

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

**RSA No.2249 of 2016 (O&M)
Date of decision: 21.08.2017**

Chandu Ram (deceased) through LRs

... Appellants

Vs.

Sombir and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sudhanshu Makkar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Legal representatives of unsuccessful plaintiff are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, dismissing the suit for possession by way of specific performance of agreement to sell dated 12.05.1983, whereas the suit was filed as late as on 29.08.2006.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that plaintiff filed a suit for possession by way of specific performance of contract/agreement dated 12.05.1983 against the defendants on the grounds, inter-alia, that defendant No.1 was owner in possession of a plot, as detailed and described in para No.1 of the plaint. It was

pleaded that defendant No.2 being the guardian of defendant No.1 had entered into an agreement to sell the plot in dispute with the plaintiff for a sale consideration of ₹2900/-. The agreement was reduced into writing on 12.05.1983 and was duly thumb-marked by defendant No.2 being guardian of defendant No.1 and the same was witnessed by Jai Singh son of Shree Chand and Shish Ram, both residents of village Shimliwas. It was further pleaded that prior to reducing the agreement into writing, defendant No.2 received a sum of Rs.2000/- in cash and remaining sale consideration of ₹900/- was received by defendant No.2 on 12.05.1983 and in this behalf defendant No.2 had acknowledged the entire sale consideration of ₹2900/- in the agreement itself. It was also agreed that the possession of the plot in dispute would be delivered to the plaintiff at the time of execution and registration of the sale deed after obtaining permission of sale from the competent court and no date for execution and registration of sale deed was fixed. It was also agreed that terms and conditions of the agreement would be binding on the defendants and their successors. However, necessary permission could not be obtained by defendant No.2 from the court and later on defendant No.2 for and on behalf of defendant No.1 delivered the possession of the plot in dispute empowering the plaintiff to raise construction on the plot for his use and enjoyment. Thereafter, the plaintiff constructed the house on the plot in dispute and he was using the house in dispute without any interference from any quarter. It was pleaded that defendant No.2 prolonged the matter for obtaining the necessary permission for sale of the plot on behalf of defendant No.1 and thereafter, defendant No.1 attained the age of majority. When plaintiff requested the defendants to get the sale deed registered in his favour in respect of the plot agreed to be sold to him, they filed

a false suit for permanent injunction against him. Even thereafter also, the plaintiff again requested defendant No.1 to execute the sale deed in pursuance of agreement dated 12.05.1983 entered into by defendant No.2 being his guardian but with no result. The plaintiff also got served a legal notice dated 20.07.2006 upon the defendants requiring them to get the sale deed executed and registered on 03.08.2006 but they did not turn up on that date in the office of Sub Registrar, Tosham and then plaintiff got his presence marked by submitting an affidavit before Sub Registrar, Tosham. It was further averred that defendants were adamant to dispossess the plaintiff from the house in dispute and defendant No.1 was also threatening him to alienate the plot in dispute to some other person. The plaintiff requested him to desist from his evil design but with no result, which necessitated the filing of the present suit.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs did not file any replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the defendants had entered into an agreement to sell dated 12.05.1983 with the plaintiff of the suit land as alleged in the plaint? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no cause of action to file the present suit? OPD.
4. Relief.

In order to prove their respective stands taken in their pleadings,

both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiff has failed to prove his case. Accordingly, suit for possession by way of specific performance of agreement to sell dated 12.05.1983 was dismissed by the learned trial Court vide its impugned judgment and decree dated 30.11.2012.

Feeling aggrieved, plaintiffs filed their first appeal, which came to be partly allowed by the learned first appellate Court to the extent that the plaintiff would not be dispossessed from the disputed property, except in due course of law. Remaining part of the impugned judgment and decree passed by the learned trial Court was upheld, vide impugned judgment and decree dated 04.01.2016 passed by learned District Judge. Hence this regular second appeal at the hands of legal representatives of the plaintiff.

Heard learned counsel for the appellants.

It is a matter of record that agreement to sell, if any, was executed between the parties as far back as on 12.05.1983. None of the attesting witnesses of this sale deed was examined by the plaintiff as they had expired. It has gone undisputed before this Court that defendant No.2 Smt. Phoolpati was required to have mandatory permission from the Court, so as to dispose of the property of minor-defendant No.1. No such mandatory permission was ever sought by defendant No.2. In this view of the undisputed fact situation obtaining on record of the case, the agreement to sell dated 12.05.1983 would be a non-est transaction between the plaintiff and defendant No.2.

