

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

**R.S.A No.5554 of 2017(O&M)
Date of decision :28.08.2018**

Harjinder Singh and another

..... Appellants

Versus

Krishan Kumar and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anoop Verma, Advocate
for the applicant-appellants.

LISA GILL,J

Appellant-plaintiffs are aggrieved of judgement and decree dated 25.04.2014 passed by the learned Civil Judge (Sr. Division), Fatehgarh Sahib as well as judgement and decree dated 16.12.2016 passed by the learned Additional District Judge, Fatehgarh Sahib.

Brief facts necessary for the adjudication of the case are that a suit for declaration was filed by the plaintiffs to the effect that decree dated 22.02.2008 passed by the learned Civil Judge (Sr. Division), Fatehgarh Sahib in the suit for possession of specific performance of the contract titled as 'Krishan Kumar and another Vs. Harjinder Singh' is illegal, null and void being a result of fraud. The said agreement to sell dated 14.06.2005 was held to be executed by the appellants in favour of the present respondent/defendants. Further prayer for permanent injunction restraining the defendants from interfering in the peaceful possession of the land in question was made.

As per averments in the plaint, plaintiffs entered into an agreement to sell dated 14.06.2005 with the defendants for sale of land measuring 12 Kanals 4 Marlas, however the defendants got the said agreement executed for land measuring 27 Kanals 13 Marlas in a fraudulent manner. It was stated that this fact came to notice of the plaintiffs only when the defendants filed a suit for possession by way of specific performance on 29.06.2006. Plaintiff had already got adjusted the total earnest money of ₹5 lakhs which the defendants had alleged to have paid to the plaintiffs on 14.06.2005. Appellant Harjinder Singh, it is stated signed his statement in the said proceedings on the asking of his counsel, but without going through the same. Evidence in the said proceedings was also recorded as per the wishes of the defendants and the plaintiffs counsel (defendants in the earlier suit) did not look after their interest. It was pleaded that the defendants obtained the decree in question by playing fraud upon the plaintiffs in connivance with their counsel. Hence the present suit was filed challenging decree dated 22.02.2008.

Defendant upon notice appeared before the learned trial Court and resisted the suit. Written statement was filed by taking a preliminary objection that the suit is hopelessly barred by limitation and the plaintiffs had not come with clean hands and had no cause of action to file the present suit. Averments on merits were controverted. It was thus prayed that the suit be dismissed.

Replication was filed. From the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiffs are entitled to the declaration as prayed for?OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP
3. Whether the suit is within time?OPP
4. Whether the plaintiffs have not come to the Court with clean hands, if so its effect?OPD
5. Whether the plaintiffs have no cause of action to file the present suit?OPD
6. Whether the suit is not maintainable?OPD
7. Relief.

Learned trial Court treated issue no.3 as a preliminary issue and after hearing the rival contentions of the parties decided issue no.3 regarding limitation against the appellant-plaintiffs and dismissed the suit vide judgment and decree dated 24.04.2014.

Appeal preferred by the appellant-plaintiffs was also dismissed by the learned Additional District Judge, Fatehgarh Sahib, vide impugned judgement and decree dated 16.12.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants vehemently argues that both the learned Courts below have grossly erred in dismissing the suit filed by the plaintiff-appellants challenging judgement and decree dated 22.02.2008 passed by the learned Civil Judge (Sr. Division) Fathgarh Sahib. It is contended that the suit is within limitation as decree dated 22.02.2008 came to the knowledge of the appellants only a few days prior to the filing of the present suit. Learned counsel for the appellants makes a specific reference to the grounds of appeal i.e. para no.3 thereof to urge that the appellants did not have any knowledge of the said decree until a few days prior to the filing of the suit as their counsel never informed them about the outcome of the suit filed by the defendants. It is further

contended that the respondents never took possession of the land in question. Learned Courts below, it is submitted have wrongly dismissed the present suit filed by the appellants, as fraud vitiates everything. Once fraud is proved on record, there can be no question of any limitation. Learned counsel for the appellant relies upon the judgement of the Hon'ble Supreme Court in **Sahadeva Gramani (Dead) by Lrs. Vs. Perumal Gramani and others 2005 (11) SCC 454** in support of the abovesaid arguments. It is thus prayed that this appeal be allowed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is not in dispute that the respondent-defendants filed a suit for specific performance and possession pursuant to agreement to sell dated 14.06.2005 entered into between the appellants and the respondents. Agreement dated 14.06.2005 entered into between the parties is not denied. It is however contended that area in excess was fraudulently got included in this agreement to sell. Agreement to sell dated 14.06.2005 was only in respect to 12 Kanal 4 Marlas, whereas it is wrongly mentioned as 27 Kanals 13 Marlas.

It is not in dispute that the appellants contested the suit for specific performance filed by the respondent-defendants. They were duly represented by a counsel, though the plea taken is that the matter was not conducted by their counsel as per their wishes but on the instructions of the plaintiffs therein. Learned counsel for the appellants candidly concedes that till date no action has been taken by the appellants against the counsel. No complaint whatsoever has been filed against him. There

is no denial of the fact that the appellants were duly represented in the said proceedings filed by the respondents. Their evidence was duly recorded before the trial Court. They were obviously appearing before the learned trial Court. Therefore, it cannot be said that they were not aware of the proceedings in the said civil suit. Bald and totally unsubstantiated averments have been made to the effect that the appellant/appellants signed blindly on his/their testimony as well. I have also perused a copy of the written statement filed by the appellants in the suit for specific performance filed against them by the defendant/respondents. A specific plea has been taken in the said written statement that excess area has been included in the agreement to sell dated 14.06.2005. No appeal whatsoever was filed by the appellants challenging judgement and decree dated 22.02.2008.

Be that as it may that the appellants were well aware of the proceedings in the earlier suit, which culminated in decree dated 22.02.2008. It was incumbent upon the appellants to have clearly proved fraud by leading clear and cogent evidence on record which is conspicuous by its absence. Learned trial Court in this situation has rightly held that the suit by the appellants has been filed beyond the statutory period of three years and is thus barred by limitation. Reliance placed upon by learned counsel for the appellant in Sahadeva Gramani's case (**Supra**), is of no avail to him keeping in view the peculiar facts of this case.

No other argument has been raised.

Learned counsel for the appellant-plaintiffs is unable to point

out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 25.04.2014 and 16.12.2016 passed by the learned Civil Judge (Sr. Division) Fatehgarh Sahib and learned Additional District Judge, Fatehgarh Sahib, respectively, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

28.08.2018

s.khan

**(LISA GILL)
JUDGE**

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