

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

RSA-1214-2015(O&M)
Date of Order:14.12.2018

RAGHBIR SINGH

..Appellant

Versus

SANT SINGH

..Respondent

(2)

RSA-1215-2015(O&M)

RAGHBIR SINGH

..Appellant

Versus

SANT SINGH AND ANOTHER

..Respondents

(3)

CR-4629-2015(O&M)

RAGHBIR SINGH

..Appellant

Versus

SANT SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate, with
Ms. Neha Anand Mahajan, Advocate,
for the appellant.

Mr. Arun Jain, Sr. Advocate, with
Mr. Dhruv Mittal, Advocate, and
Mr. Sudhir Pruthi, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

By this judgment, two Regular Second Appeal Nos.1214, 1215
of 2015 and one Civil Revision No.4629 of 2015 shall stand decided as
parties to the dispute, their counsels are common and the dispute between
the parties in all the 3 cases is inter connected. Since, counter suits have

been filed, therefore, the parties are being referred to by their names.

Asha Rani was the owner of the property measuring 5 marlas. She entered into an agreement to sell with Sant Singh, respondent in both the regular second appeals on 29.03.1986 for a total sale consideration of Rs.50,000/-, out of which Rs.30,000/- was received as earnest money. It is not in dispute that out of Rs.30,000/- received as earnest money, Rs.20,000/- was paid through bank draft. As per the agreement to sell, sale deed was to be executed and registered after getting permission under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Act of 1976').

It is the case of Sant Singh that he visited the office of Sub-Registrar on 27.06.1986, however, Asha Rani did not turn up/come forward. It is further pleaded case and as found by both the courts below that Sant Singh and Asha Rani wrote an endorsement on the reverse page of the agreement to sell on 07.01.1988, whereby Asha Rani received balance sale consideration of Rs.20,000/- and it was provided that the sale deed would be executed after getting the clearance certificate. It is the case of the plaintiff that Asha Rani shifted to Delhi and hence, her whereabouts were not known to him. Sant Singh claims that he filed a suit only on receipt of notice in the suit filed by Raghbir Singh, appellant herein in both the second appeals, claiming that he had purchased the property in dispute from Asha Rani on 13.10.2003.

Both the courts on appreciation of evidence have decreed the suit for specific performance of the agreement to sell filed by Sant Singh, whereas dismissed the suit filed by Raghbir Singh for possession. Civil Revision is arising out of execution proceedings.

Learned senior counsel appearing for Raghbir Singh, the appellant, has submitted that the suit filed by Sant Singh was time barred as it was filed after a period of more than 18 years. Hence, he submitted that the courts below erred in decreeing the suit. He further submitted that the evidence of Baldev Raj, PW3, a marginal witness of the endorsement dated 17.01.1988, there is a contradiction as to whether he had ever seen Asha Rani or not? Hence, he submitted that the endorsement is not proved to be genuine. He further submitted that the agreement to sell is with regard to Plot No.8, whereas the suit filed by Sant Singh is with regard to Plot No.8-A and Raghbir Singh has filed suit for Plot No.8, whereas the courts have not examined this issue. He has further submitted that the plaintiff is not proved to be ready and willing as he waited for more than 18 years. He further submitted that discretion should not be exercised in favour of Sant Singh because of delay and laches.

On the other hand, learned senior counsel appearing for Sant Singh has pointed out that the sale deed in favour of Raghbir Singh by Asha Rani dated 13.10.2003 recites that possession of the plot has been handed over to Raghbir Singh. He submitted that Raghbir Singh filed the present suit on 29.09.2005 admitting Sant Singh to be in possession. He further drew attention of the court to the fact that Raghbir Singh is next door neighbour and he was in knowledge of all the facts.

I have heard learned senior counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

As regards first argument, it may be noticed that Article 54 of the Schedule attached to the Limitation Act, 1963 provides that limitation

would be 3 years for filing a suit for specific performance of a contract. However, the time from which the period begins to run has been divided into two parts. First part provides that time would begin to run from the date fixed for performance, whereas second part provides that if no such date is fixed, when the plaintiff has notice of refusal to perform by other party. In the present case as noticed above, the agreement to sell as also endorsement does not provide for any fixed date or period from the date of agreement to sell or endorsement. What was provided in the agreement to sell was that it will be 3 months after getting permission under the Act of 1976. Learned counsel for the appellant was at pains to submit that the permission was not required as per the Act of 1976 because permission is only required if the land to be sold is more than 500 square meters. He submitted that the clause was redundant. Hence, the limitation would start from the date of agreement to sell. In support of an argument, he relied upon a judgment passed by the Hon'ble Supreme Court in the case of *Fatehji and Company and another v. L.M.Nagpal and others (2015) 8 SCC 390*.

