

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4518 of 2015 (O&M)

Date of decision : September 29, 2017

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Suraj Singh and another

.....Appellants

Versus

Smt. Chanderwati through Legal representatives

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Lokesh Sinhal, Advocate for the appellants.

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RITU BAHRI, J.

C.M No.12041-C of 2017

Prayer made in the application is for impleading legal representatives of the respondent/defendant Smt. Chanderwati.

In view of the facts and circumstances stated in the application, the legal representatives of respondent/defendant Smt. Chanderwati as mentioned in the application are allowed to be impleaded as respondents and the same are taken on record.

RSA No. 4518 of 2015

The appellants-plaintiffs have come up in the present regular

second appeal against the judgment of the trial Court dated 9.9.2014 passed by the Civil Judge (Junior Division) Faridabad and against the judgment of the lower appellate Court dated 24.2.2015, whereby their suit for specific performance of the agreement to sell dated 28.6.1984 has been dismissed.

The case of the appellants-plaintiffs (hereinafter referred to as 'the plaintiffs') is that the agreement to sell had been entered on 28.6.1984 and mother of respondent-defendant (hereinafter referred to as 'the defendant') namely, Bohati was owner in possession of agricultural land measuring 109 kanals 8 marlas. She entered into an agreement to sell the said land with the father of the plaintiffs, namely Rattan Lal Sharma at the rate of Rs.13,000/- per acre vide written agreement dated 28.6.1984. The agreement dated 28.6.1984 was drafted by Sh. Baldev Raj Juneja, document writer, Ballabgarh. The plaintiffs' father had paid Rs.20,000/- in cash to the mother of the defendant at the time of the agreement as earnest money on the same day vide a separate receipt dated 28.6.1984. As per the terms and conditions of the agreement to sell, the date for execution and registration of sale deed was fixed for 15.6.1985. The entire sale consideration was paid to the mother of the defendant on 15.5.1985 and mother of the defendant executed a lease deed in the office of Sub Registrar, Ballabgarh in favour of plaintiff's father Sh. Rattan Lal. She also delivered the possession of the suit land to Sh. Rattan Lal with the condition that the lesser would have no right to eject the lessee and she was given the only right to recover the yearly rent of Rs.1000/-. The mother of the defendant had also executed a GPA of the suit land in favour of Sh. Dal Chand, the brother of Sh. Rattan Lal on 15.5.1985 in the office of Sub Registrar, Ballabgarh so that Sh. Rattan Lal later on may get the sale deed executed in his favour through

GPA. The plaintiffs became owner of the suit land but the name of the defendant continued to appear in the revenue record. In the year 1989, the mother of defendant and Sh. Dal Chand, the GPA holder died. After the death of mother of the defendant and Sh. Dal Chand, the GPA, the sale deed of the disputed land could not be executed through the said GPA. The father of the plaintiff also died in the year 2007 and after his death, plaintiffs requested the defendant to execute the sale deed on or before 28.8.2011. In this backdrop, the suit was filed.

Notice was served upon defendant but defendant did not appear before the Court and was proceeded ex parte vide order dated 4.4.2013.

The suit of the plaintiffs was dismissed on the ground that when the plaintiffs had paid the entire sale consideration on 15.5.1985 and thereafter, till 2011, the defendant did not execute the sale deed in favour of the plaintiffs' father or the plaintiffs, it has to be assumed that the plaintiffs had the notice of refusal of the performance. The suit was held to be hopelessly time barred.

On appeal, the lower appellate Court affirmed the findings given by the trial Court by observing that as per jamabandi for the year 1988-89 Ex.P-11 and 2003-04 Ex.P-8, Rattan Lal, plaintiffs' father is recorded to be in possession as lessee over the suit land and as per jamabandi for the year 1978-79 Ex.P-9, Bohati, the mother of defendant is recorded as owner in possession of the suit land. The defendant is recorded as owner after death of her mother. Thus it was observed that as per the jamabandies placed on the file and the lease deed, it stood established that plaintiffs' father had been put in possession of the suit land as lessee by mother of defendant and, thus, defendant has no right to dispossess the

plaintiffs from the suit land except in due course of law. Lower appellate Court held that suit for permanent injunction restraining defendant from interfering in the possession of plaintiffs ought to have been decreed by the trial Court. Thus, lower appellate Court partly accepted the appeal and suit of the plaintiff was partly decreed and a decree of permanent injunction was passed in favour of plaintiffs and against defendant, thus, restraining the defendant from interfering in the possession of plaintiffs over the suit land during subsistence of the lease period.

In this regular second appeal, judgment of the lower appellate Court has been challenged by the appellants. However, learned counsel for the appellants has not been able to lay any evidence to show as to why the suit for specific performance of execution of the sale deed was not filed within limitation. Moreover, as per the lease deed, the plaintiffs and the other witnesses were present before the Joint Sub Registrar at the time of execution of the lease deed. They have examined PW-2 Raju and PW-3 Sardar attesting witnesses of the lease deed who both deposed that mother of defendant was in need of money before the date fixed for execution of the sale deed but father of the plaintiffs did not have funds to be incurred on stamp and registration charges and mother of defendant executed lease deed in favour of Rattan Lal on 15.5.1985 and delivered the possession of suit land to Rattan Lal with the condition that lessor will have no right to eject the lessee and she was given the right only to recover yearly rent of Rs.1000/-.

Since the execution of the lease deed was duly proved, the suit has been rightly partly decreed by the lower appellate Court. There is no infirmity or illegality in the judgment of the lower appellate Court that

warrants interference of this Court

In view of all that has been discussed above, present regular second appeal is dismissed.

September 29, 2017

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No