

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4358 of 2014 (O&M)

Date of decision: 20.02.2019

Suresh Kaur and others

..... Appellants

Versus

Gurjant Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Naresh Kaushal, Advocate
for the appellants.

Mr. Ajay Singla, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court.

In the considered view of this Court, the following substantial questions of law arise for consideration:-

1. Whether a suit for specific performance of the agreement to sell can be filed for directing the defendants to specifically perform their promise made in the unregistered sale deed?
2. What would be the starting point from which limitation would begin to run particularly when the contract for sale does not fix any date?

Amaro Singh @ Amar Singh was owner of small piece of land.

He had left behind three sons namely Randhir Singh, Pal Singh and Bhajan

Singh apart from two daughters Palo and Debo. All the three sons also died and the plaintiffs-appellants are widow, son and daughters of Bhajan Singh son of Amaro Singh whereas defendants are successor-in-interest of Pal Singh son of Amaro Singh. It has come in evidence that Pal Singh and Randhir Singh offered to sell their share in the property left behind by Amaro Singh and pursuant thereto, Randhir Singh executed an agreement dated 16.03.1993 whereas Pal Singh executed the agreement dated 12.06.1994. It will be noted that similar suit filed against Randhir Singh or his legal heirs has been decreed.

The defendants contested the suit and pleaded that their predecessor Pal Singh never executed the agreement dated 12.06.1994. Learned trial Court on appreciation of evidence has found that the agreement dated 12.06.1994 is proved. Thus, the suit was decreed. However, First Appellate Court has reversed the judgment of the trial Court while recording as under:-

1. The agreement dated 12.06.1994 is in fact a sale deed, although, unregistered, therefore, the suit for specific performance of the agreement to sell was not maintainable.
2. The suit is barred by limitation.
3. The agreement to sell was required to be registered.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

As regards first reason, no doubt the agreement dated 12.06.1994 is in the form of an unregistered sale deed. Nonetheless, it is an agreement because the sale deed is also a contract between the parties. A

sale of immovable property worth more than Rs.100/- is not complete unless it is registered. The only deficiency in the present case is that the sale deed is unregistered. The plaintiffs are well within their right to file a suit for specific performance of the contract of sale. For the purpose of this suit, such unregistered agreement could be very well treated as a contract for sale of the property, therefore, first reason given by the First Appellate Court was erroneous.

As regards second reason, it will be noted that the contract for sale does not provide or fix any date for execution and registration of the sale deed. In absence thereof, it would be part 2 of the Article 54 of the Schedule attached to the Limitation Act, 1963 which would apply which provide that if no such date is fixed, the period would begin to run when the plaintiff has noticed that the performance is refused. In the present case, no evidence has been led to prove as to when Pal Singh or his legal heirs refused performance of the contract of sale.

As regards third reason, the Registration Act came to be amended in the year 2001 providing for compulsory registration of the agreement to sell for the purpose of Section 53-A of the Transfer of Property Act. In the present case, the suit is to claim right on the basis of Section 53-A of the Transfer of Property Act. In any case, the suit for specific performance of the agreement to sell evidencing delivery of possession, is maintainable in view of Section 49 of the Registration Act. Reference in this regard can be made to a Division Bench judgment of this Court in the case of Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others, 2013(2) CCC 188.

In view thereof, both the questions as framed earlier, are answered in favour of the plaintiffs-appellants.

Hence, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored. The suit filed by the plaintiffs shall stand decreed.

Regular Second Appeal is allowed.

20.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No