

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

RSA No.2703 of 2013(O&M)

Date of decision:27.8.2018

Paramjit Singh through LR's and othersAppellants

VERSUS

Bahadur SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gurcharan Dass, Advocate and
Mr. Vivek Sharma, Advocate for the appellants.

Mr. Gaurav Chopra, Advocate for the respondent.

REKHA MITTAL, J.

The present appeal directs challenge against the judgment and decree dated 28.09.2010 passed by the Additional District Judge, Ludhiana whereby appeal preferred by the respondent/plaintiff against the judgment and decree dated 20.11.2006 passed by the trial Court was allowed, suit of the respondent/plaintiff for specific performance of agreement to sell dated 19.08.1982 was decreed.

The facts relevant for disposal of present appeal are that the respondent/plaintiff has set up agreement to sell dated 19.08.1982 in respect of land measuring 1 bigha 0 biswa 10 biswas Pukhta comprised in khasra No.2469/1315 situated in village Dhandra-I, Tehsil and District Ludhiana, as per Jamabandi for the year 1997-98. According to respondent/plaintiff, Harnek Singh, father of the appellants/defendants agreed to sell the suit land at the rate of Rs.11,000/- per bigha kacha. An amount of Rs.30,000/- was paid to Harnek Singh at the time of execution

of agreement to sell. It was agreed that Harnek Singh will execute the sale deed in favour of the respondent/plaintiff after getting permission from the competent authority under the Punjab Land Ceiling Act for sale of suit land. Registration and conveyance charges were to be borne by the plaintiff. The plaintiff always remained ready and willing to perform his part of the agreement but the defendants/appellants failed to execute the sale deed despite registered notice dated 10.01.2000 calling upon them to execute the sale deed after receiving the balance sale consideration. It is further averred that cause of action accrued to the plaintiff on 19.08.1982 when agreement to sell was executed and on 30.01.2000 when defendants finally refused to execute sale deed in favour of the plaintiff.

The appellants/defendants failed to file the written statement and their defence was struck off vide order dated 29.05.2000. The ex parte proceedings initiated against the appellants, at one point of time, were set aside vide order dated 12.01.2006 and they were given opportunity to cross examine witnesses of the respondent/plaintiff.

To prove his case, the respondent/plaintiff examined Tarlochan Singh PW-1, Gurdial Singh PW-2 and Bahadur Singh – plaintiff appeared for himself as a witness,

Having heard counsel for the parties in the light of materials on record, the trial Court dismissed the suit vide judgment and decree dated 20.11.2006 by holding that the suit is barred by limitation and the same is not maintainable. As has been noticed hereinbefore, appeal filed by the unsuccessful plaintiff/respondent was allowed by the first Appellate Court.

The sole submission made by counsel for the appellants is that as per case set up by the respondent/plaintiff, agreement to sell was executed by late Harnek Singh on 19.08.1982. In the agreement, there is a recital that the vendor would get necessary permission for sale of land from the competent authority. It is argued that there is no dispute between the parties that the said permission was required to be obtained by the vendor under The Urban Land (Ceiling and Regulation) Act, 1976 (in short 'the Act'). Counsel would urge that Section 27 of the Act that deals with prohibition on transfer of urban property except with the previous permission in writing of the competent authority was declared to be unconstitutional by Constitution Bench of Hon'ble the Supreme Court on 13.11.1980 in the case **Maharao Saheb Shri Bhim Singh Ji Vs. Union of India, AIR 1981 SC 234**, therefore, respondent/plaintiff is not entitled to seek extension of time on the pretext that the vendor had not obtained necessary permission of the competent authority under the Act. In the alternative, it is argued that even if it is assumed that the parties were not aware of aforesaid judgment of Hon'ble the Supreme Court and for that reason in an agreement of sale executed in the year 1982, there was recital with regard to obtaining permission by the vendor, the question of seeking permission was open till 16.02.1986 in view of the provisions of Section 27 of the Act. It is further argued that no litigant can raise a plea that he was ignorant of the relevant provisions of the Act/law, therefore, suit filed by the respondent/plaintiff after a period of 14 years with effect from February 1986 is clearly barred by limitation. It is further argued that the Court in appeal has sought to reckon period of limitation with effect from the year when the aforesaid Act was repealed in March 1999 but this

finding recorded by the Court in appeal is the result of non-application of mind and incorrect appreciation of the implications of Section 27 of the Act.

Another submission made by counsel is that as per the recitals in the agreement of sale, possession of land agreed to be sold was delivered to the vendee, therefore, the agreement is not admissible in evidence for want of adequate stamps. In this context, reference has been made to judgment of Hon'ble the Supreme Court **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, 2009(1) RCR (Civil) 615.**

Counsel representing the respondent/plaintiff has supported findings of the Court in appeal whereby the Court, on detailed consideration of rival submissions made by counsel for the parties in the light of discussion in paras 25 to 28 of the judgment has recorded his conclusions in para 29 to the following effect;-

"Thus, in the present case the cause of action has accrued to the appellant/plaintiff only when the Act was repealed and appellant/plaintiff issued notices to the respondents/defendants who after receiving the notices did not execute the sale deed within 7 days. The notices were issued in January 2000, whereas the present suit has been filed in February, 2000, which is well within limitation. Thus, there was no reason for the learned Lower Court to refuse the specific performance of the agreement to sell dated 19.08.1982."

I have heard counsel for the parties, perused the paper-book and records.

The precise question that calls for determination is whether suit filed by the respondent/plaintiff seeking specific performance of agreement of sale dated 19.08.1982 on 05.02.2000 is within limitation or otherwise.

