

In the High Court of Punjab and Haryana at Chandigarh

RSA-5755 of 2017(O&M)
Date of Decision:15.2.2018

Satinder Pal Singh and others

---Appellants

vs.

Tarlochan Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Deepak Nayar, Advocate
for the appellants

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 13.7.2017 passed by the Additional District Judge, Gurdaspur whereby appeal preferred by the respondent/plaintiff against the judgment and decree dated 29.8.2014 passed by the trial court dismissing suit of the plaintiff has been allowed and suit for specific performance was ordered to be decreed.

The sole submission made by counsel for the appellants is that the respondent/plaintiff filed suit for specific performance in respect of agreement dated 19.4.1991 purportedly entered into by Nirmal Singh son of Charan Singh but as the suit was filed in the year 2010, after about 19 years of the alleged agreement, the same is clearly barred by limitation. It is argued that the respondent/plaintiff was entitled to seek specific

performance of the agreement within a period of three years from the date of execution of the agreement.

The Court in Appeal has negated contention of the appellants with regard to suit being barred by limitation, in view of its observations recorded in para 13, quoted thus:-

“Now the next controversy in this appeal is whether time was the essence of contract and suit is barred by limitation. In order to understand the controversy, it will be again apposite to notice some admitted facts. As discussed above, the parties to the lis are siblings. According to the appellant, there was a family arrangement and he has purchased the share of his brother Nirmal Singh and paid Rs. 25,000/- on 19.4.1991 i.e. the total consideration amount and said Nirmal Singh delivered the possession of the property in dispute to the appellant. Since the agreement dated 19.4.1991 is proved and, as such, it is also proved that the entire sale consideration stood paid to Nirmal Singh on 19.4.1991, Once the entire sale consideration stood paid to proposed seller, time of performance ceased to be of essence because after all what can a proposed seller expect to receive under an agreement to sell except the total sale consideration and, thus, on receipt of total sale consideration, there does not remain any issue on any breach of contract by the proposed buyer. In case of sale

of immovable property, a time is normally not the essence of the contract unless there are strong indications to show to the contrary that the parties to the agreement intended to have time as the essence of the contract of sale. It is in the evidence of the appellant that when his brother Daljit Singh, who is respondent No. 5, proclaimed that he has purchased the property from legal heirs of Nirmal Singh, then in these circumstances the suit was filed. Thus, the findings as recorded by the learned Trial Court on the point being essence of the agreement are set aside and the suit of the appellant was not barred by law of limitation.”

During the course of hearing, counsel for the appellants has made available copy of agreement for perusal and appreciation. Indisputably, the agreement to sell was executed between real brothers namely Tarlochan Singh, respondent/plaintiff and Nirmal Singh, predecessor in interest of appellants/defendant Nos. 1 to 4 whereas appellant No. 5 is the brother of Tarlochan Singh and Nirmal Singh. The agreement has been titled as 'agreement of family partition'. As per the agreement, Tarlochan Singh had already paid the entire amount of Rs. 25,000/- and possession of property, subject matter of agreement, was delivered to Sh. Tarlochan Singh. Nothing has been mentioned in the agreement with regard to execution of sale deed much less fixing a date in this regard. Perusal of recitals in the agreement would reveal that the parties prepared this agreement in the form of a family settlement with a

clear intention that they would be able to transfer ownership of the property in question by way of this agreement and thus saving expenses and inconvenience of getting a sale deed executed and registered. As has been rightly held by the Court in Appeal that in cases of sale of immovable property, time is not essence of the contract unless so intended by the parties which can be gathered from the terms and conditions settled between them as well as attending/surrounding circumstances.

Keeping in view close relationship between the parties coupled with recitals in agreement, it can be safely held that time was not essence of contract for transfer of property in question on the basis of agreement dated 19.4.1991. The cause of action to file the suit accrued to the respondent/plaintiff when legal heirs of deceased Nirmal Singh transferred the suit property in favour of Daljit Singh defendant No. 5/appellant No. 5 by way of sale deed and defendant No. 5 proclaimed to have purchased the suit property from defendant Nos. 1 to 4. In this view of the matter, findings recorded by the Court in Appeal negating plea of the appellants that suit is barred by limitation are well founded and can not be faulted with.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

15.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No

