

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 30.9.2019

RSA No. 5587 of 2003 (O&M)

Jit Singh (since deceased) through LRs

---Appellant

vs.

Karan Singh @ Netaji and others

---Respondents

RSA No. 5588 of 2003 (O&M)

Jit Singh (since deceased) through LRs

---Appellant

vs.

Karan Singh @ Netaji and others

---Respondents

RSA No. 5589 of 2003 (O&M)

Jit Singh (since deceased) through LRs

---Appellant

vs.

Karan Singh @ Netaji and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Mukul Aggarwal, Advocate
for the appellant in RSA Nos. 5588 and 5589 of 2003

Mr. Suresh Kumar Kaushik, Advocate
for the appellant in RSA No. 5587 of 2003

Mr. Arun Jain, Senior Advocate with
Mr. Arnav Sood, Advocate
for the respondents

Rekha Mittal, J.

This order will dispose of RSA Nos. 5587 to 5589 of 2003 as

decision in RSA No. 5587 of 2003 would also decide the fate of other two appeals. For facility of reference, facts are taken from RSA No. 5587 of 2003.

The subject matter of litigation is the land in respect whereof agreement of sale dated 25.6.1979 registered on 26.6.1979 was executed by Karan Singh @ Netaji in favour of appellant Jit Singh for sale of land measuring 50 kanals for sale consideration of Rs. 42,187.50P out of which Rs. 20,000/- were received towards earnest money on 26.6.1979, Rs. 10,000/- were agreed to be paid by the appellant by 31.1.1980 and balance amount was to be paid at the time of registration of sale deed. The sale deed was to be executed and registered within six months of getting conveyance deed by respondent No. 1 who was allotted land as a political sufferer.

As per case of the appellant-plaintiff, notice with regard to conveyance deed was to be given by the respondent to the plaintiff. Respondent No. 1-defendant No. 1 did not receive Rs. 10,000/- vide valid receipt. The appellant sent a telegram to show his willingness to pay Rs. 10,000/- and to get the sale deed registered. A registered notice was also given to the defendant but he did not perform his part of the contract by executing the sale deed after receiving balance amount. The appellant presented himself before the Sub Registrar, Hisar on 30.1.1980 for registration of sale deed. It is further pleaded that respondent No. 1 did not inform the appellant regarding obtaining of conveyance deed in his favour till the date of filing of the suit i.e. 15.6.1989. The appellant always remained ready and willing to perform his part of the contract. Despite stay order issued by the court restraining transfer/alienation of suit land, Karan

Singh @ Netaji respondent No. 1 suffered a collusive, fictitious and fraudulent decree dated 13.2.1993 in favour of respondent No. 2 and the said decree is not binding qua rights of the appellant. The defendant wanted to dispossess the appellant forcibly and he filed suit for permanent injunction against him. In the written statement filed by respondent in that suit on 12.6.1989, he mentioned that conveyance deed has been received by him but he did not inform the appellant about receipt of conveyance deed till filing of the suit. He prayed for a decree of symbolic possession by way of specific performance of agreement of sale dated 26.6.1979 and permanent injunction restraining the defendant from alienating the land in dispute.

Defendant No. 1/respondent No. 1 Karan Singh @ Netaji filed the written statement and raised preliminary objections that suit is not maintainable; suit is bad for misjoinder and non-joinder of parties; plaintiff has no locus standi to file the suit; plaintiff is estopped to file the present suit by his own act and conduct; the civil court has no jurisdiction to try the suit and the plaintiff has not come to the court with clean hands. On merits, it is submitted that there are false allegations raised in the plaint. The alleged affidavit is not admissible in evidence for want of stamp and registration. In fact, the plaintiff was not having ready money and he did not pay the remaining sale consideration as agreed between the parties. The telegram and registered notice are not admitted. The appellant was not ready and willing to perform his part of the agreement. He denied that appellant appeared before the Sub Registrar on 30.1.1980 for registration of sale deed. The answering defendant was always ready and willing to

perform his part of the agreement but the appellant is guilty of breach of the contract, earnest money stands forfeited and agreement has come to an end.

