

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3421 of 2019 (O&M)
Date of Decision: 16.10.2019

Sardul Singh and others

---Appellants

versus

Ashok Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ajay Kumar Gupta, Advocate
for the appellants**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for symbolic possession by way of specific performance of agreement to sell dated 30.7.1982 propounded by the appellants-plaintiffs was dismissed and counter claim filed by respondent No. 2-defendant No. 2 for possession of suit property was allowed. The courts have held that suit filed by the appellants-plaintiffs in the year 2014 seeking specific performance of the agreement dated 30.7.1982 is barred by limitation. The sale deed executed by respondent-defendant No. 1 in favour of respondent-defendant No. 2 on 11.10.2012 is upheld on the basis whereof, counter claim for possession of suit land being owner, filed by defendant No. 2 was allowed.

Counsel for the appellants would argue that suit land was agreed to be sold by Ram Devi widow of Ram Ditta for sale consideration

of Rs. 5000/- and total sale consideration was received by the vendor. The agreement has also been signed by Ashok Kumar defendant No. 1, successor in interest of Ram Ditta, erstwhile owner of suit land. It is further argued that as per agreement, sale deed was to be executed on 30.7.1983 but in case mutation in favour of Ram Devi and Ashok Kumar was not sanctioned by that date, sale deed was to be executed after sanction of mutation. It is further argued that Ram Devi did not send intimation regarding sanction of mutation to Sh. Niranjan Singh, predecessor-in-interest of the appellants and proposed vendee under the agreement of sale nor to the appellants-plaintiffs, therefore, suit filed by them on coming to know that Ashok Kumar had executed a sale deed in favour of defendant No. 2 cannot be held to be barred by limitation. It is further argued that as Niranjan Singh had paid entire sale consideration and possession of suit property was with Niranjan Singh and thereafter with the appellants-plaintiffs, nothing was to be done by the appellants and only sale deed was required to be executed by Smt. Ram Devi and after her death by Ashok Kumar being successor in interest of Ram Devi and Ram Ditta. It is further argued that in such circumstances, suit is wrongly dismissed on the ground of limitation. For this purpose, reliance has been placed on judgment of Hon'ble the Supreme court **Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel and others 2006(2) RCR (Civil) 251.**

Counsel without making any submissions with regard to entitlement of the appellants to retain possession of suit property by invoking Section 53-A of the Transfer of Property Act, 1882 (in short "TP Act") has referred to judgment of this court **Bhola Singh vs. Ratia 1989**

(1) RRR 207 and that of Bombay High Court Dharmji vs. Jagannath Shankar Jadhav 1995 (2) LJR 435.

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned, photocopies of documents supplied during the course of hearing and certified copy of the agreement of sale.

Perusal of recitals in the agreement makes it evident that agreement was executed between Ram Devi and Niranjn Singh on 30.7.1982. The sale deed was agreed to be executed on 30.7.1983. It was also agreed that sale deed would be got registered after sanction of mutation of inheritance in favour of Ashok Kumar and Ram Devi. The date for execution of sale deed would be extended in case mutation was not sanctioned by the stipulated date. The sale deed would be registered immediately after sanction of mutation of inheritance failing which the second party (proposed vendee) was given liberty to get the sale deed registered through process of the court.

The appellants have raised a plea that Ram Devi was required to send intimation to Niranjn Singh or his successor in interest after sanction of mutation but no such intimation was sent by Smt. Ram Devi. There is no such recital in the agreement that Ram Devi would inform the proposed vendee about sanction of mutation. There is nothing on record suggestive of the fact that Niranjn Singh had taken any steps to get the sale deed executed and registered on the stipulated date i.e. 30.7.1983. Neither Niranjn Singh nor the appellants ever had any written communication with Ram Devi or

Ashok Kumar to know about status of mutation or calling upon them to get the sale deed executed and registered. It has been proved that mutation in favour of Ram Devi and Ashok Kumar with regard to inheritance to Ram Ditta was sanctioned in the year 1990. Ram Devi died on 17.1.1993 as has been recorded in Ex. D4 i.e. mutation qua inheritance to Ram Devi in favour of Ashok Kumar defendant No. 1.

