

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

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RSA No.926 of 2016 (O & M)
Date of Decision:17.07.2018

Dr. Major Ved Parkash Nagpal

...Appellant

Versus

Amrik Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mani Ram Verma, Advocate
for the appellant.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by the plaintiff for possession or in the alternative for recovery of Rs.6,50,000/- as damages along with interest.

Plaintiff claims that he has entered into an agreement to purchase a plot measuring 2 kanals from defendants No.1 and 2, who were property brokers. His further case is that the sale deed was executed pursuant to the agreement to purchase on 22.12.2003. Plaintiff claims that he has paid Rs.6,00,000/- and further spent an amount of Rs.50,000/- towards stamp duty and registration charges. However, he pleads that when he went to take possession, it was found that the plot which was shown to him at the time of agreement to sell was different than what has been sold to him.

Plaintiff has claimed that the plot in question which has been

sold to him is 7 kilometers away from village Karoran. Suit was contested by the defendants and pleaded that no doubt Rs.6,00,000/- has been paid and Rs.50,000/- has been spent on registration, however, it was pleaded that the plaintiff was never shown plot in Khasra Nos.41 and 42 and sale deed also does not refer to Khasra Nos.41 and 42. It is pleaded that the plaintiff has purchased the share in big chunk of joint land and the sale deed registered also mentions the same.

Suit was instituted on 06.05.2010. Both the Courts after examining the evidence available on the file have recorded a finding that since the plot purchased by the plaintiff is undivided share in a big chunk of land, therefore, relief of possession cannot be granted and the plaintiff is entitled to possession of the plot after seeking partition in accordance with law. With regard to recovery, Courts have held that the claim made by the plaintiff is barred by time as the sale deed was executed on 22.12.2003 whereas the suit was filed on 06.05.2010. The Courts have further recorded a finding that the plaintiff has not entitled to refund. It may be noticed that learned First Appellate Court has also noticed that the plaintiff has not produced on file agreement to sell dated 28.12.2003.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel appearing for the appellant has submitted that the plaintiff is entitled to possession as in the sale deed it is specifically recited that the defendant is owner in possession. He submitted that the suit filed by the plaintiff has been wrongly dismissed by the Courts below.

Learned counsel for the appellant has read over contents of the

sale deeds, it is apparent that the plaintiff has purchased undivided share in the big chunk of land.

In such circumstances, the Courts have correctly held that remedy for the plaintiff is to seek partition as on purchase of the undivided share he has become co-sharer in a joint khata.

Learned counsel for the appellant further submitted that although the appellant is highly educated, however, the sale deed is in 'Gurumukhi' (Punjabi) and, therefore, he has been cheated. He further submitted that the plaintiff-appellant has already got an FIR registered against the defendants. However, in the criminal case the defendants were acquitted. He submitted that appeal against the aforesaid judgment is pending in this Court.

Keeping in view the aforesaid facts, learned counsel for the appellant submitted that let this appeal be heard with the aforesaid criminal appeal.

This Court has considered the submission. However, find no substance therein. The judgment passed by the Court while exercising jurisdiction on the criminal side is not binding on the civil Court.

In the present case, the relief being sought by the plaintiff qua possession cannot be granted even if the defendants are convicted.

However, it may be noticed here that the order being passed by this Court would not adversely affect the submissions to be made by the appellant in the appeal pending before the Court.

Second relief sought by the appellant is for recovery of the amount paid. It is not in dispute that sale deed has been executed and property has been sold. No evidence has been produced to prove that the

plaintiff has been cheated. Plaintiff has not produced agreement to sell. In any case, the suit filed by the plaintiff for recovery was barred by time as it was filed after a period of more than six years from the date sale deed was executed and registered.

In view of the aforesaid discussion, there is no ground to interfere.

Regular second appeal is dismissed.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.

17.07.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No