

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

RSA-4054-2014(O&M)

Date of decision:-6.9.2019

Bahadur Singh

...Appellant

Versus

M/s Kartar Coloniser Pvt.Ltd.

...Respondent

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

Present: Mr.Gulzar Mohd., Advocate
for the appellant.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Bahadur Singh had brought a suit against M/s Kartar Coloniser Pvt. Ltd., Salem Tabri, Ludhiana seeking possession of plot bearing No.171 measuring 100 square yards as shown in red colour in the site plan attached, bounded as under:

North - House of Bhagat Ram – 20'

South - Street – 20'

East - Joginder Singh – 45'

West - House of Puran Singh – 45'

bearing khasra No.19//16/1, Khata No.317/323 bearing municipal No.B.XXX.III.1595, Ashok Nagar, Salem Tabri, Ludhiana situated within the revenue estate of village Bhaura, Hadbast No.88, Tehsil and District Ludhiana as mentioned in the jamabandi for the year 1999-2000 by way of specific performance of agreement to sell dated 6.6.1985.

Besides that the plaintiff craved for grant of permanent injunction restraining the defendant, his agents, attorneys from alienating and dispossessing the plaintiff from the suit property or creating any charge over it.

As per the case of the plaintiff, the defendant had carved out a residential colony in the year 1985 and had agreed to sell plot No.171 measuring 100 square yards to the plaintiff for a sum of Rs.3,000/- vide written agreement dated 6.6.1985; the defendant had received the entire consideration amount handing over possession of the plot to the plaintiff as part performance of the agreement; the plaintiff was permitted to obtain electric, water and sewerage connections and as per recital of the agreement, the defendant was not left with any right, title or interest in the plot; it was agreed that the defendant would execute and get the sale deed registered as and when it was so permitted by the State Government. According to the plaintiff after execution of the agreement, he came in possession of

the plot on the same day and thereafter raised construction over it; he had obtained an electric and water connection in his name; the Municipal Corporation, Ludhiana had allotted property number to such house of the plaintiff and the same is assessed to house tax; since the entire consideration amount had been paid, only a mere formality of execution and registration of the sale deed remained to be completed. According to the version of the plaintiff he had raised double storey house on the plot; he has been approaching the defendant regularly from 6.6.1985 onwards every month requesting for execution of sale deed in his favour but the defendant put off the matter on one pretext or the other stating that sale deeds were not being executed by the Sub Registrar, Ludhiana and he would inform the plaintiff as and when the ban was lifted by the State Government. On final refusal of the defendant to do so, the plaintiff had brought the suit.

On notice, the defendant appeared and filed written statement contesting the suit denying having entered into agreement to sell the plot with the plaintiff or receiving any consideration amount. The defendant labelled the agreement to sell dated 6.6.1985 claimed by the plaintiff as a forged and fabricated document contending that the suit was time barred also and that in the garb of alleged agreement to sell, the plaintiff was trying to take forcible possession of the suit property, the exclusive possession of which has

been with the answering defendant as owner. Refuting the remaining assertions in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled to possession by way of specific performance of agreement dated 6.6.1985? OPP.
2. Whether the plaintiff is entitled for to permanent injunction as prayed for? OPP.
3. Whether suit of the plaintiff is within limitation? OPP.
4. Whether suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.
5. Whether suit in the present form is not maintainable? OPD.
6. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW3 besides examining Sh.Harmesh Chand as PW1 and Sh.Ram Rattan as PW2. The plaintiff also tendered certain documents in his evidence.

On the other hand, the defendant himself had got his statement recorded as DW1.

After hearing the learned counsel for the parties, the trial

Court had decided issues No.1 to 5 in favour of the plaintiff and against the defendant. Resultantly, suit of the plaintiff was decreed with costs for possession by way of specific performance. The defendant was directed to execute the sale deed in favour of plaintiff within two months and to get it registered, failing which, the plaintiff would be at liberty to get the sale deed executed and registered through agency of the Court. By way of granting a decree for permanent injunction, the defendant was restrained from alienating and dispossessing the plaintiff or creating any charge over the property in dispute. This was so done vide judgment and decree dated 30.8.2012.

The defendant felt aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 13.5.2014 partly accepted the appeal holding that the plaintiff was not entitled to specific performance of agreement to sell dated 6.6.1985, however finding that plaintiff was in possession of the property in dispute, as such part of the relief granted by the trial Court restraining the defendant from interfering in possession of the plaintiff over the suit property was upheld.

Now it was turn of the plaintiff to feel dissatisfied and he had filed the present regular second appeal before this Court, notice

of which was issued to the respondent, who was duly served but did not put in appearance, as such he was proceeded against ex-parte.

I have heard learned counsel for the appellant besides going through the record and I find that the appeal has got merit and deserves to be accepted.

The trial Court by proper appraisal and appreciation of the evidence and correct interpretation of law had returned the finding that defendant had agreed to sell the plot in question with the plaintiff vide agreement to sell dated 6.6.1985 for a sum of Rs.3,000/-, receiving the entire consideration amount and delivering possession to the plaintiff and that plaintiff has raised construction over the plot getting electricity, water and sewerage connections and further the defendant was not left with any right or interest in the plot. Relying upon the Apex Court judgment **Gunwantbhai Mulchand Shah & Ors. Versus Anton Elis Farel & Ors., 2006(2) RCR(Civil) 251** wherein it was observed that in case of agreement to sell when no date is fixed for registration of sale deed, the suit cannot be dismissed even after 29 years found that plaintiff was entitled to specific performance of agreement to sell. However, learned Additional District Judge, Ludhiana by misappraisal of evidence and misinterpretation of law went on to observe that since identity of the plot was not established, therefore, the plaintiff was not entitled to specific performance of agreement to sell. The whole approach of

Additional District Judge, Ludhiana was wrong and erroneous, rather self contradictory. He has found plaintiff to be in possession of the property in dispute upholding the relief of permanent injunction restraining the defendant from interfering in possession of the plaintiff over the suit property except in due course of law. If the plaintiff has been found to be in possession of the suit property on the basis of agreement then where lies the question of any confusion with regard to identity of the property. This plea was not taken by the defendant itself in the written statement. The plea taken by the defendant that it had not entered into any agreement to sell with the plaintiff and the agreement so set up by the plaintiff is a forged and fabricated document and without consideration was rejected by the trial Court and it was rightly so done.

Learned counsel for the appellant has referred to judgment **Madina Begum & Anr. Versus Shiv Murti Prasad Pandey & Ors., 2016(3) RCR(Civil) 952** by the Apex Court wherein it was observed that when in an agreement to sell land, period of six months was specified for execution of sale deed, however sale deed was not executed, suit for specific performance filed after seven years was not barred by limitation under Article 54 of Schedule I of the Limitation Act since the said agreement did not specify specific calendar date for specific performance. In this case also hurdle of limitation would not come in the way of the plaintiff in seeking

specific performance since no specific date for execution and registration of the sale deed is mentioned in the agreement to sell.

Resultantly the judgment and decree passed by Additional District Judge, Ludhiana are set aside and the judgment and decree passed by the trial Court are restored.

The appeal stands allowed accordingly with costs.

6.9.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No