

RSA No. 4431 of 2015 (O&M)

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

RSA No. 4431 of 2015 (O&M)

Date of Decision: 12.9.2017

Dhian Singh

.....Appellant

Vs.

Darshan Singh (since deceased) through LRs

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Deepak Nayar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for specific performance of the agreement to sell dated 14.11.2000 was dismissed by the learned trial court, vide its impugned judgment and decree dated 27.2.2013 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 27.3.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that as appellant who was plaintiff before the lower court filed the suit against Darshan Singh, who during the proceedings of the suit died and his legal heirs were brought on record for specific performance of an agreement to sell dated 14.11.2000 pertaining to property two shops having measurement from East 15.6 feet,

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from west 7.3 feet, from North 14.9 feet from South 15 feet total area 19 sq. yds. boundaries of which was further described in the head note of the plaint situated in the area of Kot Khalsa, Sub Urban, Sunder Nagar, Amritsar alongwith consequential relief of permanent injunction restraining the defendant from dispossessing or interfering into peaceful possession of the plaintiff over the suit property in any manner and further restraining him from alienating the suit property to any other person except him or in the alternative suit for recovery of ₹1,10,000/- (i.e. ₹55000 as advance amount of sale consideration paid and ₹55000/- as damages as stipulated in the agreement) alongwith interest @ 18% p.a. from the date of agreement till realization of the same.

Case of the plaintiff/appellant pleaded in the plaint was to the effect that the defendant being owner in possession of the suit property entered into agreement to sell with the plaintiff on 14.11.2000 at total sale consideration of ₹55000/-. Terms and conditions of agreement was reduced into writing vide agreement dated 14.11.2000. At the time of agreement, defendant received ₹10000/- in the presence of witnesses as part of sale consideration and further as per the terms of agreement of sale, sum of ₹12000/- was to be paid on 30.11.2000 and remaining amount of ₹33000/- on the date of execution and registration of the sale deed i.e. 31.04.2001. As per terms of the agreement, plaintiff paid ₹11,000/- on 30.11.2000 to the defendant in cash in the presence of witnesses, as token of receipt of said amount, the defendant with his own handwriting made endorsement on the back of the original agreement to sell under his signatures. It was also pertinent to mention that at the time of receiving of abovesaid amount on 30.11.2000, defendant delivered the possession of the property to the

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plaintiff. Since then plaintiff was in possession of the suit property as intended vendee thereof and sons of the plaintiff were running their business under the name and style as Manjit Cycle Works continuously. Photographs of the suit property showing the running of said business and of agreement to sell as well as electricity bills were attached with the property. Plaintiff further alleged that in the month of January 2001, defendant showed his need for money to perform marriage of his daughter and on this pretext, defendant received the remaining sale consideration of ₹34000/- from the plaintiff in the presence of witnesses and made endorsement on the receipt of the said amount on the original agreement with his own signatures and handwriting. In this way, defendant received the entire sale consideration from the plaintiff and only sale deed remained to be executed.

Before the date fixed i.e. 30.04.2011, plaintiff approached the defendants and requested him to execute the sale deed but defendant showed his inability to execute the sale deed on the pretext that the mutation of the suit propriety had not been sanctioned in his favour as yet and assured the plaintiff that he would execute the sale deed in his favour in new feature after getting the mutation sanctioned in his favour. Plaintiff further alleged that in this way, defendant played fraud with the plaintiff as he never disclosed the said fact that mutation was not sanctioned in his favour nor he got mentioned the same in the agreement and concealed the material facts and misrepresented him as owner. Plaintiff had been regularly requesting the defendant time and again to execute the sale deed but the defendant had been putting of the matter on one pretext or other. Finding no other way, plaintiff got certified legal notice dated 15.6.2006 upon the defendant calling upon him to execute the sale deed dated 11.7.2006. Plaintiff alongwith

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Nirmal Singh son of S. Budh Singh having in his possession expenses for purchase of stamp papers and other expenses after execution and registration of the sale deed remained present in the office of Sub Registrar from morning till evening but defendant never turned up to perform his part of agreement and ultimately plaintiff got his presence marked in the office of Sub Registrar by getting an affidavit attested from Executive Magistrate, Amritsar. Plaintiff in this way always had remained ready and willing to perform his part of contract and was still ready and willing to perform his part of contract. Entire sale consideration was already paid but defendant committed default in performing his part of contract. Defendant with malafide intention filed frivolous suit for declaration and injunction challenging the agreement to sell in which he admitted execution of the agreement and receipt of ₹10000/- but he was denying the receipt of payment of ₹11000/- on 30.11.2000 wrongly.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections, including the issue of limitation pointing out that suit filed by the plaintiff was hopelessly time barred. Replication was filed by the plaintiff. On completion of pleading of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is entitled to specific performance of agreement to sell dated 14.11.2000 as prayed for? OPP
2. Whether plaintiff is entitled to permanent Inaction as prayed for? OPP
3. Whether the plaintiff is entitled to recovery in alternative as prayed for? OPP
4. Whether the suit of the plaintiff is barred by law of limitation? OPD

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5. Whether agreement to sell dated 14.11.2000 already stands cancelled? OPD

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record 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 miserably failed to prove his case. Accordingly, his suit for specific performance of the agreement to sell dated 14.11.2000 was dismissed by the learned trial court, vide its impugned judgment and decree dated 27.2.2013. Feeling aggrieved, plaintiff filed his first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 27.3.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that agreement to sell in question was dated 14.11.2000. Suit for specific performance of the agreement to sell dated 14.11.2000 was filed by the plaintiff as late as on 18.7.2006. The only argument raised by learned counsel for the appellant in this regard was that since the plaintiff-appellant issued legal notice dated 15.6.2006 to the defendant calling upon him to execute the agreement to sell, limitation will start from the date of issuance of the legal notice.

