

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

RSA-2040-2013 (O&M)

Date of Decision: October 30, 2019

Baldev Singh

Appellant

Versus

Teja Singh and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arihant Jain, Advocate with
Mr. Arun Jindal, Advocate
for the appellant.

Mr. Satinder Khanna, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. That the present regular second appeal has been filed to challenge the judgment and decree dated 07.03.2013 passed by the District Judge, Jalandhar and the judgment and decree dated 15.3.2012 passed by the Civil Judge (Jr. Divn.) Nakodar.

2. Briefly, the facts of the case are that respondent No.1- Teja Singh filed a suit for specific performance of agreement dated 25.09.1992 in respect of land measuring 8 kanals – 6 marlas, covered under K/K No.36/56, Khasra No.126 situated in the area of village Kotli Kamboj, Tehsil Shahkot, District Jalandhar, which was originally owned by Gian Chand s/o Munshi Ram, resident of village Shahkot. Rather it was recorded in the name of

Munshi Ram father of Gian Chand. Gian Chand being the sole legal heir of Munshi Ram executed an agreement to sell dated 25.09.1992 in favour of the plaintiff-respondent No.1- Teja Singh after receiving a sum of ₹20,000/- as earnest money. It was agreed between the parties that the balance sale consideration of ₹30,000/- would be paid by the plaintiff-respondent No.1- Teja Singh at the time of execution of the sale deed. It was also agreed between the parties that Gian Chand would get sale deed dated 22.01.1992 allegedly executed by his father Munshi Ram in favour of Pritam Singh son of Jawala Singh and Mukhtiar Singh son of Jagat Singh declared as null and void, being forged and fabricated document and to further serve upon the plaintiff-respondent No.1, a notice of the same, within one month from the setting aside of the above said sale deed dated 22.01.1992. It was also agreed between the parties that in case Gian Chand fails to perform his part of the agreement, then the plaintiff would be entitled to enforce the specific performance of the contract, through competent court of law. Later on, the said Gian Chand died and the suit for specific performance was filed against his wife Asha Rani, being his legal heir.

3. That aforesaid Gian Chand had filed an FIR No.167 dated 17.12.1992 under Sections 419/467/468/471/120-B of IPC at Police Station Lohian Khas against Pritam Singh s/o Jawala Singh, Pritam Singh son of Bagga Singh and Mukhtiar Singh, s/o Jagat Singh for the false and fabricated sale deed dated 22.01.1992 allegedly executed by Munshi Ram father of Gian Chand in favour of Pritam Singh s/o Jawala Singh and Mukhtiar Singh s/o Jagat Singh as Munshi Ram had already died on 16.06.1943. The FIR proceedings culminated into conviction of all the

aforesaid accused vide order 27.5.2000 passed by the JMIC, Nakodar, appeal against the conviction was dismissed as also the second appeal before the High Court was also dismissed.

4. The aforesaid Pritam Singh had succeeded in getting his name recorded in the revenue record on the basis of the forged and fabricated sale deed dated 22.01.1992 and thereafter the said Pritam Singh filed a civil Suit No.2003 for decree of permanent injunction regarding the suit land, which was dismissed vide order 14.09.1996. An appeal challenging the order dated 14.09.1996 was also dismissed by the District Judge, Jalandhar vide order dated 13.05.1999 and thereafter second appeal preferred before the High Court was also dismissed vide order dated 03.07.2001.

5. It is stated that at the time of execution of agreement to sell in favour of the plaintiff-respondent No.1, the possession of the property in dispute was delivered to him by the executant- Gian Chand and the plaintiff-respondent No.1 filed a suit before the Civil Courts, Nakodar which was dismissed and after that Pritam Singh and Mukhtiar Singh snatched the suit property and took possession from him. Thereafter the aforesaid Mukhtiar Singh on 11.05.2005 executed a sale deed in favour of Pritam Singh regarding the suit property and in connivance with the revenue officials got the mutation sanctioned in his favour.

6. As Gian Chand was under a legal obligation to get the name of Pritam Singh and Mukhtiar Singh deleted from the revenue record and get the sale deed executed in favour of plaintiff-respondent No.1, during his life time and after his death, by his legal heirs , the plaintiff-respondent No.1 served a legal notice upon him to execute the sale deed which is Exhibit PW

1/10 on the record along with postal receipt Ex. PW1/11 It was submitted that he was ready to perform his part of the contract and get the sale deed registered after paying the balance sale consideration. It was also submitted that sale deed dated 22.01.1992 and subsequent sale deed dated 11.05.2005 were not binding upon the rights of the plaintiff-respondent No.1, being forged and fabricated documents and the subsequent mutation sanctioned on the basis of above sale deeds liable to be declared null and void.