He further pleaded that appellant was duly informed about the conveyance deed and he was in knowledge of the same. Guljar Singh has filed a civil suit for declaration which was decreed by the court on 13.2.1993 and that decree has no effect on rights of the plaintiff and is hit by principle of lis pendence. The appellant filed a false suit for injunction and he was also in the knowledge of conveyance deed. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Defendant No. 2 filed separate written statement seriously contesting claim of the plaintiff in regard to his readiness and willingness to perform his part of the agreement or entitlement to specific performance of agreement of sale dated 25.6.1979 registered on 26.6.1979.

The appellant-plaintiff filed replication to the written statements filed by the respondents wherein he reiterated his stand taken in the plaint and controverted the preliminary objections raised in the written statements.

The trial court framed following issues for determination:-

1. Whether the plaintiff is entitled to the symbolic possession of the suit land by way of specific performance of agreement for sale dated 25.6.79? OPP
2. Whether the decree dated 13.2.1979 obtained by defendant No. 2 against the defendant No. 1 was collusively fictitious, fraudulent and illegal and not binding on the right of the

plaintiff? OPP

3. What is the effect of the decree passed during the pendency of the suit? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
6. Whether the plaintiff has no locus-standi to file the present suit by his own act and conduct? OPD
7. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD
8. Whether the civil court has got no jurisdiction to try and entertain the present suit? OPD
9. Whether the suit is barred by limitation? OPD
10. Relief.

Both the courts have negated plea of the plaintiff-appellant that he performed his part of the agreement with regard to his liability to pay Rs. 10,000/- towards second instalment out of sale consideration on or before 31.1.1980 and suit filed by appellant-plaintiff on 15.6.1989 seeking specific performance of agreement dated 25.6.1979 being barred by limitation with the finding that the appellant-plaintiff had knowledge of conveyance deed on 19.11.1981 in view of notice Ex. DW2/3 coupled with Tirllok Singh son of Jit Singh accompanied Karan Singh @ Netaji at the time of registration of conveyance deed. The courts have also taken into consideration registered lease deeds Exs. DW4/1 and DW4/2 wherein it was

mentioned that conveyance deed was registered in favour of defendant No.

1 vide registry Wasika No. 2868 dated 6.10.1980 and Jit Singh plaintiff is the second party and he put his thumb impression on the lease deed dated 28.11.1985. The trial court has held that even if it is presumed that notice was not served upon by the plaintiff to defendant No. 1 (sic) then these registered documents clearly revealed that plaintiff has knowledge of conveyance deed which was registered in favour of defendant No. 1 on 6.10.1980.

Counsel for the parties have conceded that two questions that require determination in the appeal are (i) whether the appellant has successfully proved that he tendered Rs. 10,000/- for payment to respondent No. 1 on or before 31.1.1980 and non-payment thereof is due to failure of defendant No. 1 to receive the same. If not so, what are the consequence and (ii) whether defendant No. 1 was under an obligation to send a notice to the appellant rather a notice in writing informing him about execution of conveyance deed in his favour or knowledge of said conveyance deed on the part of appellant is sufficient to obligate him to file a suit for specific performance on expiry of six months from the date of knowledge of said conveyance deed, registered in favour of defendant No.1 on 6.10.1980.