Such an agreement to sell will not confer any kind of right on the plaintiff, because defendant No.2 had no authority to execute such an agreement

to sell. The contentions raised by learned counsel for the appellants that it was an open ended agreement to sell and filing of the suit on 29.08.2006 i.e. after 23 years of the agreement to sell will not make any difference, has been duly considered and found wholly misplaced and not worth acceptance. Learned trial Court rightly dismissed the suit of the plaintiff by recording cogent and convincing evidence. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Mere agreement to sell dated 12.05.1983 Ex.P1 will not confer any title on the plaintiff. Further, the agreement to sell itself was defective in law. Plaintiff kept on waiting without there being any justification and a long period of 23 years elapsed, before he came forward and filed the present suit for possession by way of specific performance of agreement to sell, without there being any plausible explanation for this period of 23 long years.

Under these circumstances, instant one would be a fit case of undue hardship on the defendants-respondents, which would be squarely covered under the provisions of law contained in Section 20 of the Specific Relief Act, 1963. Plaintiff could not have sought benefit out of his own wrong. He was well aware about the incompetence of defendant No.2 to enter into an agreement to sell with him. Under these undisputed facts and circumstances, it can be safely concluded 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, 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 evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned District Judge in paras 17 to 19 of the impugned judgment, which deserve to be noticed here, read as under:-

*“Further, it is admitted fact by the plaintiff that at the time of alleged agreement to sell, Ex.P1, defendant no.1 was minor and that no prior permission was obtained by defendant No.2 from the competent court before entering into an agreement to sell with the plaintiff and this fact nullifies whole of the transaction. Admittedly, the father of defendant No.1 was alive at the time of alleged agreement to sell, Ex.P1. It is well settled law that a mother cannot act as lawful guardian of a person and property of a minor during life time of father and a mother cannot make alienation while the natural guardian i.e. father was alive and capable of looking after the interest of minor. In **Iruppakkatt Veettil Vishwanathan's wife Santha versus Deceased Kandan's L.Rs. wife Cherukutty and others, AIR 1972 Kerala 71**, the Hon'ble Kerala High Court observed that where no sanction of the court was taken for the alienation by the mother acting as the guardian of the minor, there is a plain violation of section 8(2) of the Act. Consequently, Section 8(3) is attracted and the disposal of the property, even though by a natural guardian becomes voidable at the instance of the minor. As admitted by plaintiff himself, no prior permission of the competent court was sought by defendant no. 2 before entering into alleged agreement to sell, Ex.P1 for the property of defendant*

No.1 who was minor at that time. Moreover, she was not the natural guardian of defendant No.1 as her husband was alive at that time.

Further, the present suit is barred by limitation because the alleged agreement was entered on 12.05.1983, whereas plaintiff filed the present suit on 29.08.2006 i.e. after a gap of about 23 years. It would be highly unjust and inequitable to allow the specific performance of the agreement which was allegedly executed about 23 years back. Performance of a contract cannot be kept in abeyance for unlimited period and hence, it cannot be said that time was not essence of the contract.

Further, learned counsel for the plaintiff argued that plaintiff was in possession over the house in dispute as defendant No.2 for and on behalf of defendant No.1 had delivered the possession of the plot in dispute empowering him to raise construction over it for his use and enjoyment and thereafter, he constructed the house on the plot in dispute and he was using the house in dispute without any interference from any quarter. However, this argument of learned counsel for the plaintiff carries weight because DW1 Sombir in his affidavit Exhibit DW1/A admitted that he had given the house in question to plaintiff on rent at the rate of Rs.200/- per month and in this way, the plaintiff was continuing as tenant over the house in dispute. Further, in cross-examination, DW1 admitted that electric connection in the house in dispute was in the name of Sanjay son of Chandu for the last 8-9 years and that besides the

disputed land measuring 28 marlas, the plaintiff had also agricultural land in his possession. Moreso, it has come on record that the plaintiff had his vote at the address of house in dispute. In such circumstances, when the possession of plaintiff over the disputed property is admitted by defendants, then certainly, the plaintiff can seek injunction regarding his forcible dispossession from the disputed property and the defendants can seek possession of the disputed property in due course of law. The findings of learned lower court are liable to be modified to this extent only. I have gone through the authorities cited by learned counsel for the plaintiff but the same are confined to their own facts and are not applicable to the facts of the present case.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in the impugned judgments and

decrees passed by the learned Courts below, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

21.08.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No