IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.5867 of 2003 (O&M)
Date of decision:26.10.2018

Birinder Pal Singh (since deceased) through LRs and others
... Appellants

Vs.

Gandharav Singh Nagra (retd.) (since deceased) through LRs and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.L.Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate and
Mr. Ritesh Aggarwal, Advocate
for the appellants.

Mr. Piyush Kant Jain, Advocate and
Mr. Viren Jain, Advocate
for the respondent(s).

Mr. A.S.Narang, Advocate
for LRs of respondent No.7(ii).

AMIT RAWAL J.

The appellants-defendants No.1 and 2 being sons of Jagjit Singh Mann are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit seeking specific performance of the agreement to sell dated 31.05.1982 in respect of partially built house No.132, Sector 9-B, Chandigarh, has been decreed.

As per the averments made in the plaint, Jagjit Singh Mann, father of appellant-defendants No.1 and 2 was owner of aforementioned house and desired to sell the demised premises. As a result thereof, the

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property in dispute, vide agreement to sell dated 31.05.1982 was agreed to be sold for a total sale consideration of ₹10.00 lakhs against the receipt of ₹1.00 lakh as earnest money paid, vide bank draft no.005687 dated 11.05.1982 drawn on Bank of Baroda, Sector 17-B, Chandigarh. The sale deed of the aforementioned agreement to sell was to be executed within a period of six months from the date of legal clearance as the premises, partly constructed, was in illegal possession of one Rattan Singh. It envisaged other conditions of obtaining 'No Objection Certificate' from the Estate Officer, Chandigarh Administration and Income Tax Clearance Certificate from the Income Tax Department, much less permission under the Urban Land Ceiling Act, 1976. Once the plaintiff came to know that the property was in occupation of Rattan Singh and he did not vacate the premises after a lot of deliberations, consideration and discussions, both the parties agreed to reduce the sale consideration by ₹2.00 lakhs i.e., from ₹10 lakhs to ₹8.00 lakhs on the same date and finally to ₹6.00 lakhs. Resultantly, a fresh agreement to sell was prepared and signed by both the parties. It was agreed that the sale deed would be executed within a period of five months from the date of eviction of the tenant. The symbolic possession was stated to be delivered to the plaintiff. Defendants No.1 and 2, i.e. sons of Jagjit Singh Mann were not having good relations with their father, filed a suit for permanent injunction dated 15.06.1982 seeking restraint against their father including the plot in question. The aforementioned injunction was vacated, vide order dated 02.01.1983. In appeal, again injunction was granted on

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24.01.1983 and finally was vacated on 26.05.1984.

However, another civil suit bearing No.80 dated 11.04.1984 was, again at the instance of the sons, i.e. defendants no.1 and 2 herein, and obtained the injunction on 26.04.1984. The said injunction was vacated on 31.05.1988. During interregnum, on 12.10.1983 plot in question was resumed by the Estate Officer, Chandigarh Administration, Chandigarh but was restored vide orders dated 29.12.1987 and 13.03.1983, therefore, there was a blot on the title. In the meanwhile, on 5th December 1987, Jagjit Singh Mann died. The plaintiff contacted defendants no.1 and 2 for execution and registration of the sale deed but they did not come forward and in such circumstances, the suit aforementioned was filed on 02.09.1989.

Defendants no.1 and 2 on appearance contested the suit by raising numerous preliminary objections qua limitation, discretionary relief, no privity of contract, agreement to sell was a forged document. In the alternative, it was averred that the agreement was not enforceable as the same was rescinded by the conduct of the plaintiff. It was further averred that Jagjit Singh Mann had also entered into an agreement to sell with regard to the property in dispute with other person. The agreement to sell was stated to be sheer result of well thought plan of conspiracy hatched between the plaintiff and Jagjit Singh Mann (since deceased), for, three stamp papers, one for power of attorney and two for agreement to sell were purchased on the same day. The deduction of the amount was an malafide attempt on the part of the plaintiff and their father to use the same in the litigation. There was stipulation qua stamp charges to be borne by the

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vendor. No prudent person would have reduced the price from ₹10.00 lakhs to ₹6.00 lakhs, i.e., reduced from ₹10.00 lakhs to ₹8.00 lakhs and then from ₹8.00 lakhs to ₹6.00 lakhs.