Counsel for the appellant would argue that appellant put his best efforts to discharge his obligation with regard to payment of Rs. 10,000/- on or before 31.1.1980 but the same was not received by respondent No. 1, therefore, he cannot be allowed to take advantage of his own wrong by contending that non-payment of Rs. 10,000/- as second

instalment of sale consideration would entail forfeiture of earnest money of Rs. 20,000/- and cancellation of agreement of sale. To bring home his contention, it is argued that respondent No. 1 sent notice on 21.1.1980 demanding payment of remaining sale consideration of Rs. 28,000/- contrary to the terms and conditions of Ex. P1. The appellant appeared in the office of Sub Registrar on 30.1.1980 along with Rs.10,000/- and executed an affidavit with regard to his presence and the same is Ex. P6. Since 31.1.1980 was a holiday in the office of Sub Registrar, he again caused appearance in the said office on 1.2.1980 along with Rs. 10,000/- and got marked his presence on the basis of affidavit Ex. P7. It is further argued that not only this, the appellant-plaintiff issued registered notice dated 31.1.1980 Ex. P3 in regard to failure of respondent No. 1 to receive Rs. 10,000/- and willingness of the appellant to pay that amount on any date. He further argued that appellant also sent two telegrams dated 30.1.1980 and 31.1.1980 Ex. P4 and P5 respectively requesting the respondent to receive Rs. 10,000/- in terms of agreement Ex. P1. It is vehemently argued that respondent neither responded to notice Ex. P3 nor telegrams Exs. P4 and P5, sufficient to infer that he himself is a guilty person who refused to receive Rs. 10,000/- and issue a receipt in token thereof. It is further argued that the courts have failed to appreciate these documents in right perspective, thus, committed a grave error rather perversity by holding that appellant failed to perform his part of the agreement with regard to payment of Rs. 10,000/- on or before 31.1.1980.

Counsel has assailed findings of the courts with regard to suit being barred by limitation by making two submissions. It is argued that as

per the agreement, the sale deed was to be executed within six months after notice of execution of conveyance deed to be given by defendant No. 1 to plaintiff-appellant. It is further argued that, no notice much less in writing was issued by respondent No. 1 informing the appellant about execution of conveyance deed in his favour. In the written statement, in response to para 4 of the plaint, it is averred that defendant was duly informed about the conveyance deed. He was in know of the same. It is argued that allegations with regard to due information to the appellant are quite vague and uncertain when otherwise respondent No. 1 has failed to adduce sufficient much less cogent evidence to prove that any such information was actually given by defendant No. 1 to the appellant. It is further argued that respondent No. 1 made an endeavour to prove photocopy of notice dated 19.11.1981 purported to be issued by the appellant calling upon him to get the sale deed registered in terms of agreement dated 25.6.1979 but he had failed to prove the said document, in accordance with law. To bring home his contention, it is argued that no such fact had been pleaded by respondent No. 1 that appellant had given notice dated 19.11.1981 though there is reference of the notice in the written statement filed by defendant No. 2 in whose favour a decree was suffered by respondent No. 1 during pendency of the suit and is hit by the principle of lis pendence. It is further argued that photocopy of purported notice dated 19.11.1981 was put to the appellant in his cross examination but he never admitted that he had issued any such notice much less the contents thereof. It is further argued that Anil Bansal, Advocate, Hisar DW2 marked documents Ex. D2/1, certified copy of Ex. DW2/2 and photocopy of notice Ex. DW2/3 but with regard to Ex. DW2/3,

the same was objected to. It is further argued that neither certified copy nor original of Ex. DW2/3 has been produced on record when admittedly photocopy of Ex. DW2/3 does not bear signatures of the appellant. It is vehemently argued that the courts without appreciating that document Ex. DW2/3 has not been proved in accordance with law nor the appellant had admitted correctness thereof, have misdirected themselves by relying upon photocopy of notice dated 19.11.1981 in order to conclude that appellant had knowledge of conveyance deed in view of contents of document Ex. DW2/3. In addition, it is argued that contents of Ex. DW2/3 have not been proved by respondent No. 1 even on the basis of testimony of Anil Bansal, Advocate DW2 as he is not the person through whom any such notice had been issued by appellant Jit Singh. Counsel would argue that knowledge of conveyance deed on the part of appellant sought to be drawn on the basis of documents produced and exhibited by Sh. Anil Bansal, Advocate, is the result of misreading of evidence, thus, suffer from perversity. Counsel would further argue that courts have also imputed knowledge of conveyance deed as Tirlok Singh son of Jit Singh-appellant was stated to be present with Karan Singh @ Netaji at the time of registration of conveyance deed on 6.10.1980. It is argued that statement of Karan Singh@ Netaji with regard to presence of Tirlok Singh at the time of execution of conveyance deed in his favour is beyond pleadings, therefore, can not be taken into consideration.