After giving thoughtful consideration to the abovesaid solitary contention raised by the learned counsel for the appellant, it has been found wholly misplaced and not worth acceptance. The reason to say so is that once time starts running from the date of agreement to sell, 14.11.2000 in the present case, it will not stop running merely because the plaintiff-appellant

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issued the legal notice after about six years of the agreement to sell. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to record their concurrent findings of facts, including on the issue of limitation holding that suit of the plaintiff-appellant was hopelessly time barred and the impugned judgments and decrees deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“I have paid considerable thought the abovesaid submissions of both counsel for the parties and have carefully gone through the evidence of the plaintiff alongwith other material. No doubt in the deposition of witnesses of the plaintiff as discussed above execution of agreement Ex.P1 by defendant in favour of plaintiff fully stands proved. Even in the written statement, defendant has admitted the fact of execution of the agreement of sale as defendant has taken the plea that the agreement of sale Ex.P1 is already cancelled and is not enforceable due to the reason that the same has become time barred. Though the defendant has also challenged the receipt of another amount of Rs.11000/- on 30.11.2000 but as there is no rebuttal to the evidence of the plaintiff, so in the evidence of the plaintiff as well as PW5 Salinder Singh who is witness of alleged endorsement on the back side of the agreement regarding receipt of Rs.11000/- by defendant, this fact fully stands proved that vide said endorser on 30.11.2000, defendant has received the said amount of Rs.11000/-. With regard to

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receipt of remaining amount of Rs.11000/- at the time of execution and Rs.34000/- thereafter has been admitted by the defendant in written statement. So in this way, execution of agreement Ex.P1 between plaintiff and defendant can be fully said to have been proved. But the other material issue i.e. issue No.4 whether plaintiff always remained ready and willing to perform his part of contract throughout cannot be said to have been proved as per requirement of law. Agreement Ex.P1 executed on 14.11.2000 stipulated date for execution and registration of the sale deed as per the terms of the agreement Ex.P1 is fixed as 30.04.2001. there is no reliable and cogent evidence that on 30.4.2001, either plaintiff had gone to house of the defendant calling upon him to come present at the office of Sub Registrar for the purpose of execution and registration of the sale deed. There is no affidavit or any application dated 30.4.2001 showing that plaintiff/application got marked his presence in the office of Sub Registrar/Tehsildar that was the material date i.e. 30.4.2001. Further more important is that perusal of first endorsement made on the agreement on second page with regard to receipt of Rs.34000/- shows that no date has been written showing on which date said amount was paid by plaintiff to the defendant. Further endorsement with regard to receipt of Rs.11000/- is dated 30.11.2000 which is on the page of the agreement. Further careful perusal of both the above said endorsement regarding receipt of above said further payment payments of the sale consideration apparently and evidently showing and establishing this fact that no further date for execution of the sale deed was got extended vide any of the above said endorsement. But it means that inspite of receipt of Rs.11000/- on 30.11.2000 stipulated date for execution of the sale deed remained 30.4.2001 which was the initial stipulated and fixed date for execution and registration of the sale deed as per the terms of the agreement. Even plaintiff i.e. PW1 Dhian Singh in his affidavit nowhere stated that stipulated date for

execution and registration of the sale deed was ever extended which was orally fixed as 30.4.2001. Rather in his cross examination, he has stated that is correct that date of execution of sale deed is not extended. So in view of these facts and circumstances, it was required from the side of the plaintiff that he should have proved on the file that on 30.04.2001 he remained ready and willing to perform their part of contract and he got marked their presence i.e. stipulated date. Even there is no material to show that from the said date i.e. 30.4.2001 within period of three years, plaintiff remained ready and willing to perform his part of contract. As per the provisions of limitation Act, limitation provided for filing suit for specific performance is three years from the date fixed in the agreement or from the date when no fixed date has been mentioned in the agreement from date when defendant has refused to execute the sale deed i.e. the date for execution of the agreement is kept open but as discussed above in this case, as per clear terms and conditions of the agreement, there was stipulated date for execution and registration of the sale deed was fixed as 30.4.2001 between the parties. So it was legally and lawfully required from side of the plaintiff that he should have remained ready and willing to perform his part of contract firstly on the said date or at the extreme end within three years of said limitation period but on that point, defence of the plaintiff is missing and rather contrary as there is no document to show that on 30.4.2011 he got his presence marked or he sent any notice to the defendant claiming upon him to come and execute the sale deed within the period of three years of said stipulated date i.e. 30.4.2001. Alleged notice stated to have been sent by the plaintiff to the defendant which has been placed on the file as Ex.P9 and postal receipt Ex.P10 shows that the said notice was sent on 15.6.06 but it means that much how the period of three years from the said stipulated period. In said notice which is dated 15.06.06 first time, plaintiff has

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got mentioned this fact in para no.4 that the defendant has played fraud with him. Mutation of suit property has not been sanctioned in his favour. He has not disclosed that fact to him and concealed the said material fact. But on which date, month or year, alleged fact came into the notice of the plaintiff neither mentioned in the said notice nor even disclosed by the plaintiff/PW1 in his affidavit.....”

When confronted with the abovesaid findings recorded by the learned first appellate court, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Appellant being the plaintiff, onus was on him to prove his pleaded case by bringing on record cogent and convincing evidence, however, he failed to do so. In fact, it was not in the control of the appellant to bring his suit within limitation because the same had already become hopelessly time barred before it was filed. 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 respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments 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 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 law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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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.

Since no plausible explanation has been found at the hands of plaintiff-appellant in both of his applications for condonation of delay in filing as well as re-filing, the same are also found misconceived and are dismissed, accordingly.

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

12.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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