Since the plaintiff owned a house in Sector 28 measuring 2000 square yards, was required to take the permission under Urban Land (Ceiling and Regulation) Act, 1976 for purchasing the plot in dispute which was measuring 5 kanals. The factum of restoration of plot after the demise of Jagjit Singh Mann was not denied but alleged that the agreement could not said to have been revived after reinvesting of the property in favour of the defendants. On merits, it was stated that Jagjit Singh Mann had not died intestate but executed a valid Will in favour of defendants no.1 and 2. Jagjit Singh Mann did not have any cordial relation with his sons and therefore, he hatched the conspiracy, with the plaintiff, and attempted to sell the plot in dispute.

Detailed replication was filed on behalf of the plaintiff giving the particulars of filing of two suits, injunction order and vacation. The factum of malafide, inordinate delay, collusion with Jagjit Singh Mann was emphatically denied, much less using of blank papers. It was averred that Jagjit Singh Mann was having good health, sound and robust at the time of execution of the agreement to sell but agreement to sell was not rescinded, rather it was explained that son, defendant no.1 had attempted to defeat the agreement to sell particularly when the original parties to the agreement to sell were ready and willing. Even the public notices were issued in the

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newspapers in the years 1985 and 1988. It was Jagjit Singh Mann, who had apparently purchased two stamp papers for agreement to sell. The deduction of the sale consideration was immediately amended and the second paper for agreement to sell was purchased by Jagjit Singh Mann for preparing the real agreement to sell meant to be eventually implemented and executed. The explanation of first agreement was given in the manner as it was typed in hurry and did not include the important clauses of handing over the symbolic possession or even issue of power of attorney. The aforementioned clauses were included in the final agreement with the sale consideration of ₹6.00 lakhs. Even 'No Objection Certificate' on the basis of final agreement to sell was obtained by Jagjit Singh Mann on 20.12.1982. Even renewal thereof was also submitted but the same was refused by the Estate Officer on 29.01.1985. The agreement could not have been said to be frustrated merely because of the property has been resumed but in fact, the same was restored and the payment of restoration charges were paid by the plaintiff.

Since the parties were at variance, the trial Court framed the following issues:-

> *"1. Whether the plaintiff is entitled for specific performance of agreement to sell in respect of partially built house no.182, Sector 9-B, Chandigarh built on plot No.41, Sector-4B, Chandigarh against the defendant?OPP*
>
> *2. Whether the suit of the plaintiff is barred by limitation?OPD*

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3. Whether the agreement to sell dated 25.5.1982 becomes void on account of forfeiture of title of Jagjit Singh Mann on resumption of plot?OPD

3-A Whether the impugned agreement is mere a paper transaction and does not confer any right on the plaintiff as the same being made with ulterior motive to put up defence in previous litigation croppposed up between the deceased Jagjit Singh Mann and the defendants no.1 and 2, if so, its effect?OPD

3-B Whether the impugned agreement cannot be enforced by the plaintiff on account of his having been already acquired area more than the prescribed one under the provisions of Urban Land (Ceiling and Regulation) Act, 1976?OPD

4. Relief."

The plaintiff in support of the aforementioned pleadings, examined as many as 24 witnesses vis-a-vis reduction of the sale price; handwriting expert, regarding the possession of the property; Notary Public vis-a-vis attestation of the General Power of Attorney dated 07.06.1982, PW-20, M.S.Vohra; attesting witness of the agreement to sell; the witness from the bank with regard to encashment of draft of ₹1.00 lakh and Local Commissioner vis-a-vis proceedings initiated, challenge of the resumption order etc., witness confirmed that plaintiff had gone to the office of Tehsildar and remained present, S.K.Chopra, Senior Assistant in the office

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of Estate Officer, U.T.Chandigarh, Stamp Vendor, District Court Chandigarh, Dharam Pal, who had taken one room on rent in the said house and Virinder Singh Issar, Advocate.

On the other hand, defendants examined DW1-Tejvir Singh, subsequent agreement holder of alleged agreement to sell (Ex.DW1/A); DW2- Harinderpal Singh Mann and closed the evidence.

On the basis of the aforementioned evidence, the trial Court decreed the suit and the appeal also met with the same fate.

Mr. M.L.Sarin, learned Senior counsel assisted by Mr. Nitin Sarin, Advocate and Mr. Ritesh Aggarwal, Advocate for the appellants in support of the memorandum of appeal raised the following submissions:-

The suit filed in the year 1989 was emphatically barred by law of limitation. Vide order dated 08.04.1985, (Ex.PW12/29), ad interim injunction order dated 26.04.1984 (Ex.PW12/18) was modified, whereby, it was made clear that as and when Jagjit Singh Mann, i.e., defendant in the said suit wanted to sell the property, he would inform the purchaser by mentioning in the sale deed that litigation between sons was pending adjudication but no steps have been taken for filing the suit, therefore, the suit was barred under the first provision of Article 54 of the Limitation Act.