7. The defendant no. 1 Asha Rani the legal heir of Gian Chand did not appear and was proceeded ex-parte by order dated 17.4.2007 . the suit was contested by Mukhtiar Singh and Pritam Singh who filed their separate written statements to the civil suit.

8. After considering the pleadings of the parties, the Civil Judge, Jr. Division, Nakodar framed the following issues:-

1. *Whether plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 25.09.1992?OPP.*
2. *If above issue is proved, whether the agreement to sell dated 25.09.1992 is result of fraud, misrepresentation and concealment of material facts?OPD.*
3. *Whether the suit is not within limitation?OPD.*
4. *Whether plaintiff is estopped by hiw own act and conduct from filing the present suit?OPD.*
5. *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties?OPD.*
6. *Relief.*

After appreciating the evidence led by the parties, the Civil Judge, Jr. Division, Nakodar vide order dated 15.03.2012 decreed the suit of specific performance of the agreement to sell dated 25.09.1992 in favour of

the plaintiff-respondent No.1- Teja Singh and directed defendant No.1 to execute the sale deed in his favour after receiving the balance sale consideration within the period of 30 days from the date of this order, failing which, the plaintiff-respondent No.1 would be at liberty to get the sale deed executed with the intervention of the court, within a period of 60 days from the date of the order. The said judgment and decree was challenged by filing an appeal which too came to be dismissed by the District Judge, Jalandhar vide his order dated 07.03.2013. Being aggrieved, the appellant has challenged the orders dated 07.03.2013 and 15.03.2012 by filing the present appeal.

9. The main thrust of the argument is that the respondents would not be entitled to the decree of specific performance since the suit had been filed after an inordinate delay of 14 years. The appellant has raised the plea of limitation while contending that the agreement was entered into on 25.9.1992 however the suit for specific performance was filed only on 2.9.1997. It is argued that the period as prescribed under Article 54 of the Limitation Act, 1963 is three years for filing a suit for specific performance and therefore it is established that the respondent plaintiff was not ready and willing to get the sale deed executed. Reliance has been place upon a judgment rendered in ***Coromandal Indag Products Pvt Limited vs Garuda Chit and Trading Co Pvt. Ltd 2011 (4) RCR (Civil) 677*** and ***Gurmail Singh and others Vs Jagdish Pal Singh 2018(2) PLR 418*** in support of his argument. It is also argued that the respondent plaintiff had filed for permanent injunction against Gian Chand the vendor, which suit had been dismissed, consequently the present suit would be barred by the principle of

estoppel.

10. Per contra, Mr. Satinder Khanna, learned counsel appearing on behalf of the respondent urges that the question of limitation would not arise since time was not the essence of the agreement entered into. In fact, the seller Gian Chand was to get the mutation sanctioned in his name before he could complete the agreement. Learned counsel relies upon a judgment rendered in *S Bhramanand and others versus K R Muthugopal (D) and others 2005 (12) SCC 764* where it has been held that “ *it is possible to say that the expression “date fixed” need not be a calendar date, but time period fixed with reference to a certain event, the happening of which is definite.*”

11. I have heard the counsel for the parties and with their assistance have produced the pleadings and the record pertaining to the case.

12. The respondent and Gian Chand had entered into an agreement for sale of land are described in the head note. A reading of Ex. P-1, which is the agreement to sell, would clearly reflect that time was never made the essence of the contract. The translated version of the sale agreement Ex P-1 is reproduced hereunder:

“ We, Gian Chand S/o Munshi Ram s/o Nanak Chand, Resident of Shahkot, Tehsil: Nakodar, at present Mangalpur Kalan, Delhi-83 c/o Anoop singh, Pardhan, Party No.1 and Teja Singh s/o Phuman Singh s/o Pohu, Resident of Kotli Kamboan, Tehsil: Nakodar, Party No.2.

That Gian Chand, Party No.1 is having land measuring 8-6 Type Barani of Khewat No.29 Khatoni No. 55 Number Khasra 126 Total:8-6, situated at Kotli Kamboan, Tehsil: Nakodar, as per Jamabandi for the year 1986-87, this land is free from all encumbrances along with path, and is agreeing to sell with free

will and without any pressure with full senses.

