

In the High Court of Punjab and Haryana at Chandigarh

RSA- 6189 of 2016(O&M)

Date of Decision:29.3.2019

Inderjit Kaur

---Appellant

vs.

Amritsar Improvement Trust Association, Amritsar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Isha Goyal, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 30.4.2016 passed by the first Appellate Court whereby appeal preferred by the respondent against the judgment and decree dated 23.7.2014 partly decreeing suit of the appellant was allowed, the judgment and decree of the trial court were set aside and suit filed by the appellant-plaintiff was dismissed.

One of the issues raised by the respondent is that suit of the plaintiff is hopelessly time barred and issue No. 4 was framed by the trial court in this regard. The trial court dismissed the suit for grant of permanent injunction but allowed her claim for mandatory injunction with a direction to the respondent to issue necessary allotment letter alongwith details of balance payment in favour of the plaintiff-appellant.

The Appellate Court determined the question of limitation

against the appellant/plaintiff. A relevant extract from para 18 of the judgment, reads as follows:-

“Further the auction had taken place on 29.08.2001 but for so many years the plaintiff had not approached the defendant trust. It is relevant that the cause of action had arose to the plaintiff on 29.08.2001 itself when in auction she was held as highest bidder but plaintiff had failed to approach the defendant trust for issuance of allotment letter since 29.08.2001 and it is only on 26.08.2010 that she had issued the registered notice to defendant for issuance of allotment letter but as per Limitation Act the limitation to seek Mandatory Injunction and permanent injunction is within a period of 03 years from the cause of action but the present suit has been filed only on 13.12.2010 which is beyond the period of 03 years. No plausible explanation has been given by the plaintiff as to why she failed to approach the defendant before 26.08.2010. In plaint, plaintiff had alleged that there was litigation and disputed plot was lying in lower area but no evidence pertaining to same has been brought on record. Therefore, plaintiff was sleeping on her right for long time and present suit has been preferred beyond the prescribed period of limitation. Further issuance of legal notice on 26.8.2010 do not extend period of limitation. Hence, the suit of the plaintiff is barred by limitation and therefore, consequently judgment and decree of the trial Court dated 23.7.2014 whereby the trial Court had partly decreed the suit of mandatory injunction is set aside and suit of the plaintiff is consequently dismissed. Present appeal is allowed. Decree sheet be prepared. Record of the trial Court be returned back and appeal file be consigned to the record room.”

This court on 18.9.2018 passed order with regard to the question of limitation. A relevant extract therefrom reads as follows:-

“Trial Court partly decreed the suit qua relief of mandatory

injunction thereby directing the defendant to issue allotment letter with details of balance payments. Relief qua permanent injunction was declined. The lower Appellate Court has reversed the judgment and dismissed the suit in toto on the ground that the property stood auctioned on 29.08.2001 and the filing of suit on 26.08.2010 would be barred by limitation. Issuance of legal notice cannot extend period of limitation.

On the next date of hearing, learned counsel for the appellant would be obligated to satisfy as to how suit was within limitation in respect of a cause of action which accrued to the plaintiff in the year 2001.

Adjourned to 14.11.2018.”

Subsequent thereto, counsel for the appellant availed several opportunities for making submissions nor answered the query to satisfy the court as to how suit was within limitation in respect of cause of action which accrued to the plaintiff in the year 2001. On 22.1.2019, appellant was directed to place on record deposition of Harjit Kaur DW1 on or before the next date of hearing with a stipulation that she shall not be entitle to any further opportunity for the purpose. The appellant filed CM No.2711-C of 2019 for placing on record testimony of Harjit Kaur DW1. Subsequent thereto, on 28.2.2019, order passed by this Court, reads as follows:-

“The present appeal directs challenge against the judgment and decree passed by the Appellate Court whereby claim of the appellant for allotment of plot in question has been rejected primarily on the ground that a communication by way of registered letter bearing No. 7691 dated 9.10.2001 was issued by the Trust calling upon the appellant to pay 10% of the sale money within 30 days from the date of issuance of allotment letter but the appellant failed to respond. It has also been held that since 2001, there is no effort by the appellant either for

allotment of the plot or payment of money and the suit has been filed at a belated stage in the year 2010.

Counsel for the appellant prays for a short accommodation to get hold of all the documents produced by the parties, for necessary reference at the time of hearing.

Last opportunity is provided to make submissions. Counsel for the appellant shall not be entitle to any adjournment on the pretext that she is not in possession of the document(s).

Adjourned to 29.3.2019.”

Counsel for the appellant has expressed her inability to get hold of the documents in compliance with order dated 28.2.2019 on the pretext that husband of the appellant is not well, therefore, she was not able to supply the documents. The appellant not only failed to comply with order of this Court passed on 28.2.2019 without any satisfactory and tangible explanation but also failed to advance any arguments to satisfy the court in response to a query raised vide order dated 18.9.2018 on the question of limitation. That being so, the appellant has failed to successfully assail findings of the appellate court on the question of limitation. No sooner the suit is hit by law of limitation, this court need not to examine the case on merits.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

29.3.2019
paramjit

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