

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5367 of 2012 (O&M)

Date of decision: 21.02.2019

Rajwati and others

..... Appellants

Versus

Rajesh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kunal Dawar, Advocate
for the appellants.

Mr. Ram Bilas Gupta, Advocate
for the respondents.

ANIL KSHETARPAL, J.(ORAL)

Defendants-appellants are in the regular second appeal against the judgment passed by the First Appellate Court decreeing the suit for possession by way of specific performance of the agreement to sell dated 29.01.1996.

The defendants contested the suit by pleading that there was no agreement to sell. Learned trial Court held that the agreement to sell as well as payment of earnest money has been proved, however, trial Court refused to grant specific performance rather dismissed the suit while holding that in the agreement to sell, 4 persons including the defendant had agreed to sell the property which was undivided share in the joint Khata. The agreement to sell was signed only by defendant-Virpal. Hence, no specific performance can be granted since other proposed vendors have not signed. Learned trial Court further held that the suit is barred by time.

Learned First Appellate Court after re-appreciating the evidence has found that the agreement to sell is between the plaintiffs and the defendant-appellant/Virpal. So, therefore it is binding between them. Other persons/proposed vendors have not signed the agreement to sell, therefore, there is no agreement to sell between the remaining proposed vendors namely Virender, Ompal and Usha. Learned First Appellate Court has further found that the suit is within limitation as it was provided in the agreement to sell that the sale deed would be executed on 12.04.1996, however, it was further recorded that if by that date, owner does not get his name entered in the revenue record, the time for execution of the sale deed shall stand extended till revenue record is updated. The Court has found that no evidence has come on record as to when that revenue record was updated. The plaintiffs before filing the suit served a notice on 28.11.2005 but no reply was given.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel appearing for the appellants has submitted that the suit filed by the plaintiffs was suffering from delay and laches as there was unreasonable delay of 10 years in filing the suit. He submitted that the suit was not maintainable.

Learned counsel for the appellants has read in open Court the agreement to sell which is in Hindi language. It is specifically recorded in the agreement to sell that the target date for execution and registration of the sale deed has been fixed as 12.04.1996, however, if the revenue record is not corrected upto that date i.e. the mutation of inheritance is not

sanctioned in favour of the defendant, the target date for execution and registration of the sale deed would automatically stand extended till revenue record is got corrected and updated. No evidence has come on record that when the revenue record was got updated or it has ever been got updated or not. In these circumstances, the Court has to see as to whether the period of limitation would begin to run from 12.04.1996 or not. The contract entered into, as noticed above, has to be given full meaning. Once it has been provided in the agreement to sell that the target date for execution and registration of the sale deed would automatically stand extended till mutation with regard to inheritance is sanctioned for which there is no evidence, therefore, the suit filed by the plaintiffs cannot be said to be barred by time. Similarly, the argument of learned counsel for the appellants that there is unreasonable delay is liable to be rejected because once there is no fixed target date for execution and registration of sale deed, the period of limitation would begin to run only from the date refusal by the defendant comes to notice of the plaintiffs. There is no evidence to that effect also. In view thereof, there is no substance in the argument of learned counsel for the appellants with regard to the suit suffering from delay and latches.

Reply to next argument of learned counsel is straight and simple. The defendant-appellant is the only signatory to the agreement to sell. The agreement to sell was with respect to an undivided share in a larger property. The Courts have rightly decreed the suit only qua defendant as he is only one who has signed the agreement to sell. Learned trial Court clearly erred in refusing to grant specific performance on the ground that there was a joint agreement by 4 persons. The remaining three

admittedly have not signed. Hence, there was no agreement between the remaining three brothers and sister of the defendant.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is dismissed.

21.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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