possession of the ownership by way of specific performance of the agreement to sell dated 03.04.2004 as the respondents did not come forward to execute the sale deed qua the remaining half share of the land i.e. 22 kanals 4 marlas on 31.03.2005. In the said suit, the appellant-plaintiff asserted that the date for execution of the sale deed as fixed was 31.03.2005 and the writing dated 16.06.2004 which preponed the execution of the sale deed to 31.07.2004 appears to be illogical and irrational, especially when the condition which was required to be fulfilled by the respondents-vendors i.e. clearing of the mortgage on the land has not been done by the respondents.

6. He submits that the dismissal of the suit of the appellant by the Courts below cannot be sustained firstly on the ground that the suit preferred by the respondents-defendants dated 07.08.2004 whereby annulling the agreement to sell dated 03.04.2004 was prayed, has been

dismissed on 14.10.2010 meaning thereby, the said agreement to sell still holds good and was binding between the parties and secondly the writing dated 16.06.2004, whereby the date for agreement to sell was preponed to 31.07.2004 from 31.03.2005 appears to be illogical and irrational and being without knowledge of the appellant-plaintiff, especially when the legal notice was sent on 14.07.2004 which has not been responded to, would not be binding upon the appellant-plaintiff. He contends that the dismissal of the suit, not only on the ground that the writing to be not to the knowledge of the appellant-plaintiff and, therefore, not binding, as also the suit being barred by limitation, thus, cannot be sustained and deserves to be set aside.

7. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

8. The suit dated 07.08.2004 which has been filed by respondent-defendant Smt. Rajjo Bai has been dismissed by the trial Court, where a permanent injunction was sought against the appellant-plaintiff that the agreement to sell dated 03.04.2004 would not be binding on her as the date for execution of the sale deed ceased to operate and the agreement has expired i.e. on 31.07.2004 on which date the appellant-plaintiff did not come forth to execute the sale deed. Mere dismissal of the suit would not help the appellant-plaintiff as there is nothing mentioned in the said judgment which would indicate that the writing dated 16.06.2004 was a result of fraud or misrepresentation or without knowledge to the appellant-plaintiff. The appellant-plaintiff, thus, cannot derive any benefit out of the same.

9. As regards the contention of learned counsel for the appellant

that the writing dated 16.06.2004 in the agreement to sell was a result of misrepresentation, fraud, without the knowledge of the appellant-plaintiff and, therefore, not binding on him, again cannot be accepted as under the said writing, signatures of the appellant-plaintiff find mention. The said signatures have not been denied by the appellant-plaintiff. Nothing has come on record which would indicate that this writing was incorporated subsequent to the signatures having been affixed upon the agreement to sell on 16.06.2004. There is no evidence on record which would support the assertion of the counsel that this writing is a result of fraud or misrepresentation except for the bald statement of the appellant-plaintiff. In view of the above, the findings as recorded by the Courts below cannot be faulted with.

10. No other point has been raised or argued by the learned counsel for the appellant.

11. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

12. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

13. In the light of the dismissal of the appeal, the application for stay i.e. CM No.4361-C of 2014, stands disposed of as infructuous.

February 25, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE