

RSA No. 5089 of 2016 (O&M)

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

**RSA No. 5089 of 2016 (O&M)
Date of Decision: 9.2.2017**

Rajender Singh and another

.....Appellants

Vs.

Ram Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashok Tyagi, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 13222-C-2016

Applicant seeks condonation of delay of 198 days in re-filing the appeal.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of 198 days in re-filing the appeal is condoned.

CM stands disposed of.

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Feeling aggrieved against the impugned judgments and decrees passed by learned courts below, recording their concurrent findings of facts dismissing the suit for specific performance, plaintiffs have approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate

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court in para 2 of its impugned judgment, are that father of defendants-respondents no. 1, 3 to 6 and husband of respondent-defendant namely Chhotu Ram entered into an agreement to sell of his agricultural land i.e. Killa no. 56//21(7-8) and Killa no. 73//1(7-8), 2(8-0) and 11 (7-8) total measuring 45 Kanlas 08 Marlas vide Jamabandi for the year 1990-91 situated within the revenue estate of village Mandhana, Tehsil & District Bhiwani (hereinafter referred to as the suit land) vide agreement dated 20.01.1993 for a sale consideration of ₹1,70,000/- and out of the aforesaid amount, a sum of ₹1,42,000/- was paid. The impugned agreement was towards the ratio i.e. 2/3rd share in favour of appellant/ plaintiff No. 1 and 1/3rd share in favour of appellant/plaintiff No. 2. The target date of execution of sale deed was fixed as 30.06.1993. However, prior to the execution of the sale deed on 10.2.1993, the predecessor-in-interest of the respondent/defendant had received a sum of ₹28,000/- and a receipt in this regard was executed on the back of the agreement to sell dated 20.01.1993, thereby the total sale consideration was paid and no target date was fixed for the execution and registration of the sale deed.

Similarly on 20.01.1993 itself, appellant/plaintiff No. 1 entered into an agreement to sell of land comprised in Killa No. 56//1(7-8) and 2(8-0) total measuring 15 Kanals 08 Marlas situated at village Mandhana for a sale consideration of ₹1,00,000/- in favour of Chhotu and a sum of ₹98,000/- was paid as part consideration and thereafter the remaining ₹2000/- was paid. Appellant/plaintiff No. 1 also entered into an agreement to sell of land situated within the revenue estate of village Mandhana on that day in favour of Chhotu for a sale consideration of ₹52,000/- and ₹50,000/- was paid by Chhotu to appellant/plaintiff No. 2 and the remaining sale

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consideration was also paid on 10.02.1993. No target date for execution of the sale deed was fixed. Accordingly, both the parties executed agreement to sell with each other.

It was decided between the parties to the suit for exchange of their respective land and both the suits were decreed vide judgment and decree dated 17.04.1993 and 18.05.1993 and thereafter, mutation were also sanctioned in this regard. Thereafter, deceased Chhotu Ram due to some enmity, had challenged both the impugned decrees but both the suits were dismissed vide judgment and decree dated 27.09.1999. Thereafter deceased Chhotu Ram challenged both the impugned decrees by preferring appeals and both the appeals were accepted vide judgment and decree dated 18.07.2005, though the appellants/plaintiffs had also preferred RSA but the same was dismissed by the Hon'ble Punjab and Haryana High Court on 24.10.2005. Although, appellants/plaintiffs filed an SLP but the same could not be decided as the controversy was relating to specific performance of contract vide agreement to sell dated 20.01.1993. Though the record regarding ownership had already been changed and there was no requirement for the execution of the sale deed, but a valid decree so passed in favour of the appellants/plaintiffs had already been upset.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether the father of the defendants no. 1, 3 to 6 and husband of defendant no. 2, namely, Chhotu Ram had executed an agreement to sell dated 20.01.1993 in favour

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of the plaintiffs on the ground as alleged in the plaint ?

OPP.

2. Whether the plaintiffs have no locus standi nor any cause of action to file the present suit? OPD

3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.

4. Relief.

Vide order dated 3.8.2012, learned lower Court framed the following additional issues:-

(3A) Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD

(3B) Whether the present suit is barred by the principle of res-judicata? OPD

(3C) Whether the present suit is barred under Order 2 Rule 2 C.P.C? OPD.

(3D) Whether the present suit is barred by limitation? OPD

(3E) Whether the plaintiffs have not come to the Court with clean hands and have suppressed the material facts? OPD

(3F) Whether the suit is bad due to non-joinder of necessary parties and mis-joinder? OPD

With a view to prove their pleaded case, both the parties brought on record voluminous documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have failed

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to prove their case. Accordingly, their suit for possession by way of specific performance of agreement to sell dated 20.1.1993 was dismissed, vide impugned judgment and decree dated 7.12.2012. Dissatisfied, plaintiffs filed their first appeal which also came to be dismissed vide impugned judgment and decree dated 29.10.2015. Hence this regular second appeal at the hands of the plaintiffs.

Heard learned counsel for the appellant.

Learned counsel for the appellants submits that since there was no target date fixed in the agreement to sell dated 20.1.1993, filing of the suit for possession by way of specific performance on 21.8.2006 would not be barred by time. He further submits that the agreement to sell was duly proved and learned courts below ought to have decreed the suit of the plaintiffs-appellants. He concluded by submitting that since learned courts below have failed to appreciate true facts of the case in the correct perspective, the impugned judgments and decrees have resulted in miscarriage of justice and the same are liable to be set aside. He prays for setting aside the impugned judgments and decrees, by allowing present appeal.

Having heard learned counsel for the appellants at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that present appeal is without any merit and the impugned judgments and decrees deserve to be upheld, for the following more than one reasons.

A combined reading of the both the impugned judgments and decrees would make it crystal clear that it was rightly held by learned courts

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below that plaintiffs-appellants have failed to prove their case. Learned trial court as well as learned first appellate court recorded cogent and concurrent findings of facts on each and every issue, before arriving at their respective judicious conclusion. Issue No. 3-B regarding principle of res judicata and issue No.3-D regarding suit being barred by limitation, were very rightly decided by learned trial court as well as learned first appellate court against plaintiffs-appellants. The suit was hopelessly time barred. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

During the course of hearing, when confronted as to how suit of the plaintiffs-appellants was within limitation, learned counsel for the appellants tried to bring the suit within limitation, contending that there was no target date fixed in the agreement to sell dated 20.1.1993. However, after giving due consideration to the argument raised by learned counsel for the appellants, the same has been found wholly misplaced, which could not be accepted. It is so said because suit was filed after more than 13½ long years and that too without even making an effort to explain this inordinate long period.

The matter re-considered by learned first appellate court, before arriving at its own just conclusion. Relevant findings recorded by learned first appellate court in para 34 to 37 of its impugned judgment, which deserve to be noticed here, read as under:-

“Undoubtedly, the plaintiffs in the earlier bout of litigation went up to the Hon’ble Supreme Court and filed one Special Leave Petition. Same was withdrawn by them seeking permission to opt for other remedy. But the

fact remained intact that plaintiffs in respect of the suit land against Chhotu contested their litigation up to the Supreme Court and lost the same. Under the garb of the availing another opportunity they can not put forward a new case. The plea of agreement Ex.P1 and endorsement Ex.P2, was never raised in the earlier litigation. Therefore, same can not be allowed to be taken to defeat the rights of Chhotu, now represented through his legal heirs.

Chhotu, had expired on 18.9.2000. Present suit was instituted on 21.8.2006. The impugned agreement to sell is dated 20.1.1993. The plaintiff failed to explain on the record that why the agreement Ex.P1, had failed to see the day of light for the period of thirteen years. It also remained unexplained that why the plaintiffs remained silent for considerable long time and only after death of Chhotu Ram, opted to file the present suit. They never dared to disclose about the agreement Ex.P1, during the life time of Chhotu. In view of the matter the conduct of the plaintiffs is not worthy of credit. Their Act speaks in volume that their intention was only to usurp the land of Chhotu.

In view of above detailed discussion this Court is of the opinion that the learned trial Court examined each and every limb of the present litigation and rightly answered issue no.1 against the plaintiffs holding that agreement to sell Ex.P1 is not valid and genuine document on the basis of which they can put forward their claim for specific performance of agreement to sell in respect of the suit land.

The plea of execution of the agreement to sell was very much available to the present plaintiffs-appellants at the time of earlier suit filed by Chhotu, deceased against Sajjan and Rajender, challenging the earlier Civil Suit no.

112 of 1993 dated 18.5.1993 titled as Chhotu Vs. Rajender Singh and of Civil Suit no. 114 of 1993 dated 17.4.1993, titled as Chhotu Vs. Sajjan Singh. But, it was not taken so same plea can not be allowed to be taken at this stage. The doctrine of res-judicata or constructive res judicata predominantly is a principle of equity, good conscience and justice. The purpose of principle of res-judicata is to put the lis at rest and no one should be vexed twice for the same cause. The plea of agreement Ex.P1, was very much available to the plaintiffs in their earlier bout of litigation but they failed to take the same. Learned trial Court has rightly held that they kept on waiting for the death of Chhotu and after that produced agreement to sell Ex.P1 in the present litigation. In case ***Dadu Dayalu Mahasabha Vs. Mahant Ram Niwas and another, 2008(3) LJR, 573***, it has been observed by the Hon'ble Supreme Court that:

“Rule of res judicata restrains the parties to judicial proceedings from agitating the same question over again even through the decision may be clearly wrong. Parties are bound by the judgment and are estopped from challenging it when it becomes final.”

Learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a 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 Vs. Lekshmy Sarojini and**

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**others, 2009 (2) RCR (civil) 286 and Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

(RAMESHWAR SINGH MALIK)
JUDGE

9.2.2017
Ak Sharma

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