

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

RSA No.740 of 2013 (O&M)

Date of Decision:15.10.2019

Ved Parkash and others Appellants

Vs

Rajpal and others Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Vijay Singh Kajla, Advocate
for the appellants.

Mr. Pankaj Midha, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the judgment of reversal passed by the Addl. District Judge, Jind vide order dated 07.01.2013.

[2]. Brief facts are that the plaintiff filed a suit for specific performance against the defendants on the basis of agreement to sell dated 09.10.2001 in respect of land measuring 7 Marlas bearing Khewat No.72, Khatoni No.76, Khasra Nos.496 and 497 situated within the revenue estate of village Bohatwala, Tehsil and District Jind as shown in the plaint. Defendants No.1 to 8 and Smt. Ghoghari wife of Ratna agreed to sell the aforesaid land in favour of the plaintiff for a total sale consideration of Rs.22,000/-. Entire sale consideration was paid to the

defendants and Smt. Ghoghari at the time of execution of agreement to sell. Plaintiff purchased stamp papers amounting to Rs.2750/- and defendants No.1 to 8 and Smt. Ghoghari executed the sale deed of the suit land in favour of the plaintiff which was scribed by Vikram Goel, Deed Writer. Possession of the land was delivered to the plaintiff and plaintiff constructed 3 shops and boundary wall around the suit property. After the agreement to sell, sale deed was not registered as the defendants left the office of Sub-Registrar without getting the same registered. Smt. Ghoghari has already expired and defendants No.9 to 16 were impleaded being her legal representatives.

[3]. It was also pleaded that earlier the plaintiff filed a Civil Suit No.547 dated 30.09.2004 for mandatory injunction by issuing directions to the defendants to get the sale deed executed on the basis of agreement to sell 09.10.2001, but the said suit was withdrawn by the plaintiff on 13.02.2009 with permission to file a fresh suit on the same cause of action after pleading technical defect in the suit. Thereafter, the present suit was filed on 10.03.2009.

[4]. Defendants No.1 to 3, 7 and 13 to 16 contested the suit thereby denying the execution of agreement to sell with the plaintiff and receipt of any sale consideration from him. The

case of the plaintiff was denied outrightly. Defendants further pleaded that Smt. Ghoghari never agreed to sell the suit land, nor received any sale consideration. Raising of construction by the plaintiff over the suit property was also denied, rather it was claimed that the shops were constructed by the defendants themselves. However, Defendants No.4 to 6 and 8 to 12 admitted the claim of the plaintiff in *toto* and prayed for grant of decree in favour of the plaintiff.

[5]. Both the parties went to trial on the following issues:-

- “1. *Whether the defendants no.1 to 8 along with Smt. Ghoghari agreed to sell suit land in favour of plaintiff for a total consideration of Rs.22,000/- by way of agreement to sell dated 9.10.2001 and they further delivered the possession of the suit land of plaintiff? OPP*
2. *Whether plaintiff was and is always ready and willing to perform his part of contract? OPP*
3. *If issues no.1 and 2 are proved in favour of plaintiff, whether he is entitled to a decree for specific performance? OPP*
4. *Whether the suit of the plaintiff is not maintainable? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Relief.”*

[6]. Plaintiff got examined Vikram Goel Deed Writer as PW-1. He himself appeared as PW-2. Plaintiff also tendered agreement to sell Ex.PA, draft sale deed dated 09.10.2001 as Ex.P1/A, copy of order dated 13.02.2009 as Ex.P-2. Thereafter evidence of the plaintiff in affirmative was closed. Defendant

Balbir Singh appeared as DW-1 and after submitting his affidavit as Ex.DW-1/A, the evidence of the defendants was closed.

[7]. After appreciating the material on record, the trial Court found that if the plaintiff was present in the office of Sub-Registrar on 09.10.2001, he would have marked his presence by way of filing affidavit in the office of Sub-Registrar by getting attestation thereof. If the defendants were reluctant to get the sale deed executed and registered in favour of the plaintiff, the plaintiff ought to have taken necessary steps under the Registration Act by producing the document before the Sub-Registrar in accordance with law. By not initiating lawful proceedings from 09.10.2001 upto 20.09.2004 i.e. for a considerable time, the plaintiff, even if, presumed to be present before the Sub-Registrar on 09.10.2001 had relinquished or abandoned his right in respect of alleged agreement to sell. The suit for specific performance came to be filed only on 10.03.2009.