With regard to lease deeds Exs. DW4/1 and DW4/2, it is argued that lease deeds pertain to land of khasra number different from khasra number of land in question, subject matter of agreement Ex. P1. Lease deeds were not between parties to the suit as lessor under the lease deeds is

Smt. Prem Wati and Sh. Ganpat Ram son of Sheokaran. It is further argued that even if lease deeds make reference to registry Wasika No. 2868 dated 6.10.1980 in favour of party No. 1 i.e. lessor, it can not be inferred that appellant also gained knowledge of execution of conveyance deed in favour of respondent No. 1. The last submission made by counsel is that even if it is accepted that the appellant gained knowledge of conveyance deed in favour of respondent No. 1 from any other source other than notice or even information sent by respondent No. 1, in absence of respondent proving that he has discharged his obligation under the agreement by giving necessary notice to the appellant qua execution of conveyance deed or calling upon him to get the sale deed executed within a period of six months of the said conveyance deed, courts have seriously faulted in deciding the question of limitation against the appellant and in favour of the respondents. The last submission made by counsel is that as the appellant always remained ready and willing to perform his part of the agreement and instituted the suit immediately after filing of written statement by respondent No. 1 in the suit for injunction mentioning about conveyance deed in his favour, findings recorded by the courts denying specific performance of agreement can not be allowed to sustain and are liable to be set aside.

Counsel representing the respondents has supported consistent findings recorded by the courts rejecting plea of the appellant with regard to his readiness and willingness to perform his part of the agreement and suit being barred by limitation. It is vehemently argued that the courts have rightly refused to attach any weight to documents Ex. P6 and P7 i.e. affidavits prepared by the appellant with regard to his presence in the office

of Sub Registrar on 30.1.1980 and 1.2.1980 as there is nothing on record suggestive of the fact that appellant had gone there after due intimation to respondent-defendant No. 1. It is further argued that appellant has failed to prove notice Ex. P3 or sending of that notice at the address of defendant No. 1 when otherwise defendant No. 1 in his written statement as well in cross examination has denied receipt of any such notice. Two documents Ex. P4 and P5 with regard to sending intimation to defendant No. 1 for payment of Rs. 10,000/- are not proved, in accordance with law as testimony of Lekh Raj PW4 is not at all sufficient to prove that these telegrams were ever delivered to respondent No. 1. It is further argued that even though the trial court had not taken into consideration telegrams Ex. P4 and P5 while deciding the issue of non-payment of Rs. 10,000/- but no specific plea was raised in the grounds of appeal before the Appellate Court that trial court has committed error by failing to take into consideration the documents Exs. P4 and P5. He would further argue that even no plea has been raised in the grounds of appeal before this court that counsel for the appellant before the First Appellate Court made any submission with regard to telegrams Exs. P4 and P5 but the said court has failed to advert to the same. It is argued with vehemence that since counsel for the appellant knew it fully well that documents Exs. P4 and P5 have not been proved, in accordance with law much less any such telegram being delivered to respondent No. 1, he did not agitate non-consideration of documents Exs. P4 and P5 either before the First Appellate Court or before this Court.