No doubt, the Act of 1976 provides that the permission would be required if the sale is with regard to plot more than 500 square meters. However, in the present case Sant Singh was never informed that the clause which has been incorporated and agreed to between the parties is redundant or no permission was required. Therefore, both the parties to the agreement to sell i.e. Asha Rani and Sant Singh always remained under impression that the permission is required. Hence, first part of Article 54 would have no application. Still further, it may be noted that the entire payment of the sale consideration has been paid. Only sale deed was to be executed and registered. In the present case, Asha Rani has not chosen to contest,

therefore, there is no evidence that Asha Rani ever refused to honor the agreement to sell or informed Sant Singh that permission is not required, therefore, Sant Singh can go ahead to get the sale deed registered.

The limitation is to be seen in the facts of each case. The judgment passed by the Hon'ble Supreme Court cited by learned counsel is dealing with a situation when order passed by the courts under Order 7 Rule 11 CPC was being examined by the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed that in the aforesaid case, sale deed was to be executed on a fixed date i.e. 02.12.1973. No doubt, in that case also, permission to sell the property was to be sought for. However, the judgment passed by the Hon'ble Supreme Court cannot be read as a statute. The judgment is to be followed in the context it has been delivered. In the considered opinion of this court, in the aforesaid judgment, Hon'ble Supreme Court did not lay down that the limitation would begin to run immediately even if no date for specific performance of the agreement to sell has been agreed to between the parties. Still further, in the present case, 3 months period was to start from the date, permission has been granted. In the present case, the aforesaid eventuality has never happened. Coupled with that once the total payment has been made, in absence of any contract to the contrary, time cannot normally be said to be essence of the contract.

As regard second argument, it may be noted that Baldev Raj is only marginal witness of the endorsement dated 17.01.1988. A minor contradiction in the statement of Baldev Raj would not result in looking the agreement to sell with suspicion. In the present case, no evidence has been led that Asha Rani did not sign the agreement to sell or did not sign the endorsement on 17.01.1988. As noticed above, at the time of entering into

an agreement to sell, part of the earnest money was paid through bank draft. Still further, if entire statement of Baldev Raj is read, it is nowhere proved that Baldev Raj has stated that Asha Rani was not present at the time of endorsement on 17.01.1988.

Next argument of learned counsel cannot be examined by this court particularly when it is not disputed that identity of the property was never issue before the courts below or any argument was addressed. This court cannot for the first time examine the dispute with regard to identity of the property particularly when such argument is based on appreciation of evidence.

Next argument of learned counsel is with regard to Sant Singh being not ready and willing, is to be noticed and rejected particularly when Sant Singh has pleaded that Asha Rani after execution of the endorsement shifted to delhi without informing Sant Singh about her address. Still further, the readiness and willingness is to be examined in the facts of the case. In the present case, total payment has been made. In such circumstances, unless Sant Singh had a notice either of the fact that no permission was required under the Act of 1976 or Asha Rani has refused to honour the agreement to sell, the period of limitation would not begin to run. Hence, it would not be correct to hold that Sant Singh was not ready and willing .

Last argument of learned counsel is with respect to discretion. Section 20 of the Specific Relief Act provides that the relief of specific performance of the agreement to sell is discretionary. However, such discretion of the court has to be based on sound and reasonable grounds guided by judicial principles and not arbitrarily. Here is a case where Sant

Singh is proved to be a person who after having paid the entire amount continued to enjoy possession and whereas Raghbir Singh, neighbour, first gets the sale deed executed in 2003 in which factum of delivery of possession is recorded and thereafter files a suit after a period of 2 years claiming possession. Once Sant Singh was in possession, Raghbir Singh was required to enquire from Sant Singh as to under what capacity Sant Singh is in possession before getting a sale deed executed in his favour from Asha Rani.

In view of what has been discussed above, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below while deciding both the suits.

The regular second appeals are dismissed.

In view of the judgment passed above, Civil Revision No.4629 of 2015 has been rendered infructuous as it has been filed against the order passed by the Executing Court.

December 14, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No