

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

RSA-4699-2013(O&M)

Date of decision:-30.4.2019

Gurdev Singh Sidhu

...Appellant

Versus

Punjab State Transmission Corporation Ltd., Patiala

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vijay Sharma, Advocate
for the appellant.

Mr.Vikrant Sharma, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case as can be gathered from the perusal of the record are that plaintiff - Punjab State Transmission Corporation Ltd., Patiala had purchased house constructed on the plot of land measuring 4 ½ marlas having dimensions 30' x 40' forming part of khewat/khatauni No.199/536, khasra No.6//15/3-18, 16/7-19 to the extent of 9/474 share vide a registered sale deed dated 30.6.1998 and it had also purchased plot of land measuring 11 marlas bearing khewat/khatauni No.199/536, khasra No.6//15/3-18, 16/7-10 to the extent of 11/237 share vide

registered sale deed dated 9.7.1998, respectively for the sum of Rs.4,99,500/- each; that at the time of execution of the sale deeds, the defendant represented that the said property in question was free from all encumbrances and no dispute for the same was pending in any Court; that in the sale deeds it was mentioned that if any defect was found in the title, then the defendant would be personally liable to make good the loss to the plaintiff; that later on both the sale deeds were cancelled by the Civil Court and plaintiff lost the possession of the plots in question. According to the plaintiff, the defendant had cheated it and played a fraud with it; that the plaintiff had suffered a huge financial loss in the process and the defendant was bound to return the sale prices of both the sale deeds along with stamp duty to the tune of Rs.60,000/- and Rs.10,000/- as registration fee as well as Rs.10,000/- as miscellaneous charges; the total amount worked out being Rs.10,79,000/-. The plaintiff asked the defendant to pay the said amount to it and had got issued a legal notice dated 30.7.2008 upon the defendant but to no effect, as such, the plaintiff brought the suit for recovery against the defendant in the Court of competent jurisdiction at Samana.

On getting notice, the defendant had appeared and filed written statement contesting the suit raising various legal objections including one that the suit being time barred, as such not maintainable and further plaintiff having no cause of action to bring

the suit and not approaching the Court with clean hands etc.; the competence of the plaintiff to bring the suit was also disputed; though execution of sale deeds was admitted. According to the defendant, the sale deeds in question were neither cancelled nor set aside by any Court and the plaintiff was still in possession of the property sold to him. In the end, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether plaintiff is entitled to recovery Rs.10,79,000/- on the basis of pronote and receipt along with *pendente lite* and future interest at the rate of 18% per annum? OPP.
2. Whether suit is filed by duly authorized and competent person? OPP.
3. Whether suit has been filed within limitation? OPP.
4. Whether the plaintiff has not approached this Court with clean hands? OPD.
5. Relief.

In order to prove its case, the plaintiff had examined Sh.Gajinder Singh, Addl. Asstt.Engineer as PW1 and Sh. Ram Lal, registration Clerk as PW2.

On the other hand, the defendant got recorded his statement as DW1.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff and against the defendant, issue No.3 against the defendant and in favour of the plaintiff, issue No.4 against the defendant and in favour of the plaintiff. Resultantly, the trial Court vide judgment and decree dated 1.11.2011, decreed the suit for recovery of Rs.10,79,000/- with costs with future interest @ 6% from the date of decree till its realization.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 10.5.2013 dismissed it.

The defendant is feeling dissatisfied with the said judgments and decrees passed by the Courts below and has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by the plaintiff against him be dismissed.

On getting notice of regular second appeal, the respondent had appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The first and foremost argument advanced by learned

counsel or the appellant/defendant was that the suit had not been filed by a competent person inasmuch as no resolution was passed by the plaintiff Board authorizing Senior Executive Engineer to bring the suit, therefore, the suit having not been filed by duly authorized person is bound to be dismissed. In support of his such contention, learned counsel for the appellant had referred to judgment **Punjab State Electricity Board Versus Union Government of India, 2001(4) RCR(Civil) 49** by a Co-ordinate Bench of this Court.

Whereas learned counsel for the plaintiff/respondent has controverted this argument saying that Additional Superintending Engineer, Civil Works Divn., Patiala being a Senior Officer of plaintiff had every right to file the suit, who was duly authorized to bring the suit. This is specifically pleaded in para No.1 of the plaint. Even issue No.2 was struck by the trial Court to the following effect:

Whether suit is filed by duly authorized and competent person?

OPP.

The trial Court in para No.18 of its judgment has dealt with this aspect observing as under:

18. As far as competency of the person who filed the present suit is concerned. In this regard Ex.P1 authorization letter is on the file. Moreover there are instructions of electricity board that suit by Addl. Superintending Engineer Civil Works Division, Patiala

can be filed, so it cannot be said that suit is not filed by competent person. Accordingly both the above said issues are decided in favour of the plaintiff and against the defendant.

The First Appellate Court has not differed with the trial Court in that regard. I on my part find that the Courts below have correctly come to the conclusion that suit has been filed by duly authorized person and there is no reason to upset such finding.

The next argument put forward by learned counsel for the appellant was that the suit was time barred inasmuch as, as admitted by PW1 in his cross-examination, possession had been taken from the plaintiff in the year 2002, whereas the suit was brought on 6.10.2008 much after a period of three years, therefore, the suit so filed is clearly time barred.

Learned counsel appearing for the respondent/plaintiff has submitted that this argument advanced is without any basis.

Learned trial Court has dealt with such aspect in para No.19 of the judgment observing that the suit was within limitation. For ready reference, the relevant para No.19 is reproduced as under:

19. As far as limitation is concerned. Admittedly the application for entering mutation has been filed by the plaintiff in the year 2008 and report made in the year 2008 immediately therefore suit was filed by the plaintiff

on 6.10.2008. In my view cause of action arose to the plaintiff in the year 2008, suit is filed by the plaintiff within three years from the cause of action. Hence the present suit is well within limitation. Accordingly this issue is decided against the defendant and in favour of the plaintiff.

I find myself in agreement with Courts below on that point. Merely by PW1 Sh.Gajinder Singh, Addl. Asstt. Engineer saying in his cross-examination that the possession was taken somewhere in the year 2002 does not demolish the case of the plaintiff that the cause of action has arisen to it in the year 2008 since from the very beginning, it is a consistent case of the plaintiff that cause of action arose to it in the year 2008. Interestingly, the defendant admits that the plaintiff has lost possession of the property in dispute, though this fact is established on the file. Thus the suit of the plaintiff is not found to be barred by time. The defendant having received money from the plaintiff for transfer of two properties and title of defendant therein having found to be defective and the sale deeds set aside, the defendant is certainly liable to return the monetary benefit derived by him from the plaintiff in the form of considerable amount for the sale deeds. The defendant cannot avoid so by taking technical sort of objections. The authority **Punjab State Electricity Board Versus Union Government of India**(supra) and

authority **Hans Raj and another Versus Union of India, 2014(3)**

Law Herald 2758 referred to by learned counsel for the appellant do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

No other arguments was advanced or put forward by the learned counsel for the appellant.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

30.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No