

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.667 of 2016 (O&M)

Date of Decision: April 11, 2016

Gurdial Singh & others

...Appellants

Versus

Mohinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.D.Bawa, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Civil Misc.No.1812-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 4 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.667 of 2016

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby the suit for specific performance of the agreement to sell dated 12.12.1988, has been decreed.

Mr.R.D.Bawa, learned counsel appearing on behalf of the appellant-defendants submits that prior to the execution of the agreement to sell, there was an agreement to sell dated 8.1.1988. As per the version of the plaintiffs, the agreement to sell dated 12.12.1988 during the continuation of the first agreement, has not seen the light of the day and even in the

secondary evidence, only the register of the scribe has been placed on record, whereas no photocopy of the agreement to sell dated 8.1.1988 is proved on record and, therefore, the plaintiffs have failed in discharging the onus and the Courts below ought not to have decreed the suit.

He further submits that Sadhu Singh and Dalip Singh have earlier entered into an agreement, whereas Sadhu Singh sold his part of the share to the respondent-plaintiffs vide sale deed dated 11.11.1988. The payment of the aforementioned agreement has also not been proved. Though time was not the essence of the agreement, the suit was filed on 11.5.2009, whereas Dalip Singh died on 17.4.1989 and, therefore, the suit was barred by law of limitation. All these factors have not been appreciated by the Courts below and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendants and appraised the paper book and of the view that there is no force and substance in the plea of Mr.Bawa for the reason that as per the documents Ex.P1 and Ex.P3, consideration amount was received, much less possession had also been delivered to the respondent-plaintiffs. Limitation, as per the agreement to sell, was kept open and as such the suit cannot be said to be barred by law of limitation. It is only after the demise of Dalip Singh till filing of the suit, there was no threat perception with regard to creating third party right and it is only when the legal heirs of Dalip Singh refused to perform the contract, the cause of action arose for filing of the suit. As per the provisions of Article 54 of the Limitation Act, the limitation to institute a suit, where time is not the essence of the agreement, is three years from the date of alleged breach. The respondent-plaintiffs have proved the

execution of the agreement to sell in question. All these facts have been noticed by the Courts below. Even nothing material surfaced from the cross-examination of PW-3 Mohinder Singh, who is witness to the agreement to sell, despite detailed cross-examination by the appellant-defendants. The following findings arrived at by the Lower Appellate Court, in my view, are prefect, legal and justified:-

“The learned counsel for the appellant further contended that the alleged original agreement of sale dated 8.1.1988 has not been produced and proved as per the law. But the contention raised also carries no merit. From the perusal of record as already been discussed the agreement of sale dated 12.12.1988 is in continuation of agreement of sale dated 8.1.1988. The agreement of sale dated 8.1.1988 has already been brought on record by way of secondary evidence vide order dated 11.6.2012 passed by the learned lower court of Smt.Harpreet Kaur, Civil Judge (Junior Division), Gurdaspur. The agreement of sale dated 12.12.1988 Ex.P-3 has fully proved this fact regarding the existence of agreement of sale dated 8.1.1988 Ex.P-1 therefore, if the secondary evidence which has already been placed by the respondents/plaintiffs will not debarred them to get the suit land as the appellant has not able to prove any forgery and fabrication of documents i.e. Ex.P-1 and Ex.P-3. If any issue had been regarding the validity of Ex.P-3 itself then the question regarding the secondary evidence of Ex.P-1 could be raised but in the present case Ex.P-3 has already been fully proved on record by way of oral as well as documentary evidences, because in order to prove this agreement of sale the respondents/plaintiffs have examined Hardip Singh who is the attesting witness of the document as PW-1. This witness has been cross examined at length but nothing adverse has come out from his statement so far as the validity of agreement of sale dated 12.12.1988 is concerned. As nothing is left on the part of performance of remaining

contract as the respondents/plaintiffs had already paid the full consideration amount and were in possession of the suit land and it was only appellants/defendants who had delayed the execution of registration and taking the benefit of non performance on their part. Moreover, if the documents are really forged and fabricated as alleged then why the appellants have not moved any application to inspect the thumb impressions of Dalip Singh by hand writing expert and also have also not moved any complaint to the police officials for the denial of these documents.

16. *The learned counsel for the appellant further contended that the cause of action in the present suit arises in the year 1989 at the time of death of Dalip Singh itself and the refusal for execution of sale deed regarding the suit land has also been admitted in the cross-examination of PW-3 Mohinder Singh. The second refusal was communicated by the L.Rs of Dalip Singh in the year 2000. Therefore, cause of action start during that period. Hence, the present suit is time barred. But this contention of the learned counsel also carries no value because the second agreement of sale vide dated 12.12.1988 was done by the deceased Dalip Singh and he died on dated 17.4.1989. If the denial on the view point of Dalip Singh itself is taken then the money which he had received by way of agreement to sell Ex.P-1 and Ex.P-3 that must be returned to the plaintiffs/respondents as the consideration money has not been returned back, therefore, the oral denial did not considered to be as per the law. In the same way simple denial for non execution of the sale deed on the part of legal representative of Dalip Singh as alleged in the year 2000 also could not be considered as denial as per the law. Therefore, as the recital of Ex.P-3 itself is not a time bound document, hence, the cause of action would be started only after giving the notice for the registration of the document. Thus, the procedure which the respondent/plaintiff had followed considered to be as per the due process of law. Hence, the agreement of sale dated*

12.12.1988 has been duly proved to be executed between the parties. Although, appellants had taken the plea of forgery but nothing has come on record to prove it. Therefore, it has surfaced on the file that on the strength of the evidence produced by the plaintiff/ respondents, this court is of the considerable view that plaintiff/respondent had always been ready and willing to perform their part of the contract and full sale consideration amount has already been received vide Ex.P-3. Therefore, they cannot be denied the relief of specific performance and even otherwise there is no legal impediment in grant of specific relief to the plaintiffs/respondents.

17. In the light of what is discussed above and without elaborating further it is found that the learned trial court has rightly returned its findings on all the issues. Therefore, the same is upheld. Consequently, the judgment and decree rendered by the learned lower court are upheld and as a result thereof the instant appeal fails and the same is hereby dismissed. Decree-in-appeal be drawn accordingly and appeal file be consigned to the record room. Lower court record alongwith copy of this judgment be sent back forthwith.”

No substantial question of law arises for determination. No interference is called for There is no merit in the appeal. The same stands dismissed.

April 11, 2016
ramesh

(AMIT RAWAL)
JUDGE