

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1515-2016

Date of Decision:23.05.2017

Harjit Kaur

.....Appellant

Versus

Hakam Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Parveen Kumar Garg, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby her suit for specific performance was dismissed by the learned trial Court, vide its impugned judgment and decree dated 15.02.2014 and her first appeal was also dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 26.11.2015.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the respondent-defendant by claiming himself to be the owner as co-sharer of land as described in the plaint, situated at Kishan Bagh Colony, Sangrur, had agreed to sell the plot measuring 200 square yards for ₹2200/- i.e. at the rate of ₹11/- per square yards on 21.01.1974 vide agreement by receiving ₹2000/- as earnest money out of the total sale consideration, but the defendant did not fix any date for execution and registration of the sale deed in favour of the appellant-plaintiff, but it was mentioned in the agreement that the sale deed would be

executed and got registered as and when the plaintiff so desired by giving sixty days notice. The appellant-plaintiff after getting possession of the said plot from the defendant had constructed her house and got electricity and water connection and other amenities by spending huge amount and started residing there. The agreement in question was displaced/lost from the appellant-plaintiff. The respondent-defendant executed another agreement dated 06.09.1976 with the same terms and conditions, but no specific date was fixed for execution and registration of the sale deed. The plaintiff few months ago came to know that the respondent-defendant wanted to alienate the said plot to any other person illegally. The appellant-plaintiff requested the respondent-defendant to execute and get registered the sale deed after receiving balance sale consideration, but he did not adhere to the request of the appellant-plaintiff. A legal notice dated 10.10.2008 was got issued to the respondent-defendant vide postal receipt No.1993, but he intentionally refused to accept the notice. The appellant-plaintiff was and is always ready and willing to perform her part of the agreement, but the respondent-defendant is not ready for the same.”

Defendant did not appear despite service and was proceeded against ex parte. Plaintiff-appellant produced her ex parte evidence, however, failed to prove her pleaded case. After hearing the learned counsel for the plaintiff and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff was unable to prove her case by leading cogent and convincing evidence. Accordingly, her suit for specific performance was dismissed by the learned trial Court vide its impugned judgment and decree dated 15.02.2014. Feeling aggrieved, plaintiff filed her first appeal which also came to be dismissed by

the learned first appellate Court, vide its impugned judgment and decree dated 26.11.2015. Hence, this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that the alleged agreement to sell between the parties was dated 06.09.1976, whereas the suit came to be filed by the plaintiff as late as on 17.01.2009, thus, the suit was filed by the plaintiff after a period of more than 33 long years. The contention of the learned counsel for the appellant in this regard is that there was no target date fixed in the agreement to sell because of which suit ought to have been treated within time, has been duly considered by this Court and the same has been found wholly misplaced and not worth acceptance. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that the appellant being the plaintiff, onus was on her to prove her pleaded case. However, she failed to do so. In the absence of cogent and convincing evidence, plaintiff-appellant was bound to fail. That is what has been held by both the learned Courts below. It was least expected from the plaintiff that she would have approached the Court within reasonable time. However, she kept on sleeping on her rights, if any. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first

appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate Court in para 12 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“The perusal of the case of Mst.Sugani (supra) reveals that in the said case, the defendant No.1 agreed to sell the suit property for a sum of ₹7,000/- on 13.12.1975 and received an earnest money of ₹5,000/- and the balance amount was payable at the time of execution of sale deed. The sale deed could not be executed on account of prohibition on sale of urban property at the relevant time. Subsequently, the said defendant No.1 sold the suit property to the defendants No.2 and 3 and the suit was filed by the plaintiff for the relief of specific performance on 3.1.1979 within period of three years of arising the cause of action. In case of Ram Lal (supra) the defendant had sold his undivided share in the suit property in favour of the plaintiff and merely for that reason of sale of share the defendant was not allowed to withdraw from the contract and the suit of the plaintiff was decreed. There was no undue delay in the said suit for the relief of specific performance. In the case of Indian Financial Association (supra), the agreement was executed by one of the attorney holder of the defendant No.1 Company, who executed the receipt of ₹10,000/- of earnest money and subsequently also executed agreement of sale on 21.05.1985 and the sale deed was to be executed on payment of balance sale consideration on 30.09.1985. The plaintiff was having the capacity to pay the amount and even paid ₹3.10 lac out of the total sale of ₹8.00 lac and ultimately the suit of the plaintiff was decreed. In case of Aniglase Yohannan (supra), the defendant has agreed to sell the suit property for an amount of ₹12,000/- and

received ₹8,000/- as earnest money on 15.02.1970 and the sale deed was to be executed within a period of six months. When the defendant filed to perform his part of the contract, the plaintiff came to the court not later than three years and rather his suit was decreed well before the year 1980 for the money decree as alternative relief.

In the case at my hand, although the plaintiff-appellant has proved the agreement Ex.P-1 executed by the respondent-defendant bearing the signatures compared with the signatures on Vakalatnama Ex.P-11 in another suit through the testimony of Shri S.K.Bajaj, Advocate, the learned counsel for the respondent-defendant in the previous suit titled Gurdial Kaur Vs. Gurnam Kaur and others and also through the testimony of Dr.Inderjeet Singh, who proved his report Ex.P-12. But the contents of the said agreement Ex.P-1 and the evidence on record cannot be ignored.

The perusal of the agreement of sale shows that the stamp paper was never purchased by the said respondent-defendant and as per the contents of the agreement the previous agreement dated 21.01.1974 was lost and therefore, the said agreement Ex.P-1 was executed on 06.09.1976 by the respondent-defendant in favour of the appellant-plaintiff for sale of the suit plot for an amount of ₹2200/- out of which ₹2,000/- were received by the said respondent-defendant. The amount of ₹2,000/- only remained outstanding. It was mentioned that the respondent-defendant is residing at Uttar Pradesh and the sale deed shall be executed at the instance of the appellant-plaintiff, but no date was mentioned, no address of Uttar Pradesh was mentioned and rather the address of Sangrur only was mentioned without any house or street. The suit was been filed against the respondent-defendant by mentioning his address of Chandigarh. There has not been any explanation given by the appellant-plaintiff that he was

unable to pay ₹200/- or he was ready or willing to perform his part of the agreement. This agreement was never renewed before the period of three years i.e. 06.09.1979. The appellant-plaintiff has suddenly presented the plaint in the trial Court on 16.11.2009 after a period of more than 33 years and the learned trial Court, therefore, has rightly observed that the conduct of the appellant-plaintiff speaks against him wherein no relief can be granted to the appellant-plaintiff. The suit filed by her is barred by limitation. The terms of the agreement are vague. The readiness and willingness is not proved from the evidence on record. The observations made by the Honorable High Courts and the Honorable Supreme Court in the case laws referred to above cast duty upon the court to take note of the conduct of the plaintiff before granting the relief. The learned trial court has rightly appreciated the evidence that in the present suit the plaintiff has failed to explain qua his silence for such a long period where the outstanding amount was just ₹200/-. The agreement is also not registered which has the recital of delivery of possession.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

May 23, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No