

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

RSA No.6313 of 2014 (O&M)

Date of decision : 18.07.2017

Joginder Singh

...Appellant

Versus

Karambir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikram Singh, Advocate with
Mr. Abhinav Sood, Advocate for the appellant.

Mr. R.K. Gupta, Advocate for the respondent No.6-Caveator.

ANIL KSHETARPAL, J.

The appellant-plaintiff has filed the present Regular Second Appeal against the concurrent findings of fact in a suit for specific performance of agreement to sell.

In brief, the facts are that the plaintiff claimed that defendant Nos.1 to 5 entered into an agreement to sell with respect to land measuring 24 kanals. The possession of the land was already with the plaintiff under the agreement of mortgage dated 03.10.1991. Out of total sale consideration of ₹51,000/-, ₹27,000/- was paid. The defendant Nos.1 to 5 did not choose to contest the suit. The defendant No.6 claimed that defendant Nos.1 to 5 had entered into an agreement to sell with defendant No.6 on 17.08.1999. He has also filed a suit for specific performance of the agreement to sell

dated 17.08.1999.

The learned trial Court after appreciating the evidence available on the record found that the suit is beyond the period of limitation as agreement to sell, specific performance whereof has been prayed for, is dated 08.06.1994, whereas suit was instituted on 18.08.2008. The trial Court further found that the plaintiff further pleads another agreement to sell dated 04.04.2006 but the same is manipulated document in order to defeat the rights of defendant No.6. The prayer of the plaintiff with respect to the protection of possession under Section 53-A of the Transfer of Property Act was also declined on the ground that the plaintiff did not take any steps in furtherance of agreement to sell. The plaintiff filed an appeal which has also been ordered to be dismissed by the learned First Appellate Court after re-appreciating the evidence.

Learned counsel for the appellant has been heard at length. Learned counsel for the appellant has submitted that the plaintiff was in possession of the property as mortgagee since 1991 and there was agreement to sell between him and defendant Nos.1 to 5 on 08.06.1994. There was another agreement with defendants Nos.1 to 5 on 04.04.2006 with respect of the same land.

Learned counsel has further referred to a decree dated 01.02.2001 passed by Civil Judge (Junior Division) Karnal to contend that defendant Nos.1 to 5 were restrained from alienating or transferring the suit land to anyone else but the plaintiff.

I have carefully considered the submissions made by the learned counsel for the appellant.

It has been noticed by the learned trial Court as well as the First Appellate Court that the present suit was filed by the plaintiff after the suit has been filed by Dhan Singh (defendant No.6) seeking specific performance of the agreement to sell against defendant Nos.1 to 5 on 17.04.2000. The plaintiff had filed a suit on 18.08.2008 seeking specific performance of agreement to sell dated 08.06.1994. As per the agreement to sell dated 08.06.1994, the target date for registering the sale, was 15.06.1995. The suit was filed after a period of 13 years. The plaintiff had further setup an agreement to sell dated 04.04.2006. This agreement has been found to be manipulated document by the Courts below.

Learned counsel for the appellant has not been able to point out that finding of the Courts below is erroneous. Learned Courts have further found that the defendant Nos.1 to 5 were contesting the civil suit filed by Dhan Singh (defendant No.6) but they did not choose to contest the present suit.

I have considered the arguments of learned counsel that the plaintiff being in possession of the property and previous agreement holder is entitled to protection under Section 53-A of the Transfer of Property Act. Both the Courts have found that the plaintiff is not entitled to protection under Section 53-A of the Transfer of Property Act as he has not taken any steps in furtherance to the agreement to sell.

The contention of the counsel for the plaintiff is that since there is a decree in favour of the plaintiff Ex.D7 dated 01.02.2001 restraining the defendants No.1 to 5 from alienating the property to anyone else except plaintiff, therefore, the aforesaid decree was binding. Aforesaid decree is

only in a suit for permanent injunction. The aforesaid decree was passed during the pendency of the civil suit filed by Dhan Singh (defendant No.6).

A close reading of the decree would show that suit was filed on 24.08.1999 and decree was passed on 01.02.2001. The plaintiff had prayed for restraint order against the defendants from forcible and illegal dispossession. Of course it was further directed that the defendants would not transfer the property to anyone else except plaintiff. However, such decree having been passed during the pendency of the civil suit filed by Dhan Singh, would not bind the Court dealing with the main suit for specific performance once the suit of plaintiff has been found to be beyond the period of limitation.

Counsel for the appellant has not been able to point out any substantial questions of law or error in the judgment passed by the Courts below, therefore, the present appeal is ordered to be dismissed.

18.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No