IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.589 of 2014 (O&M)
Date of Decision: 26.04.2016

Boor Singh .... Appellant

Vs.

Ashok Kumar and others .... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Chanan Singh, Advocate
for the appellant.

Amol Rattan Singh, J.

Civil Misc.No.4056-C of 2015

The application is allowed.

The copy of the document stated to have been exhibited as Ex.P1 before the Courts below, i.e. copy of an agreement dated 22.01.1998, is taken on record as Annexure A-1 with the grounds of appeal.

RSA No.589 of 2014

This is the second appeal of the plaintiff after his suit seeking mandatory and permanent injunction against the respondents-defendants (hereinafter to be referred to as the defendants), was dismissed by the learned Additional Civil Judge (Senior Division), Kapurthala, and thereafter, his first appeal was also dismissed by the learned Additional District Judge, Kapurthala.

The facts, as taken from the judgment of the learned Additional Civil Judge, are that the appellant-plaintiff (hereinafter to be referred to as the plaintiff), sought a decree of mandatory injunction directing the defendants to carve out three passages/roads, in the manner described in the site plan annexed by him, in terms of an agreement dated 22.01.1998 and further sought permanent injunction restraining the defendants from alienating even their share of the land to the extent of 2 kanals 2 marlas, till the passages/roads were carved out in terms of the said agreement.

2. As per the plaintiff, he had purchased 16 kanals 14 marlas of land from defendants No.2 and 3 (present respondents No.2 and 3) through their attorney, i.e. respondent-defendant No.1.

15 marlas were stated to have been purchased vide sale deed dated 13.01.1998, registered on 14.01.1998, 8 kanals were purchased vide sale deed also dated 13.01.1998, registered on 14.01.1998; 7 kanals and 12 marlas were purchased vide a sale deed dated 06.10.1998 and the remaining 7 marlas were purchased vide sale deed dated 25.01.1999.

1 kanal 1 marla of land was stated to have been purchased from one Ravi Charan son of Pritam Lal, resident of Bholath (defendant No.4, shown to be a proforma respondent-defendant), vide a sale deed dated 15.01.2007, who had earlier purchased the said land from defendants No.2 and 3.

It was also stated that vide the agreement dated 22.01.1998, defendants No.2 and 3, through their attorney, i.e. defendant No.1, agreed to give two passages of 8¼ ft. width from the Eastern to the Western side, as described in the site plan, running to a length of 363 ft. Another passage from the Eastern to the Western side, measuring 320 ft. in length, and still another passage running from the Northern to the Southern side, 10 ft. in width and 304 ft. in length, was also to be provided.

As per the plaintiff, the land for the passages/roads was to be provided in addition to the land purchased by the plaintiff and for which the defendants had agreed not to charge any further price, as defendants No.2 and 3 had sold their entire land, except the 2 kanals and 2 marlas out of which the said passages were to be made.

However, the said defendants having refused to carve out the said passages, and having allegedly threatened to further alienate the suit land, the suit was instituted by the plaintiff.

3. As per the judgment of the learned Additional Civil Judge, defendants No.2 and 3 did not appear and were proceeded against *ex parte,* whereas defendant No.1 and proforma defendant No.4 contested the suit taking preliminary objections with regard to maintainability, mis-joinder of parties, the agreement in question being an unregistered document not enforceable in law and limitation etc.

It was further stated that the entire land had been sold to the plaintiff, including the land alleged to be left for passages and that no other land left was with the defendants, on the spot. It was also contended that as per the 'alleged agreement', the plaintiff was to be given 410 marlas of land, ad-measuring 207 sq. ft., whereas he had actually been given 272 sq. ft. which worked out to 16 kanals and 14 marlas (or 334 marlas).

[Note:- What is obviously meant is that as per the agreement, each marla was to be of a measurement of 207 sq. ft., whereas what was given to the plaintiff was each marla of 272 sq. ft. and as such, instead of 15 kanals and 2 marlas of land, he had actually been given 16 kanals and 14 marlas of land. It is further to be noticed here that a standard marla of land is equal to 272.25 sq. ft.]

