

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

RSA-4021-2014(O&M)

Date of decision:-27.3.2019

Kapil Dev and another

...Appellants

Versus

Raj Pal and others

...Respondents

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

Present: Ms.Aashna Gill, Advocate for
Mr.Aman Pal, Advocate
for the appellants.

Mr.Parminder Singh, Advocate
for respondent No.1.

Mr.Harkesh Kumar, AAG, Haryana
for respondents No.2 to 4.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Kapil Dev and Anil Kumar both real brothers, had filed a suit for mandatory injunction, permanent injunction and possession against the defendants Rajpal, State of Haryana through Collector, Karnal, Registrar, Registration Office, Karnal and Sub-Registrar, Assandh, District Karnal on the averments that the plaintiffs had entered into an agreement to purchase the suit land measuring 8 kanals situated at village Bahari, Tehsil Assandh, District Karnal with defendant Rajpal

vide registered agreement to sell dated 27.6.2006 for a sum of Rs.5,40,000/-, paying a sum of Rs.2,35,000/- as earnest money on 27.6.2006; that the final date for execution and registration of sale deed was fixed as 6.11.2006; that the possession of land was handed over to the plaintiffs as part performance of agreement to sell; that the defendant No.1 had executed a sale deed in favour of the plaintiffs on 30.10.2006 but it could not be got registered by the defendant; though the plaintiffs were ready and willing to get the sale deed registered in their favour at their own expenses; that defendant No.1 again received an amount of Rs.13,000/- on 3.11.2006 from the plaintiffs and executed an agreement for extension of time on 6.11.2006 and final date for execution was fixed as 13.11.2006, however on that date defendant No.1 did not appeared before Sub-Registrar, Assandh; that he failed to get the sale deed registered despite repeated requests from the plaintiffs, rather he tried to dispossess the plaintiffs from the suit land and threatened to alienate the same; that finding no other alternative, the plaintiffs moved an application dated 1.12.2006 for registration of sale deed before Sub-Registrar, Assandh, however Sub-Registrar, Assandh returned the file back to the plaintiffs vide order dated 7.12.2006, as such plaintiffs filed an appeal before Registrar, Karnal but it was dismissed vide order dated 14.12.2006. On final refusal of the defendant No.1 to concede their claim, the plaintiffs brought the suit

in question in Court of law.

On notice, the defendants appeared. Defendant No.1 and defendants No.2 to 4 filed separate written statements. In the written statement filed on behalf of defendant No.1, he had raised various legal objections with regard to cause of action, maintainability of the suit, concealment of material facts; the plaintiffs being estopped from filing the suit by their own act and conduct; the court lacking jurisdiction to entertain and try the suit; that the suit being bad for mis-joinder and non-joinder of the necessary parties. On merits, the defendant No.1 contended that he is still owner in possession of the suit land; that as a matter of fact he was in dire need of money and approached the plaintiffs requesting them to lend him a sum of Rs.2,20,000/- for four months; that the plaintiffs agreed to do so on the condition that the defendant No.1 should execute an agreement to sell in favour of the plaintiffs as security; that the defendant agreed to do so, in that way agreement to sell dated 27.6.2006 was executed and got registered but it was only as security for the amount borrowed by the defendant from the plaintiffs; that the plaintiffs also obtained signatures of answering defendant on some blank papers; and as a matter of fact the answering defendant never agreed to sell the suit land in favour of the plaintiffs. Refuting the remaining allegations, such defendant prayed for dismissal of the suit.

Defendants No.2 to 4 in the written statement filed by

them have also raised several legal objections and while controverting the assertions on merits craved for dismissal of the suit.

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

1. Whether defendant No.1 was agreed to sell the land 8 kanals 0 marla comprising in Khewat No.33 Rect.127 Killa No.16 in favour of plaintiffs by entering into agreement to sell dated 27.6.2006? OPP.
2. Whether entire sale consideration was agreed Rs.5,40,000/-? OPD.
3. Whether defendant No.1 received Rs.2,35,000/- as earnest money from the plaintiffs?OPP.
4. Whether defendant NO.1 executed the sale deed in favour of plaintiffs on 30.10.2006? OPP.
5. Whether plaintiffs are ready and willing to get executed the sale deed registered on 30.10.2006? OPP.
6. Whether plaintiffs are entitled to a decree for mandatory injunction as well as permanent injunction as prayed for? OPD.
7. Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD.
8. Whether plaintiffs are estopped from filing the suit by their own act and conduct? OPD.
9. Whether suit of the plaintiffs are not maintainable in the

present form? OPD.

