

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

RSA No.1174 of 1992

Date of Decision.26.09.2018

Kartar Singh

...Appellant

Vs

Harchand Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurbachan Singh, Advocate
for the appellant.

Mr. O.P. Goyal, Senior Advocate with
Ms. Deep Shikha, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The present appeal has been preferred by the appellant-plaintiff against the judgment and decree of the lower Appellate Court whereby the appeal preferred by the respondent-defendant against the judgment and decree dated 28.02.1989 decreeing the suit of the appellant-plaintiff for possession by way of specific performance of agreement to sell dated 18.07.1964 had been reversed.

The respondent-plaintiff, Kartar Singh, instituted the suit claiming specific agreement to sell dated 18.07.1964 in respect of land measuring 13 bighas 6 biswas of land comprised Khasra No.6636 as shown red in the site plan situated in village Heran Tehsil Jagraon, as possession of Harchand Singh was that of a co-sharer. The entire sale consideration of ₹2330/- was paid to the defendant and the plaintiff was put into possession with the stipulation that the sale deed would be executed at any time. The plaintiff is stated to

have raised superstructure on the site by spending ₹10,000/- and running a flour mill, cotton ginning machine and saw mill in the site and also installed an engine of 31 Horse Power. It was only few months before filing of the suit in the March 1987, the plaintiff requested for execution and registration of the sale deed and having been refused by the respondent-defendant, the suit was filed.

The respondent-defendant, Harchand Singh, contested the suit by denying possession of the plaintiff. It was rather stated that he had been possession of the suit property for the last 20 years and had installed a small flour mill in his share of land.

The plaintiff filed the replication to the written statement denying the averments made in the written statement.

The trial court on the basis of pleading framed the following issues:-

- “1. Whether the defendant entered into an agreement for sale of suit site on 18.7.64 as alleged? OPP*
- 2. Whether entire sale price of amount of Rs.2330/- has been paid by plaintiff as alleged? OPP*
- 3. Whether construction over suit site has been raised by plaintiff as alleged, if so, its effect? OPP*
- 4. Whether plaintiff has always been ready and willing to perform his part of the contract? OPD*
- 5. Whether plaintiff has no locus standi to file the present suit as alleged? OPD*
- 6. Whether the suit is barred by limitation as alleged? OPD*

7. *Whether defendants are entitled to compensatory costs u/s 35-A of CPC? OPD*

8. *Relief.*

On the basis of evidence led by both the parties, the trial Court decreed the suit. The plaintiff was declared owner in joint possession along with super-structure and machinery by way of specific performance of agreement to sell. In appeal, the judgment and decree of the trial Court has been set aside.

Mr. Gurbachan Singh, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law as it has been proved on record that defendant had executed the agreement to sell dated 18.07.1964, Ex.P1. Time was not essence of the agreement, therefore, as per the provisions of Article 54 of the Limitation Act, as and when the specific performance was refused, cause of action arose to file suit, which was filed in the month of March, 1987. The plaintiff had been found in possession of the suit property and therefore, there was no occasion for the lower Appellate Court to return the finding *vis-à-vis* the possession. The plaintiff had always been ready and willing to perform his part of the agreement to execute the sale deed but defendant refused to do so, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court.

Mr. O.P. Goyal, learned senior counsel assisted by Ms. Deep Shikha appearing for the respondent-defendant supported the judgment of the lower Appellate Court as the same was based upon

the examination of oral and documentary evidence. It is proved that defendant had been in possession of the suit property as owner and had installed a flour mill in the suit property. Even the plaintiff admitted the case of the defendant *vis-à-vis* possession by putting suggestion in the cross-examination that it was only few months ago that defendant had forcibly installed machinery in the suit property and was carrying on the business, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book, records of the Courts below and of the view that there is no force in the submission of Mr. Gurbachan Singh. Ex.D1, copy of the jamabandi for the year 1969-70, Ex.D2 jamabandi for the year 1974-75 and khasra girdawaries for the years 1979-80 to 1983-1984, Ex.D6 and for the year 1985 to 1988, Ex.D7 showed defendant-Harchand Singh to be in possession of the property in dispute. The aforementioned record had not been controverted by the plaintiff and therefore, it carried presumption of truth as per Section 44 of the Punjab Land Revenue Act. If at all, the plaintiff was in possession of the suit property, nothing prevented him to bring material on record to show that he was in possession and carrying on business like payment of statutory taxes and other utility bills. On the contrary, respondent-defendant had proved on record that he had been carrying out business. There was no occasion for the plaintiff to put suggestion to the defendants for installing machinery forcibly in the disputed land and carrying on the business.

All these facts had been examined by the lower Appellate

Court being last court of fact and law. No explanation has come forth on behalf of the plaintiff in seeking specific performance of agreement to sell as late as in 1987, particularly, when the defendant has been found in possession.

Keeping in view the aforementioned facts, I do not wish to subscribe the submissions made by Mr. Gurbachan Singh to form an opinion different than the one arrived by the lower Appellate Court. No ground for interference is made out, much less, no substantial question of law arises for determination. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 26, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No