

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4233 of 2018 (O&M)

Date of decision: 29.08.2018

Gurkirpal Singh Chawla and others

..... Appellants

Versus

Deepa Duggal and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit for possession by way of specific performance of the agreement to sell dated 28.01.2006 with respect to house No.305, Sector 9-D, Chandigarh, in alternative for recovery of Rs.1,30,00,000/- (rupees one crore and thirty lacs).

Some facts are required to be noticed. Jatinder Singh Duggal @ Jatinder Sahib Singh was owner of the property in dispute. He died on 03.11.1991. There was some disputes between the heirs, therefore, a suit was filed. In the aforesaid suit, the parties entered into a settlement dated 06.01.1992 and it was decided that house No.305, Sector 9, Chandigarh shall vests exclusively in late Sh. Gurvikram Singh Duggal, the son and Smt. Deepa Duggal, wife of Sh. Jatinder Singh Duggal. However, it was also decided that mother of Sh. Jatinder Singh Duggal, Smt. Phul Duggal would have right of residence on the first floor during her life time but

neither she will let out nor give it on license to any one. It was further agreed that this house would not be sold by either of the persons during the life time of Smt. Phul Duggal.

Deepa Duggal and Gurveikram Duggal entered into an agreement to sell with Sandeep Chadha on 19.11.2004 for sale of 33% share of the property. Smt. Deepa Duggal and Gurveikram Duggal disclosed to the intended purchaser that as per the settlement arrived at, they do not have right to sell the property during the life time of Smt. Phul Duggal. However, Smt. Phul Duggal has given no objection to sell 33% share of the house in question. The relevant clause in the agreement to sell is extracted as under:-

“The said Seller/s are owners of House/Plot No.305, Sector 9-D, Chandigarh by virtue of a compromise/family settlement between Mrs. Phul Duggal W/o S. Harbans Singh Duggal and mother of Jatinder Sahib Singh, Deepa Duggal W/o Jatinder Sahib Singh, Gurveikram Singh Duggal S/o Sh. Jatinder Sahib Singh, Ms. Gunita Duggal D/o Jatinder Sahib Singh, Mrs. Jagpal Gambhir W/o Sh. Tejinder Singh Gambhir and sister of Jatinder Sahib Singh, who were all parties to a civil suite in the court of Sh. R.K. Bishnoi, Sub-Judge Ist Class Chandigarh. As per this compromise/family settlement, the said Seller/s would not be allowed to sell this property during the life time of Smt. Phul Duggal, who also has the possession of the first floor of the said property.

However, Mrs. Phul Duggal W/o Late Sh. Harbans Singh Duggal has given her “No Objection” to sell 33% share in House No.305, Sector 9-D, Chandigarh to the said seller/s.

And whereas, by virtue of this “No Objection”, the said Seller/s are interested in the sale of 33% share in the said property and the said Purchaser is also interested to purchase the same and both the parties have agreed with each other on the following terms and conditions.”

Under this agreement, Sandeep Singh Chadha had paid a sum of Rs.5,00,000/- as earnest money. It was agreed that the total sale price of 33% share of the property would be Rs.1,20,00,000/- (rupees one crore and twenty lacs) and Sh. Sandeep Singh Chadha would pay another amount of Rs.5,00,000/- as part payment on 01.12.2004.

Unfortunately, Gurvikram Singh Duggal died on 26.01.2005. The another agreement to sell was executed by Smt. Deepa Duggal reiterating her previous agreement to sell dated 19.11.2004 and Sh. Sandeep Singh Chadha further paid additional part payment of Rs.20,00,000/- making the total payment paid to the intended vendor to be Rs.30,00,000/- as Rs.5,00,000/- additionally was paid pursuant to the earlier agreement dated 19.11.2004. As per the agreement to sell, the due date for full and final payment and execution of the sale deed was fixed as 20.06.2005 or 15 days after obtaining no objection certificate from the concerned authorities.

It is further pleaded case of the plaintiffs that on 19.07.2005, a tripartite agreement was entered into between Smt. Deepa Duggal, Sh. Gurucharan Singh Bhaty (Sh. G.S. Bhaty) and Mrs. Shivinder Kaur and plaintiffs Gurkirpal Singh Chawla, Smt. Jagjit Kaur and Harmit Singh Chawla with respect to 33% share. It was noticed in the agreement that Sandeep Chadha had already received Rs.30,00,000/- as paid by him from Sh. G.S. Bhaty and assigned his rights in favour of Sh. G.S. Bhaty. It was noticed in the agreement to sell that Rs.15,00,000/- additional amount had been paid by Smt. Gurkirpal Singh Chawla and other plaintiffs herein. Thereafter, another agreement to sell dated 28.01.2006 was executed between the plaintiffs and Smt. Deepa Duggal, respondent No.1 with respect to the entire house i.e. House No.304, Sector 9-D, Chandigarh for a

total sale consideration of Rs.8.20 Crores, out of which Rs.55,00,000/- already paid was adjusted and additional payment of Rs.10,00,000/- was paid. As per the agreement to sell, the balance sale consideration was payable in the following manner and the sale deed was to be executed accordingly. The relevant clauses of the agreement to sell are extracted as under:-

“2) That the balance price shall be paid by the purchasers to the seller as under:

(i) On or before 15.02.2006, a sum of Rs.3,25,00,000/- (Rupees Three Crore and Twenty Five Lacs Only).

