IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.4455 of 2016 (O&M)
Date of decision: 18.03.2019

Amarjit Singh ...... **Appellant**

Versus

Anil Kumar etc. ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Satinder Khanna, Advocate for the appellant.

Mr. Gaurav Chopra, Advocate for respondent No.5.

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<u>ANIL KSHETARPAL, J. (ORAL)</u>

Plaintiff-appellant is in the regular second appeal against the judgments passed by the Courts below. In fact, First Appellate Court has granted a decree for permanent injunction, however, dismissed the suit qua specific performance of the agreement to sell.

Undisputedly facts are that there was agreement to sell between the plaintiff and predecessor-in-interest of defendants dated 21.04.1995 for a total sale consideration of Rs.1,50,000/-, which was paid in total and the possession was delivered. As per agreement to sell, no target date for execution and registration of the sale deed was fixed.

As noted above, the defendants who are heirs of Sarwan Kumar do not dispute the correctness of agreement to sell and receipt of money. However, learned trial Court dismissed the suit on the ground that it is barred by time whereas First Appellate Court has held that there was no stipulation in the agreement to sell that the contract can be specifically performed.

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.

In the considered view of this Court, the following substantial questions of law arise for consideration:-

1. Whether an agreement to sell or contract of sale with respect to immovable property can be specifically performed even in absence of a specific stipulation to that effect?
2. Whether in absence of any date fixed for execution and registration of the sale deed, the suit filed by the plaintiff can be held to be time barred unless defendants prove that they had refused to perform their part of the contract which made the period of limitation began to run?

As regards first question, learned counsel has relied upon a judgment passed by the Hon'ble Supreme Court in the case of *Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha, 2010(10) SCC 512*. Apart from the judgment, Section 10 of the Specific Relief Act, 1963 is not dependent on contract between the parties providing for a stipulation that in case one of the party does not perform or honour the agreement to sell, the agreement can be specifically performed through Court of law. Section 10 of the Specific Relief Act, 1963 provide that specific performance of the contract can be ordered. Section 14 deals with the contract which are not specifically enforceable. In other words, unless the case falls in Section 14, the contracts are enforceable. In such circumstances, answer to first question is in favour of the appellant.

As regards second question, it is apparent that Article 54 of the schedule to the Limitation Act, 1963 is clear and specific. It is in two parts. First part deals with the agreements in which the target date (the date fixed) for execution and registration of the sale deed has been stipulated whereas second part deals with the agreements which does not provide the date fixed for performance of the contract. In such circumstances, the limitation begins to run from the date the plaintiff has a notice of refusal by the defendant. In the present case, there is no finding of the Court that performance has been refused. Accordingly, question No.2 is also answered in favour of the appellant.

Learned counsel appearing for the respondent, however, submits that in fact, the alleged agreement to sell is a sale deed and therefore, no suit for specific performance of the agreement to sell is maintainable. There is some substance in the argument of learned counsel that the contract dated 21.04.1995 is in fact a sale deed, however, such sale is not complete unless it is registered. In such a situation, the suit filed by the plaintiff for direction to the defendants to get the same registered and enforced is maintainable. Even in equity, the plaintiff has continued in possession of the property uninterruptedly during all these years. He has admittedly paid the entire sale consideration. In such circumstances, the equity is also in favour of the plaintiff-appellant.

In view thereof, the judgments passed by the Courts below are set aside.

Regular Second Appeal is allowed.

18.03.2019 **(ANIL KSHETARPAL)**
Dinesh Bansal **JUDGE**

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