[8]. It was further held by the trial Court that the plaintiff could have asked for compulsory registration of the document under Section 23 of the Registration Act and in case of refusal thereof, it was open to the plaintiff to bring a suit under Section 77 of the Registration Act. Both the remedies are independent of each other and the plaintiff could have resorted to either of

the two remedies. Inaction on the part of the plaintiff for about 12 months was an act of abandonment of agreement to sell and waiver of his right to sue for specific performance. Issues No.1 to 3 were decided against the plaintiff. On the basis of findings recorded under issues No.1 to 3, issues no.4 and 5 were also decided against the plaintiff. As a result of that the suit was dismissed with costs vide judgment and decree dated 20.09.2011.

[9]. Feeling aggrieved against the judgment and decree dated 20.09.2011 passed by the trial Court, the plaintiff preferred an appeal before the lower Appellate Court. The lower Appellate Court accepted the appeal vide judgment and decree dated 07.01.2013 on the premise that remedy under Section 77 of the Registration Act was not available to the plaintiff because the document was never presented before the Sub-Registrar and the same was never refused to be registered. Remedy was available only after presentation and refusal by the Sub-Registrar. The plaintiff was pursuing his remedy under wrong forum in the earlier suit and the same was withdrawn after seeking permission to file a fresh suit on the same cause of action. The lower Appellate Court on the strength of Section 14 of the Limitation Act found that the withdrawal of the earlier suit was lawful act, as the same was not maintainable being a wrong

remedy. Ingredients of Section 14 of the Limitation Act were found to be attracted. No issue was framed by the trial Court, nor any finding was recorded on that aspect.

That is how the present appeal at the instance of the defendants came to be filed before this Court.

[10]. Learned counsel for respondent No.1 has vehemently argued on the strength of Section 14 of the Limitation Act, to show that suit filed on 10.03.2009 was well within limitation. In support of his submissions, learned counsel relied upon **M.P. Steel Corporation vs. Commissioner of Central Excise, 2015(3) R.C.R. (Civil) 965; Sunder Das and others vs. Gajananrao and others, 1997 AIR (SC) 1686; Ghasi Ram vs. Chait Ram Saini, 1998(4) R.C.R. (Civil) 45; M/s Sonia Overseas Pvt. Ltd. vs. Union of India and others, 2015(1) R.C.R. (Civil) 114; Jagdish Kumar and another vs. Devinder Kumar and others, 2006(4) R.C.R. (Civil) 52; Harbhagwan vs. Punni Devi, 1992(2) R.C.R. (Civil) 298; Bharat Singh vs. Deena, 1992(2) PLR 326; Gunwantbhai Mulchand Shah & Ors. vs. Anton Elis Farel & Ors., 2006(2) R.C.R. (Civil) 251; Gannmani Anasuya & Ors., vs. Parvatini Amarendra Chowdhary & Ors., 2007(3) R.C.R. (Civil) 381; Kalvakurti Venkata Subbaiah vs. Bala Gurappagari Guruvi Reddy,**

1999(3) R.C.R. (Civil) 607; Raghbir Singh vs. Sant Singh, (2019-1)193 PLR 493; Gurjit Singh and another vs. Tarsem Singh and another, 2012(4) R.C.R. (Civil) 53; R. Lakshikantham vs. Devaraji, 2019(3) Civil Court Cases 622; Amarjit Sihngh vs. Anil Kumar etc., 2019(3) Civil Court Cases 146; Mulakh Raj vs. Kishan Kaur and Ors., 2014(37) R.C.R. (Civil) 52; and Prem Chand vs. Haryana State Industrial Development Corpn. Ltd. and Ors., 2006(2) R.C.R. (Civil) 468.

[11]. I have considered the submissions made by learned counsel for the parties and have also perused the material on record.

[12]. At the time of admission of appeal on 23.01.2015, following substantial questions of law were framed by this Court:-

“(i) Whether the plaintiff is entitled for the relief of specific performance when the plaintiff did not get his presence marked with Sub Registrar nor any notice was served upon the defendants, as per the law laid down by this Court in Gudial Sarup versus Kaushalya Kapur and others 2003(2) RCR (Civil) 374?

(ii) Whether the suit for specific performance can be decreed without proving the agreement to sell/sale deed; and without proving the readiness and willingness of the plaintiff?

(iii) Whether the judgement and decree passed by the

learned Appellate Court is illegal and perverse, as there is no finding with regard to agreement to sell/sale deed, readiness and willingness of the plaintiff?

(iv) Whether the suit can be decreed without giving finding on the main issues framed by the lower court, as there is no finding on issues No.1 and 2 by learned Appellate Court?"