(ii) On or before 25.06.2006 a sum of Rs.3,50,00,000/- (Rupees Three Crore and Fifty Lacs Only).

(iii) After Demise of Mrs. Phul Kaur Duggal, Rs.80,00,000/- (Rupees Eighty Lacs Only).

3) That the last date for the execution and registration of the sale deed of 40% share in the above said house is fixed as 15.02.2006 or within 7 days from the date of issue of NOC (No Objection Certificate) from the Estate Office.

4) That the last date for the execution and registration of the sale deed of 50% out of the balance 60% share in the above said house is fixed as 25.06.2006 or within 7 days from the date of issue of NOC (No Objection Certificate) from the Estate Office.

5) That the balance 10% of the consideration amount i.e. Rs.80,00,000/- (Rupees Eighty Lacs only) is to be retained by the purchasers from the total sale price of Rs.8.20 Crore which will be paid to the seller after the demise of Mrs. Phul Kaur Duggal (Mother-in-law of the seller). Thereafter, only on receiving Rs.80 Lacs, Mrs. Deepa Duggal will hand over the possession of the complete house including the main building within 15 days to the purchasers. However, it is made clear that the seller shall deliver to the purchasers the possession of the entire property except main building where she is presently living with front lawn having one entrance gets at the time of registration of the sale deed of complete 90% share in the above said house on or

before 25.06.2006. It is also made clear that after the demise of Mrs. Phul Kaur Duggal and only after receiving Rs.80 Lacs the possession of the entire house shall be handed over within 15 days even if the NOC is delayed. In that situation the seller shall execute all the demanded documents of indirect sale of the remaining 10% share and shall receive the balance consideration money of Rs.80,00,000/- (Rupees Eighty Lacs only). It is further made clear that at the time of execution and registration of the sale deed of 40% share of the above said property, the seller shall hand over the possession of 1200 sq. yards of area of the house (Rear Lawn) and one entrance passage on the left side of the house having common boundary with house no.304. This area shall be increased after the execution and registration of the sale deed of further 50% share of the said property. However, during the life time of Mrs. Phul Kaur Duggal, Mrs. Deepa Duggal shall continue to enjoy uninterrupted undisturbed right to occupy the main building where they are presently living with one entrance gate and front lawn.”

It is undisputed that pursuant to the aforesaid agreement to sell Smt. Deepa Duggal applied for issuance of no objection certificate which was issued to Smt. Deepa Duggal by the Chandigarh Administration for permitting sale of 90% share of the house on 27.02.2006 Ex.P-4.

However, the sale deed as provided in the agreement dated 28.01.2006 were not got registered. It is the case of the plaintiffs that after getting the no objection certificate, they applied to the bank for sanction of a loan but when the bank sought an opinion from a counsel, he raised certain objections pointing out that there is restriction on the sale of the property during the life time of Smt. Phul Duggal, therefore, a fresh relinquishment deed from her would be required.

Various communications ensued. The plaintiffs ultimately

filed a suit for specific performance of the agreement to sell only on 13.05.2011.

Both the Courts after examining the evidence have found that the suit filed by the plaintiffs was barred by time. The Courts further found that the plaintiffs were never proved to be ready and willing to perform their part of the contract. The Courts further found that the plaintiffs were a knowledge of the settlement dated 06.01.1992 as it was specifically referred to in the agreement dated 19.11.2004 which in-turn was referred to in the agreement dated 19.07.2005 and the plaintiffs had in fact got assigned the rights of Sandeep Chadha and Sh. G.S. Bhatta and others.

This Court has heard learned senior counsel appearing for the appellants and with his able assistance gone through the judgments passed by the Courts below and the record.

It will be noticed here that the learned First Appellate Court while dismissing the appeal have found that certain documents have been produced by the plaintiffs, after forging the same and therefore, the learned First Appellate Court has directed the learned trial Court to initiate proceedings under Section 340 of the Criminal Procedure Code. A CRA-S-692-SB-2018 has been filed against the aforesaid directions issued by the learned First Appellate Court, which is being decided by a separate judgment.

Learned senior counsel appearing for the appellants has submitted that since as per agreement to sell, sale deed of 40% share of the house was to be got executed and registered on 15.02.2006 or within 7 days from the date of issuance of no objection certificate from the Estate Office, therefore, since proper and legal no objection certificate was not issued,

hence, the limitation would not begin to run. He submitted that this fact came to the notice of the plaintiffs when the application for sanction of loan was submitted by them and objection was raised by the bank. He submitted that since no objection certificate was one of the pre-condition, hence, in relation to the last date, the date for execution of the sale deed with respect to 40% share of the house would stand extended and therefore, the limitation would begin to run only when a proper no objection certificate is received.

