

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

-.-

RSA No. 3473 of 2019

Date of decision: 22.07.2019

Ravi Kumar Rawat

.....Appellant

Versus

Dr. Anil Malik and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Baldev Singh Badhran, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction filed by the respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 06.01.2017 and appeal preferred by defendant No. 2/appellant against judgment and decree of the trial Court was dismissed by the Additional District Judge, Palwal.

The Courts have consistently held that agreement to sell dated 29.07.2002 on the basis whereof, ex parte judgment and decree dated 04.06.2007 for specific performance was passed and sale deed dated 08.05.2008 was executed, was ante dated to defeat right of the plaintiff on the basis of agreement to sell dated 10.06.2003.

Counsel for the appellant has assailed consistent findings

recorded by the Courts primarily on two counts. The first submission made by counsel is that challenge to sale deed dated 08.05.2008 which was got registered through civil Ahlmad of the Court on the basis of ex parte judgment and decree dated 04.06.2007 is barred by limitation as the suit was instituted in January 2012 beyond a period of three years from the date of sale deed dated 08.05.2008.

Another submission made by counsel is that once an agreement to sell is followed by execution of sale deed, sale deed can be set aside only on the ground that there is some suspicion in execution of the agreement to sell. For this purpose, reliance has been placed on a judgment of this Court ***Lakhpatt Singh and others vs. Smt. Nirmal and others 2019 (2) R.C.R. (Civil) 18.***

I have heard counsel for the appellant and perused the paper particularly the judgments impugned.

Perusal of the judgments passed by the Courts makes it evident that no such question of limitation was raised despite appellant/defendant No. 2 having raised various preliminary objections on the basis whereof the trial Court framed issues No. 4 to 10. The limitation to assail sale deed dated 08.05.2008 is a mixed question of law and facts, thus, cannot be allowed to be raised for the first time in the second appeal. In this view of the matter, submissions made by counsel on the question of limitation are untenable.

The argument of counsel by relying upon judgment of this Court in ***Lakhpatt Singh's*** case (supra) is devoid of merit and deserves to be rejected. In the present case, agreement to sell in favour of the appellant has

not been challenged by its executant/owner of the suit property. On the contrary, the same has been challenged by the proposed vendee under agreement to sell executed in his favour in the year 2003 by Ram Bharose, erstwhile owner of the suit land. Both the Courts have consistently held that agreement to sell dated 29.07.2002, purportedly executed by respondent No. 2 in favour of the appellant is ante dated, therefore, would not have precedence over agreement validly executed by Ram Bharose in favour of Dr. Anil Malik, respondent/plaintiff. Counsel for the appellant has failed to point out that consistent findings recorded by the Courts qua agreement to sell in his favour either suffer from perversity or are not based upon materials on record.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

22.07.2019
Mohan Bimbra

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