

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

-.-

RSA No. 4890 of 2015 (O&M)

Date of decision: 06.01.2016

Satish Kumar and others

..... Appellants

Versus

Madan Lal

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sachin Mittal, 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.

The present appeal has been directed against the judgment and decree dated 01.05.2015 passed by the Additional District Judge, Gurgaon, affirming the judgment and decree passed by the trial Court dated 06.09.2014, whereby the claim of the plaintiff - Madan Lal (respondent herein) for specific performance of agreement to sell dated 18.02.1999 has been allowed.

Madan Lal-respondent claimed specific performance of agreement to sell dated 18.02.1999 in respect of one marla land being 1/160th share out of total land measuring 8 kanal comprised in kill No. 17 situated within the limits of M.C.Sohna. It is averred that the appellants agreed to sell the suit land for a sale consideration of Rs.3,15,000.00 and were paid a sum of Rs.65,000.00 in cash towards earnest money. The sale deed was agreed to be executed and registered on or before 30.05.1999 on payment of balance sale consideration. The balance sale consideration of

Rs.2,50,000.00 was paid by the respondent to the vendors and they issued a receipt for total sale consideration of Rs.3,15,000.00 dated 19.07.2005. It is further averred that the respondent always remained ready and willing to perform his part of the contract. The sale deed could not be executed on 30.05.1999 as the portion in question was occupied by a Scrap Dealer (*kabari*). The parties amicably agreed to get the sale deed executed and registered as and when the site was vacated by said Scrap Dealer.

The appellants/defendants filed the written statement, raising certain preliminary objections, challenged jurisdiction of the Court, locus standi of the plaintiff to file the suit and maintainability of the suit etc. However, they admitted execution of the agreement to sell, receipt of an amount of Rs.65,000.00 towards earnest money and terms and conditions incorporated therein. It is pleaded that land bearing rect. No. 219, Killa No.17 (8-0) became in pieces and land bearing No. 17/3, a part of main Killa No. 17, is situated within the municipal limits of Sohna, District Gurgaon. The appellants/defendants had already performed their part of the contract as they executed sale deed Vasika No. 189 dated 06.05.1999 in favour of Madan Lal and his brother Udai Ram in respect of land measuring 8 marlas instead of land measuring 1 marla, for a sale consideration of Rs.1,00,000.00. The respondent/plaintiff has wrongly got mentioned dimensions of the land in the agreement and filed a false suit. After 06.05.1999, there is no privity of contract between the parties to the suit. They even denied receipt of balance sale consideration of Rs.2,50,000/- or execution of receipt on 19.07.2005 with the plea that the receipt was executed on 06.05.2005 for under-table money on the request of the plaintiff as sale deed dated 06.05.1999 was executed only for Rs.1,00,000.00 and the

remaining sale consideration was paid by the plaintiff to the defendants under-table.

Counsel for the appellants has assailed the concurrent findings recorded by the Courts below primarily on two counts. The first submission made by counsel is that as per agreement dated 18.02.1999, the sale deed was agreed to be executed on or before 30.05.1999 but the suit was filed by the respondent/plaintiff on 29.04.2006, beyond a period of three years and, therefore, clearly barred by limitation.

Another submission made by counsel is that the receipt dated 19.07.2005 relied upon by the plaintiff/respondent has cuttings and interpolations, therefore, can not be relied upon either to substantiate the plea that he has already paid the entire sale consideration or to extend the period of limitation.

I have heard counsel for the appellants and perused the case file but find no merit in the appeal.

A plain reading of the pleadings of the parties would make it evident that the appellants have admitted execution of the agreement to sell and receipt of Rs.65,000.00 towards earnest money out of total sale consideration of Rs.3,15,000.00 for sale of 1 marla of land, a part of killa No. 17. The appellants have also admitted execution of the receipt but with the plea that said receipt was executed in regard to sale consideration pertaining to sale deed No. 189 dated 06.05.1999 executed in favour of respondent Madan Lal and his brother Udai Ram in respect of land measuring 8 marlas. Nothing has been mentioned as to what was the total sale consideration exchanged between the parties in respect of sale deed No. 189 dated 06.05.1999 wherein the parties have mentioned a total sale

consideration to be Rs.1,00,000.00. This apart, once the transaction in respect of sale deed No.189 dated 06.05.1999 had already been completed in the year 1999, where was the occasion for the appellants to execute a receipt in the year 2005. It is none of the plea of the appellants that their signatures on receipt Ex.P3 were obtained when the paper was blank. The receipt Ex.P3 makes a specific reference to the area, sale consideration, date of the agreement etc. The mere fact that there is a cutting in the receipt at one place or the date of the receipt has been mentioned in hand is not sufficient to accept the plea of the appellants that the said receipt was executed by them in respect of land which was sold vide sale deed No. 189 dated 06.05.1999.

The Courts below have recorded concurrent findings of facts in regard to the respondent being successful in proving his claim both on the basis of agreement to sell as well as receipt (EX.P3). As the appellants executed the receipt in regard to payment of balance sale consideration in the year 2005, the suit for specific performance filed within three years from the date of execution of receipt cannot be said to be barred by limitation, as has been so held by the Courts below. No substantial question of law arises for adjudication in view of the aforesaid discussion.

No other point has been raised.

For the reasons aforesaid, finding no merit, the appeal is dismissed in limine.

(Rekha Mittal)
Judge

January 06, 2016
mohan bimbira