This Court has considered the submission. As per Article 54 of the Limitation Act, 1963, there are two eventualities provided from when the period begins to run. Article 54 is extracted as under:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
54. <i>For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>

As per Clause 3 of the agreement to sell which has been extracted above, the parties had agreed to execute and register the sale deed with respect to 40% share on 15.02.2006 or within 7 days from the date of issuance of the no objection certificate. It is undisputed that unconditional no objection certificate was issued by the Chandigarh Administration with respect to 90% of the house permitting transfer of the property in favour of the plaintiffs on 27.02.2006. Hence, from 27.02.2006, the date for execution of the sale deed would stand extended 7 days, which would take us to first week of March. The target date for execution of sale deed of next part of the house was 25.06.2006. By taking the date as 25.06.2006, when the time begins to run for the purpose of counting limitation, the suit as filed was hopelessly time barred. At this stage, it would be relevant to

extract no objection certificate issued by the Chandigarh Administration
which is extracted as under:-

*“CHANDIGARH ADMINISTRATION
OFFICE OF THE ESTATE OFFICER, UT, CHANDIGARH
NO OBJECTION CERTIFICATE FOR SALE*

Certified that Smt. Deepa Duggal, w/o late Sh. Jatinder Pal Singh is the owners of 100% share in respect of House No.305, build on old plot No.15, Street (Measuring 3066.6 sq. yards), Sector 9-D, Chandigarh.

The plot is fully paid up subject to check by audit and Revision and the deed of conveyance has been executed.

This certificate is valid up to 30-4-2006, the for execution of Sale deed in respect of 90% share in favour of Sh. Gurkirpal Singh Chawla, Smt. Jagjit Kaur and Sh. Harmit Singh.

*For Estate Officer,
U.T., Chandigarh*

To

*The Sub Registrar,
U.T., Chandigarh.*

Registered Post

<i>UO No.</i>	<i>RP-2365/G-1/</i>	<i>2006</i>	<i>dated</i>
<i>Endst.No.</i>	<i>RP-2365/G-1/</i>	<i>2006</i>	<i>dated</i>

A copy is forwarded to Smt. Deepa Duggal resident of House No.305, Sector 9-D, Chandigarh , for information.

*For Estate Officer,
U.T., Chandigarh”*

In view of the aforesaid certificate which was without any condition, there was no restriction on the execution and registration of the sale deed with respect to 90% of the house. It will be noted that the pre-condition of getting no objection certificate has already been struck down by the Division Bench of this Court with respect to free hold property like

the property in dispute. In any case, that will not be relevant for the decision of the appeal.

In these circumstances, this Court does not find substance in the first argument of learned senior counsel appearing for the appellants. The sanction of the loan by the bank in favour of the appellants was not one of the pre-condition for honouring the agreement to sell by the plaintiffs. The aforesaid dispute is between the plaintiffs and its bankers. Smt. Deepa Duggal was only required to get a no objection certificate which she not only obtained but got it delivered to the plaintiffs in February, 2006. The argument of learned senior counsel for the appellants is that since no objection certificate was without noticing the restriction on the sale, therefore, the proper no objection certificate was not obtained by the defendants, therefore, period does not begin to run. No objection certificate as noticed above has already been obtained by Smt. Deepa Duggal in February, 2006 itself which does not put any restriction or embargo on the defendants to sell 90% of the house. Even while entering into the agreement to sell dated 28.01.2006, the plaintiffs were aware of the rights of Smt. Phul Kaur Duggal in the property. She was only having right to reside on the first floor of the house. Still further, it is apparent from the reading of the agreement to sell dated 19.11.2004 that Smt. Phul Kaur Duggal had consented to the sale of 33% of the house, therefore, the limitation for filing the suit for specific performance at the most can be said to begin to run from 25.06.2006 when the sale deed of 50% out of the balance 60% share was to be executed and registered.

It is also not in dispute that the plaintiffs through notice dated 12.04.2006 called the defendant Deepa Duggal to get a fresh

relinquishment deed executed from Smt. Phul Duggal. This notice was duly replied on behalf of Smt. Deepa Duggal vide reply dated 14.05.2006. It was specifically stated that the agreement to sell has come to an end and the earnest money stands forfeited. It was noted in the reply that the demand for getting fresh relinquishment deed from Smt. Phul Kaur Duggal was not justified. Actually, the plaintiffs have no money to pay the balance sale consideration amount. Even while replying to another notice, the defendant Smt. Deepa Duggal vide reply dated 21.07.2006 Ex.P-13 again pointed out that the agreement to sell has come to an end. It was further pointed out that Smt. Phul Duggal could give permission which has been given to sell 90% of the house and according to the aforesaid permission, agreement to sell was executed and the aforesaid condition was incorporated therein. In view of the aforesaid reply of Smt. Deepa Duggal, no doubt was left. Thereafter, the plaintiffs had no occasion to further wait. The plaintiffs, hence, cannot claim that time to file the suit would begin to run subsequently. There was no justification for the plaintiffs to delay the filing of the suit.

In view of the discussion made above, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

All the pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed with cost of Rs.1,00,000/-.

29.08.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No