[13]. Perusal of the record would show that PW-1 Vikram Goel, Deed Writer in his examination-in-chief admitted that Ex.P-1 (objected to as mode of proof) was prepared by him on the asking of Ved Parkash, Raj Kumar, Manoj, Pala Ram, Chain Singh, Ramesh Kumar, Smt. Rajpati and Smt. Ghoghari. After typing the same, the contents were read over to all of them and they all affixed their thumb impressions. Mahender and Shamsher had witnessed the same. Rajpal put his thumb impression in the capacity of purchaser. The witness has admitted in his cross-examination that there was no exchange of money in front of him. Names of Mahender and Shamsher were not written in his presence. The witness has admitted that on the thumb impressions, there was no mention about LTI or RTI. Nobody was present at the time of writing of the document. The witness did not know the parties personally.

[14]. The plaintiff while appearing as PW-2, tendered his affidavit as Ex.PW-2/A. In his examination-in-chief, he stated that he never got written agreement to sell. He got the stamp papers purchased on 09.10.2001 with the concurrence of the

defendants. Sale consideration was paid at the house of the defendants. No outsider was present. He further stated that he has constructed three shops and has also obtained electric connection in the suit property. The witness admitted that Mahender Nambardar was present and his signatures were present on the agreement to sell, but no word as Nambardar was mentioned. Name of Shamsheer as witness was also mentioned without the name of his father.

[15]. Perusal of the affidavit tendered by the plaintiff in his examination-in-chief would show that the plaintiff never pleaded his presence before the Sub-Registrar, nor any statement was made in respect of his readiness and willingness to perform his part of obligation. Plaintiff served notice on defendants only on 20.09.2004, but copy of the same has not been brought on record, nor the same has been proved in terms of its execution. Factum of issuance of notice dated 20.09.2004 has been pleaded in para no.8 of the plaint, but still the same has not been produced in evidence. Evidently, the alleged notice dated 20.09.2004 was issued prior to filing of the earlier suit for mandatory injunction i.e. Civil Suit No.547 dated 30.09.2004. Cause of action for filing the suit in the absence of proof of notice dated 20.09.2004 would start from the first date of accrual of cause of action in terms of Article 58 of the Limitation

Act. Once the limitation starts running from the date of first accrual of cause of action, it will not stop thereafter. Filing of suit on 10.03.2009 was patently time barred, even if suit for mandatory injunction was allowed to be withdrawn with a liberty to file a fresh suit on the same cause of action vide order dated 13.02.2009. Pleading of earlier Civil Suit No.547 dated 30.09.2004 have not been brought on record.

[16]. Plaintiff has to prove his readiness and willingness throughout from the date of entering into agreement to sell. In the absence of proof of execution of notice dated 20.09.2004 and non-mentioning of his presence before the Sub-Registrar on 09.10.2001 would show that the plaintiff could not prove his readiness and willingness to perform his part of obligation on the date of execution and registration of the sale deed. On further perusal of the record would show that the agreement to sell dated 09.10.2001 has been exhibited as Ex.P-1. Affidavit tendered in examination-in-chief by the plaintiff was exhibited as Ex.PW-2/A, followed by his cross-examination as PW-2. Thereafter plaintiff got his evidence closed through statement of his counsel. It is a settled principle of law that the plaintiff has to stand on his own legs.

[17]. The lower Appellate Court has set aside the judgment and decree of the trial Court only on the premise that filing of

suit under Section 77 of the Registration Act by the plaintiff was not attracted as the registration was never refused by the Sub-Registrar. Secondly the suit for specific performance in view of withdrawal of earlier suit on 13.02.2009 with permission to file fresh suit was not barred in view of Section 14 of the Limitation Act.

[18]. Once the plaintiff was not present before the Sub-Registrar on 09.10.2001, along with an affidavit of his presence and could not prove his affidavit of presence on record, submission of the sale deed for registration and refusal thereof are of no consequence. Had the plaintiff been present before the Sub-Registrar on 09.10.2001, he would have availed his legal remedies under Section 77 of the Registration Act. Absence of plaintiff and alternative remedy available to him under Section 77 of the Registration Act has adverse effect on his *bona fide* in terms of readiness and willingness. It is for this simple reason it has to be held that the plaintiff was not ready and willing to perform his part of obligation on 09.10.2001 as he was not found present before the Sub-Registrar, nor he got his presence marked by way of affidavit. In the absence of any evidence to this effect, plaintiff is not proved to be ready and willing to perform his obligation arising out of the agreement to sell. Secondly non-production of notice dated 20.09.2004 would

not bring accrual of cause of action in favour of the plaintiff from that day onwards in view of accrual of first cause of action. In terms of Section 58 of the Limitation Act, limitation would start from the accrual of first cause of action to the plaintiff for the first time i.e. on the date of execution of agreement to sell on 09.10.2001. Filing of suit on 10.03.2009 was patently time barred.