The appellants did not raise a plea as to when Sh. Niranjana Singh their predecessor passed away. Ajit Singh, one of the plaintiffs appeared in the witness box and tendered into evidence his affidavit Ex. PW1/A by way of examination in chief. In cross examination conducted on 3.8.2015, he would state that he did not remember the date, month or year of death of Niranjana Singh but he died several (*kafi*) years ago. He further stated that he cannot tell even by way of approximation as to when Niranjana Singh died. Counsel sought to contend that Niranjana Singh died in the year 1984 but this contention is not supported by any documentary evidence sought to be produced by way of additional evidence. In the given circumstances, it can safely be held that appellants for the reasons best known concealed the material fact with regard to death of Niranjana Singh. However, it is not plea of the appellants that they were not aware of death of Ram Devi who died in the year 1993. Perusal of address of parties given in head note of judgment of trial court makes it evident that appellants and defendants are residents of Fatehabad, Tehsil and District Fatehabad. All these

facts lead to an irresistible conclusion that neither Niranjana Singh nor the appellants after death of Niranjana Singh took any effective steps calling upon Ram Devi or after her death Ashok Kumar to execute the sale deed in terms of agreement of the year 1982. They got awakened from their slumber in July 2014 after the suit property was transferred by Ashok Kumar in favour of respondent No. 2-Sunil Kumar, vide registered sale deed dated 11.10.2012. Since in the present case, cause of action to file suit for specific performance accrued to the appellants immediately after sanction of mutation in favour of Ram Devi in the year 1990, the suit filed in the year 2014, more than two decades later, has rightly been held to be barred by limitation. Neither the appellants nor their predecessor in interest approached Ram Devi for extension of time for execution of sale deed on expiry of 30.7.1983 nor they initiated any steps seeking execution and registration of the sale deed after sanction of mutation in favour of Ram Devi, they cannot seek advantage to their contention from their plea beyond recitals in the agreement that Ram Devi was obligated to inform them about sanction of mutation in her favour or as she did not send any intimation, the present suit is within limitation.

To be fair to the appellants, counsel has relied upon judgment of Hon'ble the Supreme Court **Gunwantbhai Mulchand Shah and others' case (supra)** wherein suit for specific performance was filed after 29 years of agreement. In the said case, no time for

performance of agreement of sale was specified. Taking into consideration the provisions of Section 46 of the Contract Act and second limb of Article 54 of the Limitation Act, the Apex court set aside the order rejecting the plaint on the ground of limitation and case was remanded to the trial court for a proper trial of all the issues (other than the issue of jurisdiction) arising in the case and for disposal afresh in accordance with law. The appellants cannot derive any advantage to their contention from the referred authority for more than one reason. There is specific recital in the agreement in question that sale deed would be executed on 30.7.1983. In case mutation in favour of Smt. Ram Devi was not sanctioned by the stipulated date, the parties could extend the date for execution of the sale deed. The appellant did not take any steps to get the sale deed executed or extend the target date. Rather they allowed the third party interest to be created in the year 2012, on the basis of sale deed executed by Ashok Kumar in favour of Sunil Kumar. In this view of the matter, the appellants can not lend support to their contention by reference to judgment in **Gunwantbhai Mulchand Shah and others' case (supra)**.

A plain but careful reading of the judgments impugned makes it apparent that appellants did not raise any plea that they are entitle to protect their possession under Section 53-A of TP Act. Counsel also did not advance any arguments with regard thereto but he cited the aforesaid judgments dealing with Section 53-A of the TP Act.

Protection of Section 53-A can not be extended to the appellants as the agreement does not contain a recital that possession of property in question was delivered to Sh. Niranjana Singh in part performance of agreement dated 30.7.1982. This apart, appellants failed to adduce sufficient much less cogent and convincing evidence that any steps were taken by Niranjana Singh or by the appellants to seek execution and registration of the sale deed by incurring necessary expenses of stamp papers/registration etc.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 146 days in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

16.10.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No