10. Whether plaintiffs have not approached with clean hand, if so as to what effect? OPD.

11. Relief.

In order to prove their case, the plaintiff No.1 got his statement recorded as PW7 besides examining PW1 Staliyan, Record Keeper as PW1, PW2 Rajinder, Lambardar, PW3 Kuldeep, PW4 Rambir, PW5 Dhoop Singh and PW6 Anand Parkash.

On the other hand, the defendants had examined defendant No.1 Rajpal as DW1, Ashok Kumar as DW2.

After hearing the learned counsel for the parties, the trial Court decreed the suit with costs and the defendant No.1 was directed to get the sale deed registered in favour of the plaintiffs qua the suit land measuring 8 kanals 0 marla being 160/5831 share of 291 kanals 11 marlas falling in killa No.16 of Rect.No.127 on receiving the balance sale consideration and one month time was granted to the plaintiffs to pay the rest of the amount to the defendant No.1 observing that then defendant No.1 would get the sale deed registered in their favour within next one month; a decree for possession was also passed for the said land in favour of the plaintiffs since as per evidence possession of the land had been taken by defendant No.1 and defendant No.1 was further restrained from alienating/selling/transferring the suit land. This was so done vide

judgment and decree dated 12.10.2011.

Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Karnal, which was assigned to learned Additional District Judge, Karnal, who vide judgment and decree dated 16.7.2014 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit filed by the plaintiffs solely for the reason that suit was barred by limitation. Learned Additional District Judge, Karnal did not touch the findings given by the trial Court on every issue.

Being dissatisfied with the judgment and decree passed by learned Additional District Judge, Karnal the plaintiffs had filed the present regular second appeal before this Court, notice of which was issued and the respondents-defendants appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I find that the judgment passed by the learned Additional District Judge, Karnal is not sustainable at all.

Learned Additional District Judge, Karnal rather than discussing the merits of the case dealt with the aspect whether the suit had been filed within limitation and by erroneous interpretation of Section 12(2) of the Limitation Act held the suit to be time barred. It may be mentioned here that neither any such objection had been

taken by any of the defendants in their written statements nor any issue was framed in that regard. How and under what circumstances learned Additional District Judge, Karnal started probe in that regard, it is difficult to understand.

A perusal of the judgment passed by the trial Court goes to show that neither any such plea was raised by counsel for the defendants nor any finding was given. Dwelling on this point for the first time without touching the merits of the case and wrongly interpreting the provision, resultantly dismissing the suit has definitely resulted in miscarriage of justice. It is not always that point of limitation is a question of law. Sometimes facts of the case are of that type that it is to be taken as mixed question of facts and law. The Additional District Judge, Karnal has observed that the period spent in obtaining copy of the order is not to be excluded while computing the time for filing of appeal. This is obviously wrong interpretation of law. In judgment *M/s India House Versus Kishan N. Lalwani, 2003(1) RCR(Civil)374* by the Apex Court while dealing with Section 12(2) of the Limitation Act, it was observed that for computing the period of limitation, the time requisite for obtaining the copy has to be excluded without regard to the fact whether the copy was applied for before the expiry of period of limitation or not. It was further observed that time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be

excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with appeal.

On the other hand, learned counsel for the respondents has referred to **Kartar Singh Versus Ujagar Singh, 1993(2) RRR 603** by a Co-ordinate bench of this Court in support of his contention that the period is not to be excluded. However, in view of the judgment passed by the Apex Court, the law laid down there is to be relied upon and not a view taken by the Co-ordinate Bench.

Therefore, judgment and decree passed by the Additional District Judge, Karnal cannot stand legal scrutiny. The same are set aside. Resultantly the case is remanded to the said Court with a direction to decide the case giving issue-wise findings after affording an opportunity to learned counsel for the parties to address arguments.

With above observations, the appeal stands disposed of accordingly.

The parties through counsel are directed to appear before learned Additional District Judge, Karnal on 25.4.2019.

27.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No