

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

**RSA No.2455 of 2003 (O&M)
Date of Order: November 01, 2017**

Thakur Rajeev Singh

...Appellant

Versus

Yoginder Kumar Sood

...Respondent

(2)

RSA No.4967 of 2014 (O&M)

Balwant Singh Goraya

...Appellant

Versus

Satinder Kaur and others

...Respondent

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

**Present: Mr. Anupam Gupta, Senior Advocate, with
Mr. Bhavnik Mehta, Advocate,
for the appellant.**

**Mr. Akshay Bhan, Senior Advocate, with
Mr. Gaurav Chopra, Advocate and
Mr. Santosh Sharma, Advocate and
Mr. Rohit Sud, Advocate,
for the respondent (s)**

ANIL KSHETARPAL, J.

By this common judgment, I shall be disposing of RSA No.2455 of 2003 and RSA No.4967 of 2014. The facts are being taken from RSA No.4967 of 2014.

Plaintiff is in appeal against the concurrent findings of fact arrived at by the Courts below.

Detailed facts have been noticed by the Court, however, to complete the narrative some brief facts are being noticed.

Plaintiff filed a suit for specific performance of the agreement to sell dated 10.03.1994. It was pleaded that out of total earnest money of

Rs.30,00,000/-, Rs. 10,00,000/- was paid to defendants no.1 and 2 and land measuring 2 kanals 13 marlas and 12 sq. feet area comprised in plot nos. 7 and 8 was agreed to be sold. It was pleaded by the plaintiff that the target date for execution and registration of the sale deed was 24.09.1994. The suit for specific performance of the agreement to sell was filed on 23.09.1994. Plaintiff had further pleaded that another sum of Rs.14,00,000/- was paid to defendant nos.1 and 2.

Defendants contested the suit. The execution of the agreement to sell was not disputed, however, it was pleaded that the original agreement did not bear the date of the execution. It was further pleaded that in the last line of first page of the agreement, originally the date for execution and registration of the sale deed was 24.04.1994, which has been by over-writing made to 24.09.1994, to bring the suit within limitation. It was further pleaded that at the time of execution of the agreement, Amarjit has not attested the agreement and even the signatures of the second attesting witness Thakur Rajeev Singh has been obtained after the execution of the agreement. The receipt of Rs.10,00,000/- was admitted, however, receipt of Rs.14,00,000/- was denied.

Both the Courts after appreciation of the evidence available on the file, have dismissed the suit filed by the plaintiff on various grounds, however, important once are as under:-

- (i) the agreement to sell has been interpolated and the date fixed for execution and registration of the sale deed was 24.04.1994, which has been changed to 24.09.1994. The Courts below relied upon a report of the Documents and Finger Print Expert. The Documents

and Finger Print Expert has produced on file enlarge photograph, which prove this fact.

(ii) Further payment of Rs.14,00,000/- is not proved on the file because there is no receipt and the evidence produced by the plaintiff is not reliable.

(iii) the suit was barred by time as the original date for execution and registration of the sale deed was 24.04.1994, whereas the suit has been instituted on 23.09.1997 i.e., after more than three years from the date fixed for execution and registration of the sale deed.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments and decrees passed by the Courts below as well as the original record brought before me.

Learned counsel for the appellant has made the following arguments:-

- (i) that the land was under mortgage and, therefore, the plaintiff was justified in insisting upon redemption of the mortgage. He has submitted that redemption of the mortgage took place on 02.05.1997 and, therefore, the cause of action would be deemed to have started therefrom.
- (ii) Finding of the first appellate Court that the bank with whom the land was mortgaged is not a party, is factually incorrect as the bank was party defendant in the suit i.e. defendant no.3.

(iii) The mortgage of the land is being denied in the written statement and it was only admitted in the evidence when the defendants had been cornered.

(iv) That in any case, plaintiff was entitled to refund of the amount, which has been paid as earnest money and admitted by the defendants.

On the other hand, learned counsel for the respondents while controverting the argument has supported the judgments passed by the courts below.

FINDINGS:-

In this case, it may be significant to note the assertions made in paragraph 10 of the plaint, which read as under:-

“10. That in any case, though it is not admitted, the defendant no.3 can have lien over the suit property, on the basis of mortgage, only partially because some other properties have been mortgaged with it by The Jalandhar Leasing Pvt. Ltd. in such a case, the defendant no.3 can have a lien over the suit property to the extent of balance sale consideration thereof, due and payable to defendants no.1 and 2, by the plaintiff. The plaintiff is even ready and willing to pay the same to defendant no.3 if this Hon'ble Court so decrees.”

Plaintiff himself has submitted that defendant no.3 can have lien over the property on the basis of mortgage but the sale deed can be registered. Plaintiff had not pleaded that cause of action has arisen to him for the first time on redemption of the mortgage. As per the plaint, the

cause of action is alleged to have accrued to the plaintiff firstly on 10.03.1994. Paragraph 14 of the plaint is extracted as under:-

“14. That cause of action accrued to plaintiff against the defendants, firstly on 10.03.1994, the date of execution of the agreement, then on 24.09.1994, the date fixed in the agreement for its performance; subsequently on 10.09.1995 and 16.09.1997, the dates of notices by plaintiff calling upon defendants no.1 and 2 to perform their part of the agreement and also when the defendant no.3, too, refused to admit the claim of the plaintiffs under the agreement and finally on 22.09.1997, the date of reply of notice by defendant nos.1 and 2.”

