

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

RSA No.917 of 2018 (O&M)
Date of Decision : 27.02.2019

Shri Krishan Singh

...Appellant

Versus

Mahender Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ramesh Malik, Advocate for the appellant.

B.S.WALIA, J(Oral).

1. Regular Second Appeal has been filed against judgment and decree dated 12.10.2017, passed by the learned Addl. District Judge, Jhajjar affirming the judgment and decree dated 12.08.2016, passed by the learned Civil Judge (Junior Division), Bahadurgarh dismissing the suit filed by the appellant/plaintiff being barred by limitation.

2. Brief facts of the case leading to the filing of the instant appeal are that the appellant filed a civil suit seeking specific performance of agreement to sell dated 17.02.2005 praying that the respondents/defendants be directed to deliver possession of agricultural land measuring 15 kanals 19 marlas out of land comprised in Khewat No.236/229, Khatoni No.280, Rect. And Killa No.99/15/3 (2-0), 16/2 (7-18), 25 (6-0), Rect. and Killa No.100/20/2 (6-8), 21 (7-12), 107/2/1(2-0), kittas-6, total land measuring 31 kanals 8 marlas, situated in village Dulhera, Tehsil Bahadurgarh, District Jhajjar in pursuance of agreement to sell executed by Jai Lal son of Kurdia with a further prayer that necessary directions be issued to the

respondents/defendants to get executed and registered the sale deed in favour of the appellant/plaintiff as per the terms and conditions of agreement to sell dated 17.02.2005 and in the alternative, if it was found that the appellant/plaintiff was not entitled to specific performance of the agreement to sell, then a decree for recovery of ₹4,00,000/- i.e. double of earnest money of ₹2,00,000/- plus interest @ 8% per annum from 17.02.2005 till actual realization of the decretal amount be passed in favour of the appellant-plaintiff.

3. Civil suit was filed with the averments that Jai Lal son of Kurdia expired in the year 2007 leaving behind Mahender Singh, Krishan Lal, Dharambir and Satyawanti as his legal heirs. During his life time, Jai Lal represented to the appellant-plaintiff that he wanted to sell the suit land and after negotiations, the appellant-plaintiff agreed to purchase the same for a total sale consideration of ₹5,50,000/-. Accordingly agreement to sell dated 17.02.2005 was got executed between the parties in the presence of witnesses and the appellant-plaintiff paid a sum of ₹2,00,000/- as earnest money to Jai Lal in the presence of Umed Singh, Advocate and Umed son of Jeet resident of village Marot. Agreement to sell was scribed by Jai Singh, Deed Writer and it was mutually agreed between the parties that the sale deed would be executed and registered upto 15.06.2005, after payment of balance sale consideration and further that in case the appellant-plaintiff failed to comply with the terms and conditions of the agreement to sell, then earnest money paid by him would stand forfeited while if Jai Lal failed to comply with the terms and conditions of the agreement to sell, then he would be liable to pay double the earnest money to the appellant-

plaintiff. It was further alleged that the agreement to sell was registered vide document No.7406 dated 17.02.2005.

4. That it was been also alleged that the appellant-plaintiff was always ready and willing to perform his part of the contract by paying the remaining sale consideration and for this purpose on 15.06.2005, approached the O/o the Sub Registrar-cum-Executive Magistrate, Bahadurgarh but Jai Lal did not turn up. Thereafter, the appellant-plaintiff moved an application before the Executive Magistrate for marking his presence and an affidavit regarding the presence of the appellant-plaintiff was duly got attested. However, Jai Lal illegally and fraudulently backed out from the agreement to sell while concocting a false story of misrepresentation. It was further averred that Jai Lal instituted civil suit No.37/2005 for declaration and permanent injunction against the appellant-plaintiff, but the same was dismissed as withdrawn vide order dated 07.06.2010. During the pendency of Civil Suit No.37/2005, Jai Lal expired and his legal heirs were impleaded as parties.

5. That on dismissal of Civil Suit No.37/2005, the appellant-plaintiff instituted Civil Suit seeking specific performance of agreement to sell dated 17.02.2005. On notice in the aforesaid civil suit, written statement was filed on behalf of respondent Nos.1 to 3 and 6 taking preliminary objections regarding maintainability of the suit, locus standi, lack of cause of action, suit being barred by limitation besides concealment of true and material facts. On merits, it was contended that alleged agreement to sell dated 17.02.2005 was unlawful and the result of fraud and misrepresentation played by the appellant-plaintiff in collusion with

respondents/defendant Nos.4 and 5 and one Yog Dutt alias Sonu son of Ram Kumar, who obtained signatures and thumb impressions of deceased Jai Lal on blank papers.