To decide the aforesaid issue, it is necessary to extract a part of the agreement in vernacular but translated in English, reads as follows:-

"After the permission, purchaser may get the registry done whenever he wants. The expenses of permission would be borne by me (seller). The expenses for registry within Miad (agreed period) would be borne by the purchaser. If I back out, the purchaser can get the registry through Court. On my refusal in case the registry is got done through Court, I will be responsible for the entire expenses etc."

The respondent issued notices to all the three appellants, sons of late Harnek Singh and the contents thereof are exactly the same. The copies of the notices are Ex.P8 to P10 issued to Sikander Singh, Kuldeep Singh and Paramjit Singh respectively. In para 4 of the notice, it is mentioned that his client has learnt that no permission is now required to execute the sale deed. In para 7, the noticee was called upon to execute the sale deed along with his brothers within 7 days from the receipt of notice with further stipulation that client of Sh. Charanjeev Bhardwaj, Advocate would wait for the noticee in the office of Sub Registrar Ludhiana in the week from 10.01.2000 to 14.01.2000, ready with money. The notices that contain first version of the respondent/plaintiff does not make reference, if the respondent ever approached Sh. Harnek Singh prior

to his death in the year 1983 or thereafter to his sons either for seeking permission from the competent authority or to execute the sale deed.

The crucial question for determination is whether the respondent/plaintiff can take advantage of repeal of the Act in the year 1999 in order to contend that the suit is within limitation, as has been so held by the Court in appeal.

The parties must not be aware of judgment of Hon'ble the Supreme Court passed in the year 1980 whereby the provisions of Section 27 of the Act were declared to be unconstitutional. I stand fortified in my observations from the fact that in the year 1982, they agreed to get the necessary permission by the competent authority. Even otherwise judgment passed by the Court cannot be taken as a law in regard whereof ignorance cannot be pleaded. In this view of the matter, contention raised by counsel for the appellants on the basis of judgment of Hon'ble the Supreme Court in **Maharao Saheb Shri Bhim Singhji' case** (supra) cannot enure to benefit of the appellants.

The Act received assent of the President on 17.02.1976 and was published in Gazette of India on 17.02.1976. It applies to the whole of the States of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Uttar Pradesh, Tripura etc. Sub Section (3) of Section 1 of the Act says that the Act shall come into force in various States including State of Punjab at once and in any other State which adopts this Act under clause (1) of Article 252 of the Constitution on the date of such adoption.

Section 27 that provides for prohibition of transfer of urban property in sub-Section (1) provides, extracted herein-below for ready reference:-

"27. Prohibition on transfer of urban property.

(1) Notwithstanding anything contained in any other law for the time being in force but subject to the provisions of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority."

A perusal of the aforesaid extract leaves no manner of doubt that necessary permission in writing of the competent authority is required for a period of 10 years on such commencement or from the date on which the building is constructed, whichever is later. In the case at hand, the property involved is land and not a building, therefore, the permission under the Act was required only for a period of 10 years from the date of commencement of the Act which came into force on 17.02.1976. In this view of the matter, I find merit in contention of the appellants that no such

permission in terms of the provisions of Section 27 of the Act was required to be obtained by the vendor after February 1986.

As per the settled position in law, ignorance of law is not an excuse, therefore, the respondent/plaintiff cannot be heard to say that since he was not aware that the necessary permission was not required after February 1986, suit filed within a period of one year from the date of repeal of the Act in the year 2000, is within limitation.

On due consideration of aforesaid extract from the agreement, it can be gathered that vendee was left at liberty to get the sale deed executed whenever he wanted after necessary permission. At the same time, it was also agreed that the purchaser would be responsible for meeting expenses for getting the registry done within 'Miad'. A conjoint reading of the aforesaid stipulations in the agreement does not lead to an inference that the vendee was left at liberty indefinitely to file the suit for specific performance of the agreement or he was not obligated to file the suit within a reasonable time.

As has been discussed hereinbefore, the requirement of getting previous permission of the competent authority under the Act was required only till February 1986. The present suit has been filed by the respondent in February 2000, after a period of 14 years from the date when the requirement for getting permission expired. The notice issued by the respondent/plaintiff which is the first version of the plaintiff does not make reference if the respondent ever approached Sh. Harnek Singh or his successors in interest for getting the necessary permission for execution of the sale deed. In the given scenario, cause of action to file the suit certainly accrued to the respondent/plaintiff in February 1986. As the

respondent has filed the suit after a period of 14 years, the suit is clearly barred by limitation. As such, findings of the Court in appeal that cause of action to file the suit accrued to the respondent after the Act was repealed in the year 1999 are erroneous and contrary to the provisions of Section 27 of the Act. That being so, I find merit in contention of the appellants that suit filed by the respondent/plaintiff is clearly barred by limitation and liable to be dismissed on this score alone.

The plea with regard to the agreement being not admissible in evidence for want of requisite stamps is misconceived and liable to be rejected. The objection with regard to the document being insufficiently stamped is required to be raised at the time of admission in evidence and the same cannot be allowed to be raised at a subsequent stage of the suit much less in the appeal, in view of Section 36 of the Indian Stamp Act, 1899. In this view of the matter, the appellant cannot derive any advantage to their contention from the judgment of Hon'ble the Supreme Court in **Avinash Kumar Chauhan's case** (supra).

No other point has been raised.

For the foregoing reasons, the appeal is allowed. Judgment and decree passed by the Court in appeal are set aside. As a natural corollary, judgment and decree passed by the trial Court are restored and suit filed by the respondent/plaintiff fails and is accordingly dismissed leaving the parties to bear their own costs.

AUGUST 27, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no