As per Article 54 of the Schedule to the Limitation Act, 1963, the time from which the period begins to run in a suit for specific performance has been divided in two parts; (i) the date fixed for performance; (ii) if no date is fixed for performance then the date when the plaintiff has noticed that the performance is refused. Article 54 of the Limitation Act is extracted as under:-

<i>54. For specific performance of a contract.</i>	<i>Three Years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>
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Counsel for the appellant at this stage cannot be permitted to make out a new case. Therefore, the argument of learned counsel for the appellant has no force.

Second argument of learned counsel for the appellant is that the

finding of the first appellate Court that the bank with whom the land was

mortgaged is not a party is factually incorrect as the bank was party defendant in the suit i.e. defendant no.3.

I have considered the arguments of learned counsel for the appellant.

No doubt, the learned first appellate Court has committed a small error in ignoring the fact that bank is defendant no.3 in the case, however, that would not come to the rescue of the appellant.

The third submission made by learned counsel for the appellant is that the mortgage of the land is being denied in the written statement and it was only admitted in the evidence when the defendants had been cornered.

The argument of learned counsel for the appellant in this regard is also not correct. It is the pleaded case of the plaintiff that plaintiff and his attorney came to know in the end of January, 1995 that defendant nos.1 and 2 have mortgaged the suit land in favour of defendant no.3. The factum of the mortgage was in the knowledge of the plaintiff.

No doubt the defendant had in the written statement denied the mortgage. However, that fact itself would not improve the case of the plaintiff. The plaintiff himself has pleaded that he knew about the mortgage in the end of January, 1995 and had paid further sum of Rs.14,00,000/- to defendant no.1 and 2 to redeem the mortgage. The wrong plea taken by defendant no.1 and 2 in the pleadings would not improve the case of the plaintiff. Plaintiff has to stand on his own legs.

It is the case where the agreement to sell has been interpolated to bring the suit within limitation. The target date for execution and registration of the sale deed has been tempered with. Defendants have produced on file a photocopy, which is Ex.D1. A bare look at the

photocopy would show that the date for execution and registration of the sale deed is 24.04.1994. The interpolation is further proved as on the second page certain additions have been made. In Ex.D1, even the date of execution of the agreement to sell is not mentioned. The same has been later on added in Ex.P3, the original agreement to sell produced by the plaintiff. Defendants have examined Document and Finger Print Expert. He has given his report and has also produced on file a copy of the enlarged photograph, which is at page 129 of the trial Court's record. It is clear that the figure 4 has been interpolated to make it read as 9. The expert has taken pains to compare the figure 9 written at different places in the agreement. The expert has given cogent reasons to give an opinion that the figure 4 denoting the month April has been interpolated to show as 9 i.e. September month. Once the plaintiff has filed a suit on the basis of interpolated document, plaintiff is not entitled to any relief from the Court.

Still further Amarjit Singh, the attesting witness has been examined as PW4. His statement make a very interesting reading, which is extracted as under:-

“It is correct that Ex.D1 is the photostat copy of the agreement Ex.P3. It is correct that in Ex.D1, the date for the execution of sale deed and the payment of the balance sale consideration is mentioned as 24.4.1994. Similarly in Ex.D1, the date of the execution of this agreement does not find mentioned. When I signed Ex.P3, the signatures of Bhagat Preet Singh were not thereon Ex.P3. Similarly at that time the signatures of Balwant singh were also not there on Ex.P3. It is

correct that the date reading as 10.3.1994 on Ex.P3 at point 'A' is in different ink and different pen. Witness volunteer it was put in my office when the agreement was completed. In the agreement Ex.P3 the date for the payment of balance sale consideration and for execution of sale deed is now readable as 24.9.1994. I do not know if the figure 4 denoting the month in the date, has been changed in figure 9 or vice-versa. I cannot say if there is over writing on figure 4 in the said date denoting the month. There are no signatures of defendants on the date reading 24.9.1994.”

It is also not in dispute that the plaintiff has not stepped into the witness box. Plaintiff has appeared through attorney Thakur Rajeev Singh. Thakur Rajeev Singh is not signatory to the agreement to sell. He does not know the circumstances in which the agreement was entered into. Therefore, his evidence cannot be treated as a substitute to the evidence of a plaintiff. Here is the case where the agreement is alleged to be interpolated. In such circumstances, it was necessary for the plaintiff to step into the witness box.

Learned counsel for the appellant in the alternative has submitted that the payment whereof has been admitted should at least be refunded.

I have considered the submission of learned counsel for the appellant, however, this Court is unable to agree for two reasons:-

(i) the payment was made on 10.03.1994. The date for execution and registration of the sale deed was 24.04.994. The suit was filed on 23.09.1997, therefore,

the suit for recovery even if it is to be examined would be time barred.

(ii) once the plaintiff has not come to the Court with clean hands, the plaintiff does not deserve any relief. The litigant who has filed a suit on the basis of interpolated document, does not deserve any sympathy.

For the reasons recorded hereinabove, both the regular second appeals are dismissed.

NOTE:- All the miscellaneous applications shall stand disposed of in terms of the judgment passed above.

November 01, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO