

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

RSA-6703-2016(O&M)

Date of decision:-29.3.2019

Satya Dev

...Appellant

Versus

Smt.Prakash Wati (since deceased) through LRs.

...Respondents

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

Present: Mr.Kartar Singh, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

CM-17498-C-2016

This is an application under Order 41 Rule 27 CPC for
producing additional evidence.

Heard.

The order proposed to be placed on file shall be helpful to
effectively adjudicate the controversy between the parties. Therefore, the
application is allowed. The order Annexure A-1 is taken on record.

RSA-6703-2016(O&M)

Briefly stated, facts of the case are that plaintiff Satya Dev
had brought a suit for specific performance of agreement with

consequential relief of permanent injunction against against defendants Smt.Parkash Wati – widow, S/Sh. Chander Bhatia, Umesh Bhatia and Pankaj Bhatia – sons as well as Smt.Annu Handa and Sh.Sanjay Handa on the averments that Sh.Radhey Shyam Bhatia their predecessor-in-interest being owner in possession of area measuring 85 Sq.yards on the basis of registered sale deed dated 30.6.1990 bearing document No.3829 duly registered in the office of Sub-Registrar, Faridabad had entered into an agreement to sell that property with the plaintiff for a total sale consideration of Rs.7,20,000/- on 1.10.2007 handing over possession of said property to the plaintiff; that the plaintiff had paid the entire sale consideration to Sh.Radhey Shyam Bhatia; that time was not the essence of agreement and it was agreed that as and when the plaintiff required, Sh.Radhey Shyam Bhatia would execute the sale deed in his favour; that the plaintiff had raised construction as per his requirement over the property and started running a workshop under the name and style of M/s Satya Dev Electric Work in that building; that Sh.Radhey Shyuam Bhatia had died on 10.10.2009 leaving behind the defendants No.1 to 5 as his only legal representatives; that the plaintiff requested the legal representatives to execute the sale deed but they rather started interfering in peaceful possession of the plaintiff and tried to sell the property to some person, to which they had no right, giving rise to a cause of action to the plaintiff to bring the suit.

Notice of the suit was given to the defendants, who put in appearance but failed to file any written statement despite availing of several opportunities, as such their defence was struck off vide order dated

18.2.2014.

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

1. Whether the plaintiff is entitled for a decree of specific performance of contract with the consequential relief of permanent injunction, as alleged? OPP.
2. Relief.

In order to prove his case, the plaintiff Satya Dev got his statement recorded as PW1 besides tendering some documents.

After hearing learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 25.11.2014.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Faridabad which was assigned to Additional District Judge, Faridabad, who vide judgment and decree dated 21.11.2016 dismissed the same and upheld the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, resultantly, the impugned judgments and decrees passed by the Courts below be set aside.

Notice of the appeal was issued to the defendants but they did not appear to offer a contest.

I have heard learned counsel for the appellant besides going through the records and I find that the judgments and decrees passed by the Courts below are not sustainable.

The Courts below have not properly appreciated the fact that vide the agreement to sell executed by the deceased Sh.Radhey Shyam Bhatia in favour of plaintiff on 1.10.2007, the entire consideration amount had been paid and possession delivered to the vendee. No particular date for execution of the sale deed had been fixed, rather it had been mentioned that the vendor would execute the sale deed in favour of the vendee or his nominee as so desired by the vendee and in case the vendor did not do so, the vendee shall have a right to get the sale deed executed through Court. Of course in terms of Article 54 of Schedule 1 of the Limitation Act, which deals with the limitation for filing a suit for specific performance of contract, the limitation period provided is of three years but the crucial thing is as to when, the limitation is to begin. It dilates that the limitation of three years is from the date fixed for performance or if no such date is fixed, when the plaintiff had notice that performance is refused. The second part is applicable in the present case and not the first since no date had been fixed for execution and registration of the sale deed and it had been mentioned that the vendee could get the sale deed executed as and when he desired, that means the limitation would start running when the vendee had noticed that specific performance of agreement had been refused. The vendor Radhey Shayam Bhatia in this case had died. According to the plaintiff, as pleaded in the plaint, after death of Sh.Radhey Shyam Bhatia, the plaintiff requested the defendants, who are

