

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2147 of 2014 (O&M)

Date of Decision: 02.03.2016

Anil Kumar and Others

... Appellant(s)

Versus

Maman and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Namit Sharma, Advocate
for the appellant(s).

Mr. B.S.Bedi, Advocate
for respondents No.1 to 6.

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts of both the Courts below, whereby the Court of first instance had decreed the suit for specific performance of agreements of sale dated 13.11.1991 and 20.3.1992 and the appeal having been filed by the appellant/defendants was dismissed by the Court of first appeal.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiffs had filed suit for specific performance of agreements of sale dated 13.11.1991 and 20.3.1992. The said agreements were duly executed. Thereafter the defendants had not come forward to perform their part of agreements, though plaintiffs were always ready and willing to do so. Defendants contested the suit taking the plea that Jeo Devi never entered into agreement of sale, which is a fake and forged document. No payment of earnest money was made. Possession of the suit land was never delivered by the plaintiffs. Rather possession of the suit land remained with Jeo Devi till her death and after her death, defendants No.1 to 3 are in actual cultivating possession of the land in dispute. Execution of any affidavit by defendant No.1 Anil Kumar and Sajjan Kumar was denied as the same was a procured and forged document and prayed that suit be dismissed.

On these facts, issues were framed by the Court of first instance and the parties were ordered to lead their respective evidence. The Court of first instance, after considering the material and evidence available on file, returned the findings that agreement of sale dated 13.11.1991 Ex.PW.1/A stood proved. As regard to agreement of sale dated 20.3.1992 Ex.PW.2/1, the same was proved on the basis of testimony of attesting witness Birkha, who deposed that agreement was duly entered into between the parties and the parties had put their signatures/thumb impression on the same and Jeo Devi had agreed for sale of the suit land for a total sale consideration of ₹ 3,15,000/-. Payment of ₹ 90,000/- had already been made in the year 1991.

Remaining sale consideration was also admitted and conceded by Jeo Devi.

The Court of first instance relied upon the statement of defendant Anil Kumar also as regard to prove the agreements of sale Ex.PW.1/A and Ex.PW.2/1. The same were confirmed on the basis of affidavit Ex.PW.5/A having been executed by two sons of Jeo Devi. The Court of first instance, on the basis of evidence available on the file, returned the finding that the plaintiffs were ready and willing to perform their part of agreement. The said findings of facts have been affirmed by the Court of first appeal. The Court of first appeal also observed that the plea of forgery was taken by defendant No.1 that has not been proved, whereas due execution of agreement and consideration thereof was proved on the file. Thereafter, defendants failed to perform their part of the agreement. On the basis of documents Ex.P4 to P19, defendants are in possession of the suit property.

Learned counsel for the appellants has also taken the plea that agreement Ex.PW.1/A is dated 13.11.1991 and agreement Ex.PW.2/1 is dated 20.3.1992, whereas the suit has been filed on 26.8.2006 and that way, suit is beyond period of limitation and the Courts below have not considered these aspects.

The Courts below have rightly dealt with the plea of limitation that if no time has been prescribed for getting the sale deed executed, the limitation period would start from the date of refusal to perform and in this case, limitation started from the date of death of

Jeo Devi who died on 16.4.2005 and mutation having been sanctioned on 29.6.2005 and taking the date of limitation from that point of time, the suit is well within period of limitation. There is no substantial question of law involved in the present appeal and as such the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407.***

In view of the above, the present regular second appeal stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

March 02, 2016

"DK"