Counsel has sought to rely upon copy of notice dated 19.11.1981 with regard to knowledge of the appellant in respect of

conveyance deed as there is reference to conveyance deed in the said document. It is further argued that the courts have rightly taken into consideration documents Exs. DW2/3, DW4/1 and DW4/2 to uphold plea of the respondent that appellant had knowledge of conveyance deed firstly in the year 1981 and then in the year 1985 but as he failed to file the suit within a period of three years and six months from the date of knowledge, the suit is barred by limitation. It is argued that property in dispute bears No. 68-A, Hisar and the said fact also finds reference in head note of the plaint. He would inform that total area of plot bearing No. 68-AP, Piranwali Bir, Hisar is 100 kanals and agreement to sale is in respect of 50 kanals and in regard to remaining 50 kanals, two lease deeds were executed in favour of the appellant by Smt. Prem Wati and Ganpat Ram in the year 1985 wherein there is specific reference with regard to conveyance deed dated 6.10.1980. It is further argued that even as per recitals in the agreement of sale, there was no such requirement that notice with regard to conveyance deed was to be given in writing, therefore, giving of notice is to be construed liberally and in the present scenario, the appellant cannot be heard to say that he did not have knowledge/notice of execution of conveyance deed dated 6.10.1980 in favour of respondent No. 1 at any time prior to filing of written statement in suit for injunction. It is further argued that as the appellant was not ready and willing to perform his part of the agreement, he tried to create evidence, may be under legal advice, by preparing affidavits Ex. P6 and P7 but without putting any effort to pay the amount of Rs. 10,000/- either by sending a demand draft or money order etc. in the name of respondent No. 1. It is further argued that failure of the appellant

to prove that he ever tendered Rs. 10,000/- for payment to respondent No. 1 on or before 31.1.1980 and his failure to file a suit for specific performance immediately after gaining knowledge of execution of conveyance deed in favour of respondent No. 1 speak volumes to falsify and belie his plea of readiness and willingness to perform his part of the agreement, thus, the courts have rightly answered both the aforesaid issues against the appellant and in favour of respondent No. 1.

I have heard counsel for the parties, perused the paper book and records.

There is no dispute that appellant paid Rs. 20,000/- towards earnest money out of total sale consideration of Rs. 42,187,50P vide agreement to sell dated 25.6.1979 registered on 26.6.1979. Perusal of agreement and contentions raised by counsel for the parties makes it apparent that a sum of Rs. 10,000/- out of balance amount of Rs. 22,187.50P was to be paid by the proposed vendee to the vendor upto 31.1.1980 against receipt failing which the amount of earnest money would stand forfeited and agreement would come to an end.

Counsel for the appellant has mainly relied upon documents Ex. P3, P6 and P7 to prove that payment of Rs. 10,000/- could not be made to defendant No. 1 because of his failure to accept the same. As per documents Ex. P6 and P7, the appellant went to office of Sub Registrar on 30.1.1980 and 1.2.1980 along with Rs. 10,000/- and got attested his affidavits in this regard. As has rightly been held and so contended by counsel for respondent No. 1 that neither it was agreed between the parties that payment of Rs. 10,000/- would be made upto 31.1.1980 in the office of

Sub Registrar nor the appellant ever informed respondent No. 1 to come present in the office of Sub Registrar on the aforesaid date(s) for receiving Rs. 10,000/-. That being so, courts have rightly refused to rely upon documents Ex. P6 and P7 in support of contention of the appellant that he tendered payment of Rs. 10,000/- but the same was not accepted by defendant No. 1.

The appellant has relied upon telegrams Exs. P4 and P5 but the same were not taken into consideration by the trial court. Counsel for the appellant has failed to point out that in the grounds of appeal before the First Appellate Court, he pressed into service documents Exs. P4 and P5 to assail findings of the trial court on the aspect of payment of Rs. 10,000/-. There is nothing in the grounds of appeal before this Court that the appellant ever made any submissions in respect of documents Exs. P4 and P5 before the First Appellate court or the said court failed to advert to those submissions. This apart, perusal of testimony of Lekh Raj PW4 would reveal that the same is not at all sufficient to prove these documents, in accordance with law much less to establish that any such telegram was actually delivered to respondent No. 1. In this view of the matter, the appellant cannot derive any advantage to his contention from documents Exs. P4 and P5.

