

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

RSA No. 3094 of 2014 (O&M)
Date of decision: October 14, 2019

Amrik Singh

...Appellant

Versus

Darshan Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Tacoria, Advocate,
for the appellant.

Mr. Surjit Singh Swaich, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The instant Regular Second Appeal has been filed seeking to challenge the judgment and decree of both the Civil Judge (Sr. Division), Rajpura, whereby the suit for possession by way of specific performance filed by the respondent No.1/plaintiff has been allowed and the appeal filed before the first Appellate Court stands dismissed.

2. In brief, the facts are that the plaintiff/respondent No.1—Darshan Singh (henceforth called as '**the plaintiff**') filed a suit for specific performance alleging that he had entered into an agreement to sell dated 20.12.1996 with respondent No.2—Kanwar Chand. On the basis of the said agreement, 28 bighas of land situated in village Manjauli, Tehsil Rajpura, District Patiala was to be sold to the plaintiff by Kanwar Chand. The price

of the land was fixed at ₹2.08 lakh for 4 bighas and total value of the land was fixed at ₹14,56,000/-. out of which earnest amount of ₹3.5 lakh was given at the time of execution of the agreement to sell. The sale deed was to be executed on 2.1.1999, but was not executed on the fixed date i.e. 2.1.1999. However, time was extended for execution of the sale deed to 1.5.2001 and an additional amount of ₹70,000/- was handed over to Kanwar Chand when the date was extended. On 1.5.2001, Kanwar Chand showed his inability to get the sale executed and consequently the date was again extended to 28.12.2002. Another amount of ₹50,000/- was given to Kanwar Chand on the said date. On 16.10.2002, the plaintiff came to know that Kanwar Chand had entered into another agreement dated 13.3.1997 with the defendants No. 2 and 3, who had filed a suit for specific performance of their agreement against Kanwar Chand and consequent to the said agreement, sale deed dated 13.5.1997 for 9 bighas of land had been executed. Consequently, the plaintiff filed a suit for specific performance of the agreement dated 20.12.1996 and also sought permanent injunction restraining the defendant/appellant from alienating the suit land to any other person except the plaintiff.

3. At the outset, it is noticed that during the course of the proceedings before the trial court, defendants No.2 and 3 compromised the matter with defendant No.1 and consequently the suit filed by defendants No.2 and 3 was withdrawn.

4. The suit was contested by Kanwar Chand, the vendor, who supported the case of the plaintiff, while the subsequent purchaser, namely,

the appellant herein alleged that he is a bonafide purchaser of the suit property and the agreement as set up by the plaintiff is, in fact, a forged and fabricated document. On that basis, it was also contended that though he had taken up the plea of limitation but the issue was not dealt with in its right perspective. A replication was filed by the plaintiff denying the averments made in the written statement. Consequent to the pleadings, issues were framed and in support of his claim, the plaintiff examined PW1 Kashmir Singh, who is one of the attesting witnesses, to the agreement to sell Ex. P.1. PW2 Sucha Singh was also one of the attesting witnesses to the agreement to sell Ex. P1 and the plaintiff himself stepped into the witness box as PW3 and deposed by way of his duly sworn affidavit Ex. PW3/A, verbatim to the plaint. The plaintiff tendered documents Ex. P.1 to Ex. P6 and closed his evidence, whereas, defendant No.1 vendor stepped into the witness box and gave his affidavit Ex. DW1/A admitting the claim of the plaintiff. Defendant No.4/appellant herein stepped into the witness box as DW.2. Defendant No. 3 Gurbax Singh, one of the attesting witnesses to registered sale deed in favour of defendant No.4/appellant deposed that defendant No.4 was a bonafide purchaser and there was no agreement to sell in the year 1996.

5. The trial court, on appreciation of the evidence, came to hold that the sale deed dated 13.5.1997 is liable to be set aside and the plaintiff would be entitled for getting the sale deed registered in his favour on deposit of the balance sale consideration. The appeal too was dismissed.

Aggrieved against the dismissal of the appeal, affirming the judgment and

decree of the trial Court setting aside the subsequent sale deed, the instant appeal has been filed.