In all, the contention of the defendants was that the plaintiff, having been granted a larger measurement of each marla of land, than what was agreed to, the difference of 2 kanals and 2 marlas had already been made good and further, that they had already sold 1 kanal and 2 marlas of land to one Satwant Singh son of Gurmeet Singh, though the mutation in that regard had still to be sanctioned.

4. Thereafter, the following issues were framed by the Additional Civil Judge:-

> "1. Whether an agreement dated 22.01.1998 was executed by the defendants No.2 and 3 in favour of the plaintiff? OPP
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> 2. Whether the plaintiff is entitled for relief of mandatory injunction, he has prayed for? OPP
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> 3. Whether the plaintiff is entitled for relief of permanent injunction, he has prayed? OPP
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> 4. Whether the suit is not maintainable in the present form? OPD
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> 5. Whether the suit is bad for non-joinder of parties? OPD
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> 6. Whether the suit is within limitation period? OPP
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> 7. Whether the plaintiff has no cause of action to file the present suit? OPD
>
> 8. Whether the plaintiff has no come to the Court with clean hands? OPD
>
> 9. Relief."

5. The plaintiff examined three witnesses though himself did not step into the witness box.

He also tendered into evidence the agreement dated 22.01.1998 as Ex.P1, a site plan Ex.P2, copies of two general powers of attorney dated 05.08.2010 and 09.04.2007 as Exs.P3 and P4 respectively, a copy of the 'jamabandi' for the year 2000-01 as Ex.P5, attested copies of sale deeds dated 13.01.1998, 13.01.1998, 06.10.1998, 25.01.1999 and 15.02.2007 as Exs.P6 to P10 respectively.

The defendants examined defendant No.1, i.e. the attorney of defendants No.2 and 3, as DW1 and tendered in evidence a copy of the sale deed dated 26.08.1996 as Ex.D1.

6. The learned Additional Civil Judge on appraising the evidence, including the testimony of Kulwinder Singh, General Power of Attorney of the plaintiff, found that as per the agreement dated 22.01.1998, the defendants had agreed to leave out the land for passages, in the said agreement, without any consideration. The agreement was also otherwise found to be duly proved. However, it was held by that Court that the said agreement did not actually spell out as to what was the measurement of each marla that had actually been purchased by the plaintiff, which fact was also not discernible from the attested copies of the sale deeds produced in the evidence.

It was further held that the defendants had come out with a case that the plaintiff had already been sold 1 kanal and 2 marlas area in excess, by measuring each marla to be 272 sq. ft., as against the agreed 207 sq. ft. per marla, and the plaintiff had not actually controverted that averment.

In fact, his attorney, PW3 Kulwinder Singh, had admitted in his cross-examination that the plaintiff had purchased 17 kanals 15 marlas area of “big Marlas”, whereas the agreement to purchase the suit land was in respect of “small Marlas' of 207 sq. ft. each. It was further found on the basis of the cross-examination of the attesting witness to the agreement, i.e. Amrik Singh PW1, that there were two 'Government passages' approaching the suit land.

Hence, it was held that the suit land was not inaccessible and the plaintiff had already been sold land more than what was agreed to in terms of actual measurement.

It was also held by the learned Civil Judge that in any case, any right emanating from the agreement dated 22.01.1998, could have only been enforced within three years thereof, whereas the suit was instituted on 30.08.2007; hence, it was filed beyond the period of limitation.

Therefore, on both these counts, the suit of the plaintiff was dismissed.

7. In the first appeal filed by the plaintiff, while agreeing with the finding of the learned Additional Civil Judge, it was further held by the Additional District Judge that firstly, the plaintiff-appellant had failed to point out that defendants No.2 and 3 actually had any land left with them after they had sold off land measuring 1 kanal to Satwant Singh vide the sale deed dated 26.08.1996, i.e. even prior to all the sale deeds in favour of

the plaintiff.