Another document relied upon by the appellant is copy of notice dated 31.1.1980 marked as Ex. P3. The respondent/defendant No. 1 in the written statement has denied receipt of any such notice dated 31.1.1980. The copy of notice was exhibited with an objection from the contesting party on the ground of being secondary evidence. The appellant

did not produce any postal receipts with regard to sending of original of Ex.

P3 to respondent Karan Singh @ Netaji. Karan Singh @ Netaji defendant No. 1 in his testimony has categorically denied that he ever received notice Ex. P3. In the given circumstance, the appellant cannot derive any advantage to his contention of having tendered Rs. 10,000/- for payment to respondent No. 1 by relying upon document Ex. P3.

As per the settled position in law, mere marking of a document will not dispense with its proof, in accordance with law. Moreover, the appellant has failed to adduce any evidence that original of this document was ever dispatched at the address of respondent No. 1. Copy of notice Ex. P3 makes reference to notice dated 21.1.1980 issued by respondent-defendant No. 1. In the plaint, there is no reference to notice dated 21.1.1980 issued by defendant No. 1. Any such notice received by the appellant had not seen the light of day in the present case. In absence of proving notice dated 21.1.1980, it is difficult to accept contention of the appellant that respondent No. 1 became unreasonable by demanding Rs. 28,000/- in place of Rs. 10,000/- to be paid upto 31.1.1980. Analyzed from any angle, consistent factual findings recorded by the courts with regard to failure of the appellant to discharge his obligation to pay Rs. 10,000/- upto 31.1.1980 neither suffer from misreading of oral evidence nor non-examination of documentary evidence in right perspective. That being so, as the appellant failed to establish that he tendered Rs. 10,000/- for payment to respondent No.1, agreement stands cancelled and earnest money stands forfeited, in view of the terms and conditions contained in agreement Ex. P1. As such, plea of the appellant that he always remained ready and

willing to perform his part of the agreement or his entitlement to specific performance of agreement has rightly been rejected by the courts.

This brings the court to question of limitation in filing the suit, relevant in the context of readiness and willingness as well. Though in view of discussion made hereinbefore, this court need not to dilate on the issue of limitation but still as the parties have made submissions, I would not fail in my duty to decide the question of limitation.

No doubt, as per the agreement, the sale deed was to be executed on six months notice (*cheh mass ke notice par*) after execution of conveyance deed. Though language used in the agreement with regard to notice is not very clear but since respondent No. 1 has not disputed the allegations raised in the plaint with regard to his liability to issue a notice, the same would be construed in favour of the appellant-plaintiff. Indisputably, no notice in writing was issued by respondent No. 1 informing the appellant about execution of conveyance deed in his favour. It is also an undisputed fact that even till filing of suit no such notice had been issued by respondent No. 1 to the appellant. As per allegations of the appellant, respondent No. 1 made reference to conveyance deed in the written statement filed by him in the suit for injunction instituted by the appellant and immediately thereafter he filed suit for specific performance meaning thereby that he filed the suit for specific performance without waiting for formal notice from respondent No.1. This fact negates contention of the appellant that terms and conditions of the agreement with regard to notice are to be construed strictly and until notice in writing was issued by respondent No. 1, limitation would not start to run. However,

respondent No. 1 has also failed to adduce any cogent evidence with regard to verbal information sent by him to the appellant in respect of execution of conveyance deed in his favour.