6. That it was also averred that Jai Lal died on 24.11.2006 and not in the year 2007 as alleged by the appellant-plaintiff, that the appellant-plaintiff had not filed any suit for specific performance within the prescribed period of limitation, therefore, Civil Suit No.37/2005 was got dismissed as withdrawn on 07.06.2010 and since agreement dated 17.02.2005 itself was a bogus document, the question of specific performance did not arise at all. Likewise, written statement on behalf of respondent Nos.7 and 8 was filed denying the claim put forth by the appellant-plaintiff. Replication to the written statement was filed and on the basis of the pleadings, following issues were framed :-

1. Whether an agreement to sell dated 17.02.2005 was executed by Jai Lal with the terms and conditions therein?

OPP

2. Whether the plaintiff is/was willing to perform his part of contract, if issue No. 1 is proved? OPP

3. Whether the plaintiff has been instituting the civil suit No.37 dated 19.04.2005 decided on 07.06.2010 titled as Jai Lal etc. Krishan under bonafide intention and with due diligence?

OPP

4. Whether the sale deed No.8666 dated 05.03.2007, sale deed No.7791 dated 07.03.2005, sale deed No.8315 dated 30.03.2005 are illegal, null and void and not binding upon the rights of the plaintiff? OPP

5. Whether the plaintiff is entitled for decree of specific performance or for alternative relief on the ground mentioned in the plaint as prayed for? OPP
6. Whether the suit of the plaintiff is not maintainable in the present form? OPD
7. Whether the plaintiff has no locus standi to file the present suit? OPD
8. Whether the suit is highly time barred? OPD
9. Whether the suit is hit by Section 23 of the Contract Act/ OPD
10. Whether the decree of specific performance cannot legally passed on the ground that the suit land is co-parcenary property? OPD
11. Whether the alleged agreement to sell dated 17.02.2005 is a result of fraud? OPD
12. Relief.

7. The learned trial Court proceeded on the basis that the appellant-plaintiff had instituted the civil suit for specific performance of agreement to sell dated 17.02.2005, whereas the respondents-defendants had contested the civil suit primarily on the ground that the same was barred by limitation and that agreement to sell was a result of fraud, therefore, in order to decide the civil suit, the Court was required to ascertain as to whether the agreement to sell dated 17.02.2005 was enforceable or whether it was barred by limitation. On the basis of evidence led before it, issue Nos.1 to 5 and 8 were decided against the appellant-plaintiff and in favour of the respondents-defendants while issue

Nos.6, 7 and 9 to 10 were decided against the respondents-defendants and in view of the findings particularly on issue No.8, the civil suit was dismissed as barred by limitation.

8. Appeal filed by the appellant-plaintiff against the judgment and decree dated 12.08.2016, passed by the learned Civil Judge (Junior Division), Bahadurgarh, was dismissed by the learned Addl. District Judge, Jhajjar, vide judgment and decree dated 12.10.2017.

9. At the time of hearing, the sole argument of learned counsel for the appellant is that the judgment and decree of the learned Courts below are legally unsustainable and liable to be set aside as the suit was filed within limitation.

10. I have considered the submission of learned counsel for the appellant.

11. Admittedly the appellant-plaintiff filed a civil suit on 25.09.2010 seeking specific performance of agreement to sell dated 17.02.2005. The sale deed was to be executed by 15.06.2005. The civil suit could have been filed within three years from the date fixed for the execution and registration of the sale deed or from the date of refusal of any party to perform his part of the contract. Admittedly Jai Lal, instituted Civil Suit No.37 of 2005, titled as Jai Lal versus Shri Krishan and others denying validity of agreement to sell dated 17.02.2005 and seeking declaration that agreement to sell dated 17.02.2005 was null and void, without consideration, a sham transaction and not binding upon him. In other words, Jai Lal clearly denied the execution of the agreement to sell