Secondly, it was held that the plaintiff had become a co-sharer in the suit land, so he had an efficacious remedy to get the passages carved out by way of partition of the joint land and as such, he not having resorted to the said efficacious remedy, he was barred in terms of the provisions of Section 41 (h) of the Specific Relief Act, 1963, from seeking any injunction.

Thirdly, it was held by the first Appellate Court that there was no recital in the sale deeds exhibited on behalf of the plaintiff, that a passage would be provided by defendants No.2 and 3. Further, the agreement dated 22.01.1998, by which the passages were supposed to have been carved out, was an agreement entered into without any consideration. Hence, it being an unregistered agreement, it was not enforceable unless the plaintiff had filed a suit for specific performance, which in any case he could not have done beyond the period of three years, i.e. beyond 22.01.2001.

Consequently, on the aforesaid grounds, as also agreeing with the factual position that more land than was agreed upon, in terms of actual measurement, had been sold to the plaintiff by the defendants, the first appeal was also dismissed.

8. Before this Court, learned counsel for the appellant firstly submits that the Courts below have erred in holding that there were no recitals in the agreement to sell dated 22.01.1998, that a passage is to be carved out from the land sold by the respondents to the appellant.

He further submits that as regards limitation, since there was no time period fixed in the agreement to transfer the land, the question of limitation would not arise.

He next submits that the registration of an agreement to sell is not compulsory and hence the said agreement in any case not having been disputed by the parties, could not have been discarded by the learned Courts below.

Lastly, learned counsel for the appellant submits that though the fact, that land more than what was agreed upon has been transferred by the respondents to the appellant, may not be incorrect, however, any remedy for retrieval of excess land transferred, is separately available to the respondents.

9. Having heard learned counsel for the appellant, I find no ground to interfere with the judgments of the Courts below.

Though, as regards the first argument, the learned counsel is partly correct, inasmuch as the agreement dated 22.01.1998 contains a recital to the effect that in addition to 410 marlas of land, the vendors, i.e. respondents herein (defendants), would leave two passages, each maintaining 1½ karams in width from east to west and from north to south; however, what has been held by the first Appellate Court is not that the agreement dated 22.01.1998 does not contain any recital with regard to passages being carved out, but in fact, what has been held by that Court is that the sale deeds, Exs.P6 to P9, do not contain any such recital. It has been specifically stated in paragraph 30 of that judgment, that the agreement in question did state that passages were to be provided.

However, the agreement was held to be unenforceable on two grounds; viz., that firstly it was without any consideration having been paid and as such, was enforceable only by filing a suit for specific performance which was not filed and secondly, in any case, such a suit would be barred by limitation.

Further, I find no error in the judgments of the Courts below, dismissing the suit and appeal, both, on grounds of limitation, as also on account of the fact situation, as was not denied before the Courts below, by way of any replication, or even at this stage, that extra land is admitted to have been transferred by the respondents to the appellant.

With no rebuttal to the fact that extra land had been transferred by the respondents to the appellant, whether such extra land would suffice to carve out the passages mentioned in the agreement to sell, as has been held to be so by the Courts below, is a question of fact which this Court would not enter into at the stage of second appeal, especially with no evidence at all led, to the contrary.

Secondly, as regards limitation, the suit filed by the appellant-plaintiff, did not seek specific performance of the agreement dated 22.01.1998, which actually otherwise stood executed vide sale deeds dated 06.10.1998/07.10.1998 and 25.01.1999. If any part of the agreement was not adhered to, it was for the appellant to challenge the non-execution of that part of the agreement, within a period of three years thereafter.

The last sale deed is dated 25.01.1999, as noticed above, whereas the suit was filed on 31.08.2007 before the learned Additional

Civil Judge (Sr. Divn.), Kapurthala. The limitation for seeking execution of any agreement being 3 years, (with admittedly the additional land sought to be purchased not in the possession of the plaintiff), I see no error even with regard to that finding, of the Courts below.

Consequently, finding no merit in this appeal, it is dismissed *in limine,* with no orders as to costs.

April 26 , 2016 **(AMOL RATTAN SINGH)**
vcgarg/dinesh **JUDGE**