legal representatives of Sh.Radhey Shyam Bhatia to execute the sale deed but they started interfering in peaceful possession of the plaintiff and he had to file a suit for permanent injunction but he had withdrawn that suit and he was granted liberty to file a suit for specific performance. A copy of that order has been placed on file, which goes to show that the civil suit had been filed on 22.3.2011 and it was disposed of on 9.1.2013 when counsel for the defendant pleaded that he had no objection, if application filed on behalf of the plaintiff seeking permission to withdraw the suit with liberty to file a fresh one was allowed. The trial Court had accordingly allowed the request of plaintiff to withdraw the suit granting him permission to file fresh one on the same cause of action. If it is taken that the plaintiff had filed the suit on refusal of defendants, who are legal representatives of the deceased to admit his claim and when they allegedly threatened to interfere in his possession and to alienate the suit property, thus calculating the period of three years from when the suit for permanent injunction was filed on 22.3.2011, the suit for specific performance having been filed on 6.7.2013 is within three years thereof, as such within limitation and it could not have been dismissed being time barred.

In support of his contention that suit had been filed within period of limitation learned counsel for the appellant has referred to authority **Madina Begum & Anr. Versus Shiv Murti Prasad Pandey & Ors., 2016(3) RCR(Civil)952**, wherein the Apex Court dealing with specific performance of agreement to sell land wherein period of six months was specify for execution of sale deed but it was not executed

within that period and suit for specific performance was filed after seven years, it was observed that suit was not barred by limitation.

In view of the detailed discussion above, I find that the suit is within limitation and is not time barred.

The second ground for which the suit had been dismissed by the trial Court was that plaintiff had not produced on record any document, which could establish the ownership of deceased Sh.Radhey Shyam Bhatia qua the suit property. However, I do not find any merit in these observations. There is nothing on file to show that the property in question belongs to some other person. No third person approached the Court stating that Sh.Radhey Shyam Bhatia had entered into an agreement to sell with the plaintiff without having any title in the suit property or any third person claiming right or interest in the property in question. In any case, the third party rights are not going to be affected as a result of the *lis* between the parties and only the parties to the suit would be bound by the decision rendered by the Court regarding the controversy between them.

The plaintiff has been non-suited by the trial Court for another reason, that plaintiff had failed to examine any attesting witness of agreement to sell and receipt Ex.P2. The agreement to sell is not a document required by law to be attested. Therefore, Section 68 of the Evidence Act, which provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of Court and capable of giving evidence, shall not be applicable.

Learned counsel for the appellant has referred to Division Bench judgment by Andhra Pradesh High Court **Jaksani Lakshman Rao & Ors. Versus Ellandula Ravinder, 2007(5) RCR(Civil)574** wherein dealing with such an eventuality, it was observed that in case of agreement to sell, it is not incumbent upon the parties to examine the attesting witnesses.

It has to be taken note of that the defendants had not contested the claim of the plaintiff. Though they had put in appearance but they failed to file any written statement and their defence was struck off. They had not led any evidence in rebuttal and evidence adduced by the plaintiff had gone unrebutted. The plaintiff had got his own statement recorded as PW1 and in his affidavit Ex.PW1/A reiterated his case as contained in the plaint. Therefore, in absence of any rebuttal evidence or suspicious circumstances, the deposition of the plaintiff should have been accepted and it was wrongly discarded by the trial Court. The lower Appellate Court also did not consider all these aspects in a proper manner examining those on touchstone of the settled law on the subject and rather in a mechanical manner and seem to have put seal of approval on the findings recorded by the trial Court.

The plaintiff had been successful in making out a case for specific performance of agreement dated 1.10.2007 directing the defendants to execute the sale deed in his favour and from restraining the defendants from transferring the suit property to anybody else except the plaintiff. The suit was wrongly dismissed by the trial Court and such verdict was affirmed by the learned Additional District Judge, Faridabad.

That wrong is undone by acceptance of the present appeal.

Thus the appeal stands allowed; the judgments and decrees passed by the Courts below are set aside. The suit of the plaintiff succeeds and a decree for specific performance of agreement to sell dated 1.10.2007 is passed in favour of the plaintiff against the defendants directing the defendants to execute the sale deed in favour of the plaintiff qua the property, which is subject matter of the agreement. Since the total consideration amount is found to have been already paid and possession of the property is lying with the plaintiff, the defendants are further restrained from alienating the suit property to anybody else except the plaintiff. Thus, the suit is decreed with costs throughout.

It is clarified that in case the defendants failed to come forward to execute the sale deed in favour of the plaintiff within a period of two months from today, then the plaintiff shall have a right to get the sale deed executed in his favour through the Court of law by moving an execution application in the trial Court.

29.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No