6. Learned counsel appearing on behalf of the appellant contends that he is a bonafide purchaser of the suit property. It is argued with great vehemence that the agreement to sell dated 20.12.1996 is a forged and fabricated document and the suit has been instituted by Darshan Singh—plaintiff against Kanwar Chand, in collusion with each other. It is argued that the suit filed by the plaintiff was beyond the period of limitation as the sale deed in his favour was executed in the year 1999 and the suit had to be filed within a period of three year that is by 2002, whereas the suit had been filed on 3.4.2003. Mr. Tacoria, learned counsel appearing on behalf of the appellant/defendant No. 4, subsequent purchaser, in support of his contention relies upon the judgment of the Hon'ble Supreme Court in the case of **Prem Singh and others V. Birbal and others 2006 (3) RCR (Civil) 381**.

7. Per contra, learned counsel appearing on behalf of the plaintiff argues that the document Ex. P.1, which is an agreement to sell has been duly proved as both the attesting witnesses have stepped into the witness box and have confirmed due execution of the said agreement, while further submitting that both the courts below have discarded the plea set up that the agreement is false and fabricated document since no evidence had been adduced on the record to that effect. It is further argued that the judgment as relied upon in the case of **Prem Singh (Supra)** is not applicable to the facts of the present case and is distinguishable. Furthermore, he submits

that the plea of limitation has to be raised at the very outset and the same cannot be taken for the first time in an appeal. The question of limitation is a mixed question of law and facts and evidence has to be led in this regard. The Hon'ble Supreme Court has in **Ramji Singh Patel Versus Gyan Chandra Jaiswal 2018 (5) R.C.R. (Civil) 737**, held that the High Court ought not to entertain a plea that the suit itself was barred by period of limitation in the second appeal.

8. I have heard learned counsel for both the parties and have gone through the pleadings, impugned judgments passed by both the courts below as well as the case law cited.

9. The main issue as raised by learned counsel for the appellant is that the suit was barred by limitation since the sale deed had been executed in the year 1999 between Kanwar Chand and the appellant Amrik Singh and as per the law of limitation as applicable in the instant case, the sale deed ought to have been challenged within a specified period of three years from the date of execution. A reading of both the impugned judgments would reflect that the appellant herein, being the subsequent vendee, had not taken up the plea of limitation and neither were any issues framed regarding the same. It is only during the final arguments of the case that a plea was raised that the suit is barred by limitation. Admittedly, the suit that had been filed by the plaintiff was a suit for possession by way of specific performance of the agreement to sell dated 20.12.1996 against the defendant Kanwar Chand, Rajinder Kaur, Sukhwinder Singh and Amrik Singh. Kanwar Chand, who had executed the sale agreement, contested the suit by admitting the

facts regarding entering into an agreement. Defendant No.4—Amrik Singh contested the suit on the ground that he is subsequent vendee and now having failed to prove that the sale agreement was a forged and fabricated document, has set up a plea of limitation that the sale deed in his favour was executed in the year 1999 whereas the suit had been filed in the year 2003. There is no direct nexus between the respondent and the subsequent vendee. The question as to whether in a suit for specific performance of an agreement to sell there was a necessity for seeking a declaration and cancellation of the sale deed, the Delhi High Court has held in the case of **Jafar Imam Versus Devender Chauhan and others 2014 (3) ILR 1917** that there would be no necessity to claim a declaratory relief qua subsequent transferee, while further holding that the relief of specific performance of agreement to sell is a substantive relief and the declaration of invalidity of the sale deed is only an ancillary relief and there was no necessity for the plaintiff to ask for cancellation of the sale deed. The Delhi High Court held as under:-

“20. The legal position thus emerges is that:

(i) If in a suit the Plaintiff seeks the substantive relief of specific performance of contract, the declaration of the invalidity of the sale deed in favour of the subsequent transferees would be an ancillary relief.

(ii) It is not necessary at all for the Plaintiff to ask for any such declaration for cancellation of Sale Deed.

(iii) It would be enough for the Plaintiff to have joined subsequent transferees as co-Defendants so as to contend that the subsequent sale deeds were not binding on him.

(iv) The proper form of decree is to direct specific performance

of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him, to the prior transferee.

(v) Subsequent transferee does not join in any special covenants made between the prior transferee and his vendor, all that he does is to pass on his title to the prior transferee.