[19]. Since the pleadings of earlier Civil Suit No.547 dated 30.09.2004 have not been brought on record, therefore, it cannot be observed that the said suit was also filed with reference to issuance of notice dated 20.09.2004 by the plaintiff. In the absence of proof of execution of notice dated 20.09.2004, the suit for specific performance filed on 10.03.2009 would be hit by Order 23 Rule 2 CPC as the suit in question instituted on permission granted under Order 23 Rule 1 CPC shall be hit by law of limitation in the same manner as if the first suit had not been instituted. If all these aforesaid attending facts and circumstances of the case are read in conjunction with accrual of first cause of action in the absence of notice dated 20.09.2004, the limitation would start running from 09.10.2001 and it will not stop by any subsequent act.

[20]. In view of above, substantial questions of law No.(i) as framed has to be answered against the plaintiff. Since the

plaintiff has not led any evidence in respect of his presence before the Sub-Registrar, nor the notice dated 20.09.2004 has been proved on record, therefore, it has to be held that plaintiff was not ready and willing to perform his part of obligation. In the same manner question No.(ii) has to be answered in negative as the plaintiff could not prove due execution of agreement to sell with reference to statements of attesting witnesses. Even the statement of PW-1 Deed Writer is discrepant viz-a-viz. presence of attesting witnesses and their signatures on the agreement to sell. In this way question No.(ii) is answered against the plaintiff.

[21]. Perusal of judgment and decree of the lower Appellate Court would show that the decision of the trial Court has been reversed wholly on account of misreading of evidence. Once the plaintiff was not proved to be present before the Sub-Registrar, availing of alternative remedy under Section 77 of the Registration Act or refusal thereof were of no consequence and suit for specific performance was not maintainable as the plaintiff did not avail any remedy under Section 77 of the Registration Act. Perusal of record also shows that the lower Appellate Court has not decided the appeal issue-wise, though the trial Court took up the issues No.1 to 3 together and on the basis of decision rendered therein issues No.4 and 5 were also

decided against the plaintiff. The lower Appellate Court has not adverted issue-wise findings and has reversed the decree of the trial Court primarily on the ground of non-availability of remedy under Section 77 of the Registration Act to the plaintiff and the suit being within limitation on the strength of Section 14 of the Limitation Act. In my considered opinion on all counts the suit of the plaintiff has to fail. Consequently, substantial question of law No.(iii) is answered against the plaintiff.

[22]. Even if Section 14 of the Limitation Act is appreciated in the light of arguments raised by learned counsel for the respondents on the strength of precedents cited by him, the case of the plaintiff cannot be improved on the basis of first accrual of cause of action i.e. on 09.10.2001 as the plaintiff did not prove execution of notice dated 20.09.2004, nor the pleadings of the earlier Civil Suit No.547 dated 30.09.2004 have been proved on record viz-a-viz. accrual of cause of action to file the suit. Passing of order dated 13.02.2009 by which the aforesaid earlier suit was withdrawn has been pleaded in the plaint only without exhibiting the order on record. Only a bald effort has been made by placing on record the copy of order without proving its execution. It is a settled principle of law that mere production of document would not dispense with proof of its execution. It could not be brought on record whether the

notice was also part of previous suit for mandatory injunction. In the absence of proving pleadings of earlier suit, no such indulgence even at the threshold of Section 14 of the Limitation Act can be given. The limitation once starts running on the basis of accrual of first cause of action, it will not stop running by the subsequent acts in view of Article 58 of the Limitation act and the precedents cited hereinabove. Limitation of three years starts when the right to sue accrues. Notice dated 20.09.2004 has not been proved on record, therefore, the limitation will start running from the date when right to sue first accrues. Successive violation of right will not give rise to fresh cause of action and the suit will be beyond limitation. The word 'first' has been designedly used between 'sue' and 'accrued' in Article 58 of 1963 Act which is a clear departure from Article 120 of 1908 Act of the Limitation Act.

[23]. For the reasons recorded hereinabove, I find that the judgment and decree dated 07.01.2013 passed by the lower Appellate Court is not legally sustainable and is thus set aside. The present appeal is allowed. Consequently, the judgment and decree dated 20.09.2011 passed by the trial Court is hereby restored.

October 15, 2019

(RAJ MOHAN SINGH)
JUDGE

Atik

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