dated 17.02.2005 and impliedly refused to get executed and registered any sale deed in favour of Shri Krishan i.e. the appellant-appellant and when notice of the civil suit was served upon the appellant-plaintiff he filed a written statement on 17.03.2006 as evident from Ex.PW5/C. Thus from the plaint of Civil Suit No.37 of 2005 i.e. Ex.PW5/B and written statement of the said civil suit it is clear that period of limitation would commence from the date when Shri Krishan i.e. appellant-plaintiff had notice about the institution of the civil suit. It also needs mention here that although appellant-plaintiff filed written statement controverting the claim of the plaintiff in Civil Suit No.37 of 2005 yet he did not file any counter claim seeking specific performance of the agreement to sell dated 17.02.2005 and Jai Lal appellant-plaintiff continued to contest the aforesaid civil suit and later on the same was withdrawn by the legal heirs of Jai Lal on the ground that limitation for filing of suit for specific performance had lapsed, therefore, they did not wish to pursue the civil suit and on the basis of said statement, Civil Suit No.37 of 2005 was dismissed as withdrawn vide order dated 07.06.2010.

12. Learned counsel contends that the period of limitation would commence from 07.06.2010 i.e. the date when Civil Suit No.37 of 2005 was dismissed as withdrawn by the L.Rs. of deceased Jai Lal because he was diligently pursuing the earlier suit, therefore, in terms of Section 14 of the Limitation Act, 1963, the period of time during which the he was prosecuting his defence in Civil Suit No.37/2005 was to be excluded. Benefit of Section 14 of the Limitation Act, 1963 is available to a litigant only when the civil proceedings could not be decided on merits because of

defect of jurisdiction or other cause of like nature. However, the civil Court which was adjudicating Civil Suit No.37/2005 was competent to determine the rights of the parties and had the appellant-plaintiff herein i.e. defendant in Civil Suit No/37/2005, filed a counter claim then the dispute could have been settled in said suit for all intents and purposes. However, since the appellant-plaintiff was not diligent in pursuing his claim for specific performance by filing a counter claim, he is not entitled to the benefit provided under Section 14 of the Limitation Act.

13. Section 14 of the Limitation Act is intended to afford protection to a litigant against the bar of limitation where the civil proceedings could not be decided on merits because of defect of jurisdiction or other cause of like nature, as has been held by the Hon'ble Division Bench of Kerala High Court in Food Corporation of India vs. C. Mohammed Kunhi 2009 (4) CCC 202 (Kerala) (DB). The appellant-plaintiff failed to file any counter claim in Civil Suit No.37/2005. It is not the case that the appellant-plaintiff was litigating before some incompetent forum from where he could not have sought the relief of specific performance which he is seeking in the Civil Suit filed by him out of which the instant Regular Second Appeal arises nor is it a case that he was not aware about the accrual of cause of action on filing of suit by Jai Lal owner of the land denying the execution of the agreement to sell.

14. Faced with the aforementioned position, learned counsel for the appellant contends that in view of decision of Hon'ble the Supreme Court in K.S. Satyanarayna vs. V.R. Narayana Rao 1999 (6) SCC 104, the

appellant-plaintiff was entitled to the alternative relief of refund of earnest money along with interest or to double amount of the earnest money as per the terms and conditions of the agreement to sell dated 17.02.2005. I am afraid the plea of learned counsel for the appellant is devoid of merit since the Civil Suit filed by the appellant-plaintiff was dismissed being barred by limitation, therefore, if the claim for specific performance is barred by limitation, the claim for refund of earnest money along with interest or double of the earnest money would also be barred by limitation. Reference in this regard can be made to the decision of Hon'ble the Supreme Court in Bogidhola Tea & Trading Company Ltd. and another vs. Hira Lal Somani 2008 (3) CCC 548 (SC). It also needs mention here that on 08.02.2018, counsel for the appellant had sought time to satisfy the Court that Civil Suit No.37/2005 filed by Jai Lal alleging agreement to sell dated 17.02.2005 not to be a valid document extended the period of limitation for the appellant-plaintiff. However, neither has any provision of law nor has any decision of any Court of law been referred to by learned counsel for the appellant in support of the plea as was raised by him on 08.02.2018.

15. In the light of the position as noted above, no question of law arises for consideration. Accordingly, finding no merit in the appeal, the appeal is dismissed in limine. Since the main appeal has been dismissed, therefore, civil misc. applications pending, if any, also stand dismissed.

(B.S.WALIA)
JUDGE

27.02.2019

rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No