That above land was earlier sold on 22.01.1992 by Munshi Ram s/o Nanak Chand in favour of Pritam Singh son of Jawala Singh, and Mukhtiar Singh s/o Jagat Singh, Residents of Kotli Kamboan, Tehsil: Nakodar, and the mutation had also been sanctioned, which is totally wrong and false.

Because, Munshi Ram, S/o Nanak Chand, R/o Shahkot, Tehsil Nakodar, had died on 16.06.1943. Regarding which the case had been filed in the Court of Sub-Judge, Nakodar. Because, sale deed is dated 22.01.1992 and Munshi Ram had died about 48 years ago. And now I, Gian Chand is the only legal heir and in possession. And agreed to sell to the Party No.2 Teja Singh for a total sum of ₹50000/- and today a sum of ₹20000/- has been received as advance money for the expenses on the Civil suit in the presence of witnesses, mentioned in the margin. Gian Chand party No. 1 has received advance money from Party No.2 Teja Singh. The remaining amount of sale consideration shall be paid at the time of registry which shall be got done after the decree by the Sub-Judge, Nakodar, which is pending there. And the Party No. 1 Gian Chand will inform to the Party No.2 through the Registered Notice one-month in advance and this is the condition that in case the Party No.1 Gian Chand fails to execute the sale deed then Gian Chand Party No.1 will be bound to pay to Party No.2 Teja Singh the advance money of ₹20000/- and equal amount ₹20000/- as fine totaling ₹40000/-. In case, Teja Singh Party No.2 fails to execute the sale deed, then the advance money shall be forfeited. The expenditure of the sale-deed shall be borne by the Party No.2, and he can get the sale deed in anybody's name. The agreement has been written and the registry/sale-deed can be done through the Court. The legal heirs of the parties shall be bound by it. The possession of the land mentioned in

agreement has been given. The contents of the agreement have been read over to the parties, who after hearing and admitting the same, have signed. The agreement has been written so that it may be used at the appropriate time.”

As per the agreement of sale, Gian Chand had stated that the sale deed in favour of Pritam Singh and Mukhtiar Singh dated 22.1.1992 and subsequent mutation is false as Munshi Ram- the executant had died 48 years ago. He mentioned he had received advance money from Teja Singh and the remaining amount of sale consideration was to be paid at the time of registry which was to be got done after he had managed to get the names of Pritam Singh and Mukhtiar Singh removed from the revenue record (as mutation had been sanctioned in their favour on the basis of a forged and a false and a fabricated sale deed). The respondent was able to prove the execution of sale agreement through secondary evidence since both the attesting witnesses both had died. The sale deed dated 22.01.1992 on which the appellant is seeking to rely upon, has already been declared to be false and a fabricated document by the courts below and the finding has been upheld by the High Court. In fact the appellant stood convicted in this regard. The appellant does not have the locus to challenge the suit since he does not have any legal right in the property and at best can be held to be a trespasser. Moreover the legal heirs of Gian Chand have not challenged the concurrent finding of both the courts below and have accepted the judgment and decree. Since time was not the essence of the contract the question of limitation and delay in filing the suit for specific performance would not arise.

13. The judgment as relied upon by the counsel for the appellant are not applicable to the facts of the instant case, where time was not the essence of the contract as certain formalities were to be completed by Gian Chand like getting the mutations reversed in his name. On the failure to do so the suit was filed. Therefore, the ratio of the judgment rendered in *S Bhramanand and others versus K R Muthugopal (D) and others 2005 (12) SCC 764* would be applicable to the facts herein.

14. Another argument has been raised that the suit would be barred by estoppel as the suit filed by the respondent Teja Singh for permanent injunction already stood dismissed. This argument too is without basis as the suit for permanent injunction filed by Teja Singh the respondent, was against the appellant seeking to restrain them from interfering in his peaceful possession, whereas in the instant suit the relief of specific performance of the sale agreement is sought against Gian Chand and his legal heirs. The bar of order 2 rule 2 CPC would not be applicable since the parties to the suit and the relief sought are entirely different.

Consequently, the appeal filed is hereby dismissed. The concurrent finding of both the Courts below do not warrant any interference being well reasoned judgments after appreciating both the law and the evidence adduced.

October 30, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No