To strengthen the aforementioned argument, reference was made to the legal notice dated 14.03.1985 explaining the readiness and willingness to perform the part of the contract, therefore, the suit filed in the year 1989 was expressly barred. The Chandigarh bye-laws prevent the mis-user of the property as the same portion was being used by the tenant as

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beauty parlour. A resumption order was passed on 12.10.1983 but the same was recalled on 29.12.1987. The resumption of the property would not deprive the vendee to seek the specific performance of the agreement to sell.

The possession of the aforementioned property had been with the defendants. It is highly un-believable that an amount of ₹10.00 lakhs mentioned in the agreement was reduced to ₹8.00 lakhs and then ₹6.00 lakhs. In-action on the part of the plaintiff for performing his role was arrested owing to the injunction order dated 24.01.1983 in appeal but the fact of the matter is that possession in the rent proceedings was taken by Jagjit Singh Mann from the tenant on 13.03.1983. As per the stipulation in the agreement, sale deed was to be executed within a period of five months. In the absence of any effective steps, discretionary relief could not have been granted. The second suit was filed on 11.04.1984 and ad interim injunction was granted on 26.04.1984 which was ultimately vacated in 1985, thus, there is gross illegality and perversity. The rate of the premises at the relevant point of time was much more, which was proved through the agreement dated 25.06.1985 (Ex.DW1/A) executed with Tegvir Singh. The second NOC vide order dated 07.04.1983 (Ex.P3) applied by Jagjit Singh Mann was refused by the Estate Officer. An agreement in such circumstances was deemed to have been rescinded and in the absence of any challenge to the decision, the simpliciter suit for specific performance was not maintainable.

Both the Courts below could not have excluded the period of

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ad-interim injunction against Jagjit Singh Mann restraining him from alienating the suit property as only disclosure of the pendency of the suit was required to be made to the vendee. Owing to the resumption order dated 12.10.1983, the agreement was frustrated in law and the remedy available to the plaintiff was to seek liquidated damages, for, Jagjit Singh Mann was divested of the title by operation of law and for all intents and purposes, the contract became void and could not be revived but this aspect has totally been brushed aside. The alleged agreement was a device to defeat the claim of the appellant-defendants, for, the entire property was joint Hindu Family Property. There was no occasion for G.S.Nagra to prepare the demand draft of ₹1,00,000/- on 11.05.1982, whereas, the agreement to sell was of 31.05.1982. There was a categoric admission by the plaintiff and his witnesses that receipt of earnest money of ₹1,00,000/- was executed after a period of two years. In the proceedings before the Chief Administrator, for setting aside the resumption order, G.S.Nagra, plaintiff, himself, filed an application under Order 1 Rule 10 of Code of Civil Procedure, thus, he knew that vendor did not have any title. The decree is, thus, result of illegality and perversity. Even the plaintiff did not remember the date of execution of agreement to sell as in one breath he stated that it was of 1984 and not of 1982. No sane person would reduce the price of huge residential site located in the prime sector of Chandigarh. The entire litigation to evict the occupant one Rattan Singh from the property was conducted by Jagjit Singh Mann.

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In support of the aforementioned submissions, reliance was placed upon the following case law:-

1. R.K.Parvatharaj Gupta Vs. K.C.Jayadeva Reddy JT 2006(2) SC 156, wherein stipulation of execution and registration of the sale deed was specified after disposal of the appeal pending in the High Court but the suit for specific performance was filed beyond three years from the date of expiry of fifteen days specified in the legal notice dated 24.04.1984.

2. Fatehji & Company and another Vs. L.M.Nagpal and others 2016(1) PLR 98 to contend that where a vendee had put in possession in respect of the property agreed to be sold, provisions of Article 54 of the Limitation Act, could not be extended irrespective of the fact that possession had been delivered and on similar lines, **Manjunath Anandappa Urf Shivappa Hansi Vs. Tammanasa and others AIR 2003 Supreme Court 1391.**

Mr. Piyush Kant Jain, learned counsel assisted by Mr. Viren Jain, Advocate representing the respondents submitted that there was an impediment for execution and registration of the sale deed which was not only one but others too as the defendants, sons of vendor Jagjit Singh Mann had earlier accessor obtained the injunction in the year 1983 and after withdrawal of the previous suit, filed another suit in April, 1984. Vide order dated 26.04.1984, ad interim injunction was granted. By virtue of the modification, shadow on the title continued. During the interregnum, the

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property was resumed on 12.10.1983 and in the resumption proceedings, the plaintiff also joined. It was with his endeavour, the property was restored on 29.12.1987, Ex.PW7/B. The restoration charges was concededly, deposited by the plaintiff owing to the demise of Jagjit Singh Mann in December, 1987. Immediately, after restoration order, suit was filed in September, 1989. Service of notice of 1985 in such circumstances was inconsequential. The readiness and willingness had been proved. The concurrent findings of facts and law cannot be interfered with until and unless there is gross illegality and perversity which has not been pointed out. Rather there is no equity in favour of the defendants as they had attempted to give distorted picture by coining a story of forged agreement but fact of the matter is that in a civil suit filed by the sons, Jagjit Singh Mann conceded regarding the execution of the agreement to sell in question for a sum of Rs.6.00 lakhs, therefore, the defendants being legal heirs are estopped to raise such plea. The embargo on the suit property was cleared only in the year 1989, therefore, during all this period, the plaintiff was prevented to seek discretionary relief. The agreement to sell has been proved through the testimony of marginal witnesses. The demand draft of ₹1,00,000/- paid to Jagjit Singh Mann and its encashment had been proved. Both the Courts below while rendering the findings have dealt with the evidence led by the plaintiff in extenso.

In support of the aforementioned submissions, reliance was placed on the following judgments:-

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Prakash Chandra Vs. Narayan 2012(5) SCC 403 to contend that even in the absence of any issue vis-a-vis hardship, due to increase in market price during the pendency of the suit, relief by way of compensation cannot be granted. On similar lines, reliance has been laid **K.Prakash Vs. B.R.Sampath Kumar; 2015(1) SCC 597,** wherein the Hon'ble Supreme Court while noticing the escalation in the value of the property did not interfere with the concurrent findings of facts and law, particularly, when the agreement to sell had legally and validly been proved and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and the judgments cited at bar and of the view that there is no force and merit in the submissions of Mr. Sarin.

This Court, while admitting the appeal on 22.05.2008 had framed the following substantial questions of law:-

> *"i) Whether the suit for specific performance of the alleged agreement dated 31.05.1982 was time barred having been filed on 2.9.1989?*
>
> *ii) Whether the period of limitation which has once started running would stop due to a subsequent event/disability?*
>
> *iii) Whether the grant of injunction order by a Civil Court would extend the period of limitation prescribed by law?*

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iv) Whether the injunction order dated 8.4.1985, Ex.P12/29 has been misread?

v) Whether the Courts below were right in decreeing the suit for specific performance even though the value of the suit property had escalated due to the long delay of over 7 years between the date of alleged agreement and the filing of the suit?

vi) Whether the alleged agreement to sell dated 31.05.1982 is valid and legal and specifically enforceable?

vii) Whether the resumption of the property in dispute by the Estate Officer rendered the alleged agreement to sell null and void and unenforceable in law?

*viii) Whether the 3 agreements allegedly executed on 31.05.1982 were merely paper transa*ctions?"

While dealing with the contention qua suit being barred by law of limitation, it would be expedient to extract the provisions of Article 54 of the Limitation Act. The same reads thus:-

For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

The factum of restraint order in the first suit, second suit and its modification, much less the resumption order and restoration in December, 1987 is not in dispute. The suit, thereafter, has been filed after one year and nine months. During all this period, there was an impediment/hindrance for

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the plaintiff to seek specific performance owing to the shadow on the title, at the instance of the present appellant-defendants, sons of Jagjit Singh Mann, who contested the suit tooth and nail wherein, the claim with regard to the property being ancestral was negated nor it culminated into any finding. The factum of execution of the agreement to sell in question at the price of ₹6.00 lakhs was also adverted to. It would be in the fitness of things to extract the relevant para of the written statement Ex.PW12/19. The same reads thus:-

> "............Shri Jagjit Singh Mann, defendant has had become extremely tired on account of unending litigation in respect of the immovable property describeable as as House No.132, Sector 9-B, Chandigarh which began about 8 years back on which huge amount has been spent and had to go to Supreme Court twice and has finally succeeded in getting the possession on the basis of decree of eviction. The said immovable property describeble as House No.132, Sector 9-B, Chandigarh was purchased by Shri Jagjit Singh Mann, defendant, from Shri B.N.Vohra through a registered sale deed for a consideration price of Rs.1,50,000/- against which Shri Jagjit Singh Mann, defendant was offered handsome amount of more than Rs.6,00,000/-, therefore, to get rid of the abovesaid unending tiring litigation and to gain a fair price and as an act of good management Shri Jagjit Singh Mann, defendant also stands in

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need of funds for payment of loans as raised by him from the Hayana Government for the development of land and so also for the repayment of Tractor loan and amount outstanding against him on account of the balance payable consideration price of A-Type Flat No.1/64, Azad Apartments, Sri Aurobindo Marg, New Delhi which property though situated at New Delhi has been unnecessarily roped in the present suit for permanent injunction, entered into an agreement to sell the abovesaid immovable property much before the institution of the present suit of permanent injunction.

Apart from the above Shri Jagjit Singh, defendant, needed money for the construction of Farm houses of the agricultural land and for making further addition in House No.129, Sector-B, Chandigarh and for other household expenses and for meeting the expenses for treatment and on the marriages of his daughters' daughters and daughters' sons.

Allegation that Shri Jagjit Singh Mann, defendant is squandering the properties in horse breeding and horse races at Zarifabad Farm at Karnal and at Meerut and Delhi besides being derogatory, defamatory are scandalous also and are a very sad reflection of the conduct of plaintiffs who are the sons of Shri Jagjit Singh Mann, defendant.

Shri Jagjit Singh Mann, defendant has a flourishing horse breeding farm at village Zarifabad, District Karnal, which is

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> paying very rich dividends financially.
>
> No legal embargo can be imposed upon Shri Jagjit Singh Mann, defendant qua the sale of any of the immovable properties which has been made the subject matter of dispute by plaintiffs, despite the fact the said plaintiffs have no legal right, title or interest in the said self acquired immovable properties of Shri Jagjit Singh Mann, defendant."

The injunction order remained effective till 26.05.1984 but in the meanwhile, another civil suit no.80 dated 11.04.1984 was filed, wherein, again injunction order was passed.

It is a matter of record that civil suit no.80 of 1984 was dismissed as withdrawn on 31.05.1988 and till that time, injunction order with a condition of disclosing the factum of litigation was in operation. It is also a matter of record that G.S.Nagra, plaintiff instituted the appeal against resumption order and the relevant charges for seeking restoration of the plot were also paid by him, thus, for all intents and purposes, it was not at all expedient to get the sale deed executed before 31.05.1982 or till December, 1987 when the resumption order was cancelled. DW1-Tejvir Singh had also proved the factum of possession of the suit property with the plaintiff, for, after obtaining the eviction order, rent note (Ex.PW9/1) was executed by the plaintiff in favour of one Dharampal. The result of the eviction proceedings culminated into handing over the possession to by the bailiff, from the tenant, to the plaintiff. The senior advocates of great reputation had appeared as witnesses for marking the presence of the plaintiff in support of

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the plea qua readiness and willingness. Even the legal notice in 1985 served upon Jagjit Singh Mann to appear would be inconsequential owing to the hindrances/impediments, ibid, therefore, the delay cannot be attributed on the part of the plaintiff. The appellant-defendants have also failed to prove that the agreement to sell was a mere paper transaction. In this regard, PW6-Ram Sarup Kaila had appeared and proved that stamp papers bearing entries against serial nos.3232 to 3234 were sold to Jagjit Singh Mann son of Kirpal Sigh Mann, resident of House No.129, Sector-9, Chandigarh. Even the Advocate engaged by the plaintiff for submission of application under Order 1 Rule 10 of Code of Civil Procedure in the resumption proceedings had also been examined. The factum of reduction in the price was also explained through testimony of PW14-Amarjit Singh Sethi. Handwriting expert has been examined whereby signatures of Jagjit Singh Mann have been proved to the hilt. It is a common practice amongst the LRs being siblings of the vendor to deny act of vendor but the truth always surfaces through past admission. The written statement as indicated above is the testimony of the same. Even as per written statement dated 23.09.1982 Ex.PW12/7, filed in the previous suit, there was candid admission with regard to execution of the agreement to sell on behalf of Jagjit Singh Mann. The defendants have not been able to rebut/controvert the same.

There is no dispute to the ratio decidendi culled out in the aforementioned judgments (supra). Each and every case is to be decided by taking into consideration the pleadings and evidence brought on record

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during the course of trial. In such circumstance, it is only then provisions of Article 54 of the Limitation Act, come into play. No sane person with a rider in the sale deed with regard to pending litigation without pondering upon its ultimate result would block the money by claiming the specific performance of the agreement to sell. It is only when the cloud on title cleared and injunction was vacated, specific performance was sought. Even the escalation in the prices cannot come to the rescue of the defendants as no plea of hardship was ever pleaded or any issue in this regard was framed.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence. The aforementioned substantial questions of law are answered against the appellants.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 26, 2018
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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