

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5566 of 2014 (O&M)

Date of Decision: 28.05.2018

Himat Singh and others

..... Appellants

Versus

Amarjit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate
for respondents No.1 to 11.

Mr. Jaideep Verma, Advocate
for respondent No.12.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court while accepting the appeal and setting aside the judgment passed by the learned trial Court resulting in dismissal of the suit filed by the plaintiffs.

Plaintiffs filed a suit on 15.06.2010 for possession by specific performance of the agreement to sell dated 27.02.1986. The plaintiffs claim that their predecessor Bachan Singh had entered into an agreement to sell with defendants No.1 to 6 and Harbhajan Singh, father of defendants No.7 and 8 on 27.02.1986 agreeing to sell 5 bighas, 1 biswa and 3 biswai for a total sale consideration of Rs.1,10,000/-, out of which, Rs.64,000/- was

received as earnest money. It was stipulated that the defendants will get possession of the land legally in execution of the decree and shall get the mutation sanctioned in their favour and they will get the permission to sell the land and thereafter informed the plaintiffs accordingly. On receipt of such intimation, the sale deed was to be executed and registered within two months. The plaintiffs were claiming to be always ready and willing to perform their part of the contract.

The defendants contested the suit. The agreement to sell and receipt of earnest money was admitted. However, it was pleaded that the agreement to sell is not subsisting as it was revoked and the plaintiffs were served with notices dated 05.06.1987 and 09.06.1987 and a notice was published in the newspaper on 23.07.1987 specifically mentioning that the earnest money stands forfeited.

Learned trial Court as discussed, decreed the suit. However, the learned First Appellate Court after re-appreciating the evidence available on the file dismissed the suit filed by the plaintiffs.

This Court has heard learned senior counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned senior counsel for the appellants has submitted that the defendants took symbolic possession of the land in dispute in execution of the decree on 10.06.2010. He further submitted that there was encumbrances on the land in dispute which was cleared only on 10.06.2010. Hence, he submitted that the suit instituted on 15.06.2010 was within time.

On the other hand, learned senior counsel for the respondents has pointed out that the possession of the land was already with Harbans

Singh son of late Sh. Bachan Singh. Harbans Singh was claiming ownership of the property through a Will from the original owner Labh Singh. He submitted that Bachan Singh, the predecessor of the plaintiffs filed a suit for permanent injunction on 29.08.1987 wherein Bachan Singh claimed that he is in possession of the property and the defendants are threatening to alienate the property to some other persons and he apprehends forcible dispossession. He submitted that in view of the aforesaid pleadings, the plaintiffs cannot claim that cause of action accrue to them in June, 2010.

Labh Singh was owner of the property. He entered into an agreement to sell with Sh. Piara Singh. Piara Singh filed a suit for specific performance of the agreement to sell which was decreed on 12.01.1981. The appeal preferred by Labh Singh was dismissed by the Court. The defendants being legal heirs of Piara Singh entered into an agreement to sell with the plaintiffs on 27.02.1986. The sale deed in favour of defendants was executed through Court on 08.01.1986. As noticed earlier, the possession was with Harbans Singh son of late Sh. Bachan Singh. As rightly pointed out, Bachan Singh claim himself to be in possession when he filed a suit on 29.08.1987. Still further, it has come on record that the defendants repeatedly called upon the plaintiffs to perform their part of the contract. Notice in this regard was served on the plaintiffs on 05.06.1987 followed by another notice dated 09.06.1987 and thereafter, publication was got carried out in the newspaper clearly mentioning that the agreement to sell has come to an end and the earnest money stands forfeited. Still, the plaintiffs did not file the suit. The plaintiffs even when filed the suit for permanent injunction on 29.08.1987, specifically mentioned in the plaint

that the defendants are threatening to alienate the property. At least on the day of filing of the suit, the predecessor of the plaintiffs was having knowledge that the defendants are refusing to honour the agreement to sell.

As per Limitation Act, if an agreement to sell does not prescribe the date for execution and registration of the sale deed, then the limitation would begin to run from the date other party refuses to perform their part of the contract. Article 54 of Schedule to the Limitation Act, 1963 provides that in absence of date fixed for performance when the plaintiff has noticed that the performance is refused. In the present case, the plaintiffs had notice of the performance being refused on the date of notice served i.e. 05.06.1987. The publication carried out in the newspaper on 23.07.1987 and thereafter once again, when the predecessor of the plaintiffs filed a suit for injunction wherein it was specifically pleaded that the defendants are threatening to alienate the property to some other person.

In these circumstances, the learned First Appellate Court has correctly held that the suit filed by the plaintiffs was barred by limitation. Still further, while publication in the newspaper dated 23.07.1987 Ex.D-3, the earnest money stood forfeited. Obviously, the agreement came to an end. The suit came to be filed after a period of 23 years from the date of publication of notice in the newspaper which cannot be held to be within limitation.

Learned counsel for the appellants has submitted that as per the terms of agreement to sell, only on delivery of possession and in execution of the decree, on being intimated, the limitation for filing a suit for specific performance was to begin. He submitted that the symbolic possession of the property was taken by the defendants only on 10.06.2010. This Court

has considered the submission. The predecessor of the plaintiffs namely Bachan Singh had filed a suit in the year 1987 admitting him to be in possession. Once, he was in possession, he cannot take a plea that the defendants were to first take the possession under the Civil Court decree and thereafter, intimate the plaintiffs.

In view of the discussion made above, this Court does not find any ground to interfere with the judgment passed by the learned First Appellate Court.

Appeal is dismissed.

28.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No