(vi) If the court reaches the conclusion that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him would not be void but only voidable at the option of the earlier "contractor".

(vii) If there are any special covenants and conditions agreed upon in the contract for sale between the original purchaser and the vendor those have to be incorporated in the sale deed although it is only the vendor who will enter into them and the subsequent purchaser will not join in those special covenants.

(viii) The whole idea and the purpose underlying a decree for specific performance is that if a decree for, such a relief is granted the person who has agreed to purchase the property should be put in the same position which would have obtained in case the contracting parties, i.e., vendor and the purchaser had, pursuant to the agreement, executed a deed of sale and completed it in every way.

(ix) The relief of declaration prayed for against the subsequent transferees is not required to be valued in terms of money.

(x) There would be no necessity of claiming any declaratory relief as against the subsequent transferee. Consequently, there will be no question of payment of court-fees in respect of said relief. The said relief claimed would be superficial and unnecessary in the facts and circumstances of the case."

10. Further, in the judgment rendered in as **Pawan Kumar Garg**

Versus Harbans Singh and others 2015 (7) R.C.R. (647), this Court held

as under:-

“Even a plea that the plaintiff has sought for setting aside the sale beyond a period of limitation has no meaning, since such a prayer is an unnecessary surplusage. Section 19 of the Specific Relief Act enjoins that every plaintiff suing for specific performance shall implead the subsequent purchaser in order that he gets a binding declaration. All that is necessary for the plaintiff is to secure a finding that the subsequent purchase was not bona fide and without notice of the earlier agreement of sale. The Court that grants specific performance is bound to examine whether the subsequent purchaser has established the bona fides of his purchase and the fact that he had no knowledge of the agreement of sale. The burden of proof is on the purchaser attempting to show the document to stand even against the claim for specific performance. In such a suit the truth of sale is not a point in issue; on the other hand, it is the bona fides of purchase and the knowledge or otherwise of the subsequent purchaser about the anterior agreement of sale. The Court that grants a decree for specific performance invalidates a subsequent purchase only on findings regarding the purchaser's bona fides and knowledge and not merely on passing of consideration or whether any vitiating circumstances existed or not. If the plaintiff has, therefore, sought a relief that the sales in favour of defendants are not valid, he was doing so against the defendants who have willingly brought themselves on record even before the filing of the amendment application.”

11. As per the ratio of the aforesaid judgments, it is not necessary for a plaintiff to ask for any such declaration of cancellation of a sale deed in a suit that has been filed for specific performance and, therefore, the question of limitation itself could not have been raised by the subsequent

vendee. If at all, the plea of limitation would be available to a vendor that the suit has been filed beyond the period of limitation. In the case in hand, the vendor, namely Kanwar Chand has supported the case of the plaintiff stating that Ex. P.1 was a validly executed document. The plaintiff was to derive a title from the vendor and not from the subsequent vendee.

12. The appellant herein has not been able to prove or establish that a fraud had been committed by the plaintiff/respondent No.1 with Kanwar Chand in getting the agreement to sell executed. Needless to say that the agreement to sell stands proved on the record by the attesting witnesses as well as by the vendor Kanwar Chand himself. The appellant being the subsequent vendee cannot be held to be a bonafide purchaser, given the fact of close relationship between him and Kanwar Chand. It is an undisputed fact that Kanwar Chand is the father of the appellant—Amrik Singh, born from his first wife. Therefore, both the courts below have rightly held that the appellant herein was not a bonafide purchaser, as in his evidence he has admitted that he got the sale deed registered, while having knowledge about the pendency of a case between the plaintiff and his father. The judgment, as relied upon by the learned counsel for the appellant would not be applicable to the facts of the instant case. There is no dispute with the legal proposition as laid down that the period of limitation for challenging a sale deed is three years but in the instant case, the plaintiff/respondent No.1 herein filed a suit for specific performance of the agreement to sell dated 20.12.1996 seeking registration of the sale deed in his favour. Once, an agreement to sell has been duly proved on the record, as has been done in the instant case, both

the courts below have rightly decreed the suit of the plaintiff holding the sale deed in favour of the appellant as null and void, being not a bonafide purchaser. No question of law, much less substantial question of law arises for consideration in the present appeal.

13. Consequently, the Regular Second Appeal stand dismissed accordingly.

October 14, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No