The question that falls for consideration is, since when knowledge qua existence of conveyance deed can be imputed to the appellant-plaintiff. The copy of notice dated 19.11.1981 has not been proved in accordance with law. Neither the original nor certified copy thereof has been produced by respondent No. 1. In the written statement filed by defendant No. 1, there is no reference to any such notice issued by the appellant. The appellant, in cross examination, stated that he got issued a notice for getting the registry done but he did not remember if it was dated 19.11.1981 or some other date. Further stated that he has seen photo copy of notice in file of suit No. 768/90/88 title "Jit Singh vs. Karan Singh" but cannot say that it is the same or otherwise but his advocate knows it. The photocopy of notice was read over to him and he replied that he did not know if the notice was given by him. In view of the above, it can safely be held that the appellant never admitted if photocopy of notice dated 19.11.1981 is the copy of notice issued by him through his counsel.

Respondent No. 1 examined Sh. Anil Bansal, Advocate, Hisar and photocopy of notice dated 19.11.1981 Mark 'A' was exhibited as Ex. DW2/3 with objection from counsel opposite. Counsel for respondent No. 1 has failed to make out any convincing arguments that either this document can be read into evidence or findings of the courts by relying upon this document imputing knowledge of conveyance deed to the appellant can hold field. In this view of the matter, I find merit in contention of the

appellant that neither document Ex. DW2/3 has been proved in accordance with law nor its contents can be used against the appellant to impute knowledge of conveyance deed.

Karan Singh @ Netaji in his testimony has deposed about presence of Tirlok Singh son of Jit Singh appellant at the time of registration of conveyance deed on 6.10.1980. The statement of respondent No. 1 in this regard is beyond pleadings and cannot be looked into. As such, the courts have wrongly relied upon this piece of evidence to infer knowledge of conveyance deed, by the appellant.

This brings the court to the lease deeds Ex. DW4/1 and DW4/2. The first lease deed was executed by Smt. Prem Wati wife of Ganpat Ram in respect of area measuring 24 kanals of plot No. 68-AP, Piranwali Bir, Hisar but khasra numbers of land leased out by Prem Wati are different from khasra numbers in dispute. In the lease deed, there is reference to Wasika No. 2868 dated 6.10.1980 and mutation No. 121 dated 11.9.1981. It also makes reference to Karan Singh being holder of said Bainama registry Wasika No. 2868 of 1980. Similarly, the second lease deed Ex. DW4/2 dated 28.11.1985 makes reference to registered Wasika No. 2868 dated 6.10.1980 in favour of Karan Singh.

Counsel for the appellant has not disputed that the entire land measuring 100 kanals including land measuring 50 kanals agreed to be sold by respondent No. 1 and 50 kanals i.e. 24 and 26 kanals leased out vide lease deeds Exs. DW4/1 and DW4/2 respectively is a part of plot No. 68-AP, Piranwali Bir, Hisar. The said fact has also been so recorded in the second line of agreement Ex. P1. Counsel for the appellant has not disputed

that appellant was not aware of factum of plot No. 68-AP Piranwali Bir, Hisar having total area measuring 100 kanals which is the subject matter of agreement Ex. P1 and lease deeds Exs. DW4/1 and DW4/2. Keeping in view the recitals of lease deeds executed in favour of the appellant in respect of other khasra numbers of plot No. 68-AP, Piranwali Bir, Hisar certainly leads to an inference that appellant came to know about existence of registered Wasika No. 2868 dated 6.10.1980 in favour of Karan Singh in November 1985. If the period of limitation is reckoned with effect from 1985, suit filed by the plaintiff/appellant on 15.6.1989 is clearly beyond the period of three years and six months from the date of knowledge of conveyance deed dated 6.10.1980. In this view of the matter, I do not interfere in findings of the courts on the question of limitation. Further more, as the appellant neither approached defendant No. 1 for executing the sale deed within a period of six months from gaining knowledge of conveyance deed dated 6.10.1980 nor instituted the suit at the first available opportunity, it also gives a jolt to his plea that he always remained ready and willing to perform his part of the agreement.

In view of what has been discussed hereinbefore, finding no merit the appeals fail and are accordingly dismissed with costs.

(Rekha Mittal)
Judge

30.9.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes