

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 5107 of 2017 (O&M)

Kapil Gupta and Others

... Appellant(s)

Versus

Mahesh Kumar and Others

... Respondent(s)

AND

2. Regular Second Appeal No. 1326 of 2018 (O&M)

Mahesh Kumar

... Appellant(s)

Versus

Kapil Gupta and Others

... Respondent(s)

DATE OF DECISION: 21.10.2020

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellants (In RSA-5107-2017)
and respondents No. 1 to 4 (In RSA-1326-2018).

Mr. Raman Gaur, Advocate
for the appellant (In RSA-1326-2018).

Mr. Alok Mittal, Advocate
for respondent No.1 (In RSA-5107-2017).

Ms. Monika Tanwar, Advocate
for respondents No. 6 to 9 (In RSA-5107-2017).

Anil Kshetarpal, J.

This judgment shall dispose of the afore-referred two appeals arising from a suit for specific performance of an agreement to sell, decreed by the trial Court whereas the First Appellate Court modified the decree by granting alternative relief of refund of the money paid with the interest @

9% per annum.

Regular Second Appeal No. 5107 of 2017 has been filed by the plaintiffs, whereas Regular Second Appeal No. 1326 of 2018 has been filed by the defendants. In the considered view of this Court, following question of law arise for adjudication:

1. Whether the learned first Appellate Court, before setting aside the judgment passed by the learned trial Court, is required to record definite findings/reasons for reversing the discretion exercised?
2. Whether it is appropriate to deny the relief of specific performance of the agreement to sell on the ground of laches, particularly when the entire sale consideration stood paid at the time of execution of agreement to sell and the suit is found to have been filed within the period of limitation?
3. Whether in a suit for specific performance of agreement to sell the limitation begins to run from the date of agreement of sell?

FACTS

Late Sh. Devi Chand, predecessor-in-interest of the defendants, entered into an agreement to sell with the plaintiffs on 22.05.2006 with respect to the land measuring 1 bigha 16 biswas being 36/169th share of the land measuring 8 bighas 9 biswas on receipt of the entire amount of sale consideration i.e. ₹ 9,00,000/-. It was recited in the agreement to sell that

agreement to sell did not stipulate any target date/the period for execution and registration of the sale deed. Late Sh. Devi Chand died after some time. After serving notice dated 23.12.2008 on the defendants calling upon them to honour the agreement to sell the plaintiffs filed the suit on 20.02.2009. The defendants contested the suit while taking a stand that the alleged agreement to sell and the receipt are bogus documents prepared by the plaintiffs in collusion with their own father Dinesh Kumar Gupta. It was further pleaded that Dinesh Kumar Gupta and late Sh. Devi Chand were the defendants in many suits and they jointly contested the litigation against Mahesh Kumar (the appellant is RSA No. 1326/2018) son of late Sh. Devi Chand and he used to have immense faith in Dinesh Kumar Gupta and hence he would sign on the blank papers and hand over to Dinesh Kumar Gupta in order to file the pleadings in the pending suits. It was further pleaded that he was not the owner of the land agreed to be sold. The delivery of possession of the land in question was also denied. The plaintiffs filed replication and thereafter, the learned trial Court, after considering the pleadings of the parties, framed the following issues:

- “1) Whether Devi Chand predecessor in interest of the defendants, executed an agreement to sell of his land measuring 1 Bigha-16 Biswa i.e. 36/169 share of measuring 08 Bigha-09 Biswa in favour of the plaintiffs and three others on 22.05.2006 for a total sale consideration of ₹ 9,00,000/- (Nine Lacs)? O.P.P.*
- 2) Whether total sale consideration was received by Late Devi Chand against receipts? O.P.P.*

- 3) *Whether the possession of the land in dispute was delivered to the plaintiffs? O.P.P.*
- 4) *Whether the plaintiffs were always ready and willing to perform their part of contract? O.P.P.*
- 5) *Whether the suit is not maintainable in the present form? O.P.D.*
- 6) *Whether the agreement to sell and receipts are outcome of fraud? O.P.D.*
- 7) *Whether the plaintiffs have no locus standi in the present suit? O.P.D.*
- 8) *Relief”.*

The plaintiffs examined seven witnesses including plaintiff No. 2 himself, their father Dinesh Kumar Gupta, Amit son of Gobind Ram (the attesting witness's son) and a Handwriting & Fingerprints Expert. The plaintiffs also produced various documents to prove their case. On the other hand, defendant No.3, stepped in the witness box as DW.1 and examined Balwan Singh, Handwriting & Fingerprints Expert as DW.2. The defendants also produced certain documents referred to in para 18 by the learned trial Court in its judgment.

The learned trial Court, on appreciation of the evidence while recording a finding of the fact that the plaintiffs have successfully proved the execution of the agreement to sell on receipt of entire sale consideration and they were always ready and willing to perform their part of the contract, decreed the suit for specific performance. The first Appellate Court has

modified the judgment & decree and chose to grant alternative relief sought

in the plaint while ordering the the refund of the amount of ₹ 9,00,000/- along with the interest @ 9% per annum from the date of execution of agreement to sell till its realization. That is how these two appeals (one by the plaintiffs and Second by the defendant) have come up for final disposal.

This Court has heard learned counsel for the parties through video conferencing and with their able assistance, perused the paper-books and the record of the learned Courts below. Learned counsels were also given opportunity to file synopsis with a short summary of the submission made on the official email of the court.

At this stage, it would be appropriate to note the reasons recorded by the learned First Appellate Court.

1) The plaintiffs have successfully proved the execution of agreement to sell by late Sh. Devi Chand on receipt of the total sale consideration and hence findings of the trial court are upheld.

2) The plaintiffs have filed a suit within a period of three years from the date of execution of agreement to sell and they before filing the suit also sent a notice calling upon the defendants to perform their part of the contract. Therefore, the suit filed by the plaintiffs is not only within limitation but they were also always ready and willing to perform their part of the contract.

3) The plaintiffs have failed to prove that the possession of the land was delivered to the plaintiffs as plaintiff

No.2 Lovekesh Gupta has failed to depose in examination-in-

chief that the possession of the land has been delivered.

4) The suit filed by the plaintiffs suffers from laches as it has been filed after a period of approximately 33 months from the date of agreement to sell.

5) Although the defendants have failed to prove that late Sh. Devi Chand was not the owner of the property agreed to be sold, however, since this fact is disputed, therefore, it would not be appropriate for the Court to grant the decree for specific performance of the agreement to sell.

6) The prices of the land in question might have increased manifold.

As noticed, both the Courts below have concurrently found that late Sh. Devi Chand did execute the agreement to sell on the receipt of the entire sale consideration and the plaintiffs were always ready and willing to perform their part of the contract. Learned counsel for the defendants has submitted that the suit was filed by the plaintiffs after the death of late Sh. Devi Chand and it is not disputed that Dinesh Kumar Gupta and late Sh. Devi Chand used to defend the litigation filed by Mahesh Kumar son of late Sh. Devi Chand. He further contended that the signatures of late Sh. Devi Chand were taken on the blank papers. However, on deeper consideration, this Court finds that no interference with the concurrent findings of fact arrived at by the learned Courts with regard to the validity and the correctness of agreement to sell is required. It is not disputed that late Sh. Devi Chand was educated and retired as an officer. Still further, on careful

signed by late Sh. Devi Chand at two different places. On the front page, his signatures are on the left hand margin, whereas on the reverse side, where the recitals of the agreement concludes, he has once again signed. He has signed in fluent English. Apart therefrom, a separate receipt acknowledging receipt of the amount of sale consideration has also been executed and he signed the aforesaid receipt in such a manner that the signatures with the date on which the signature were appended, are starting on the paper used for scribing the receipt while coming to an end on the revenue stamp pasted thereon. In other words the signature of Late Devi Chand goes across the revenue stamp pasted on the receipt with a part thereof on the paper on which receipt is scribed. Still further, although the defendants have taken a stand that the agreement to sell and the receipt are bogus documents, however, except oral deposition of Mahesh Kumar alongwith an opinion of the privately engaged handwriting and finger print expert, no other evidence has been led to prove that fact. Further, the defendants have also failed to prove that late Sh. Devi Chand had signed the blank papers.

Now the stage is set to consider the reasons recorded by the learned first Appellate Court to reverse the judgment of the learned trial Court. The first Appellate Court has recorded that the delivery of possession to the plaintiffs pursuant to the agreement to sell is not proved as the plaintiff No. 2 (PW.1) has not deposed in his examination-in-chief that the possession of the land agreed to sell was delivered by the Late Devi Chand to them. It has further been observed by the Court that since the property was a joint khata, therefore, late Sh. Devi Chand could not have delivered the possession of the specific portion of the property. On examination of the

record, it is apparent that Dinesh Kumar Gupta, the plaintiff's father, while appearing as PW.6 specifically stated that actual physical possession of the land was delivered to the plaintiffs at the time of execution of the agreement to sell. In the cross-examination, when he was given suggestion that the plaintiffs are not in possession, he refuted the aforesaid suggestion and stated that late Sh. Devi Chand had already sold his share to them or some other vendees and therefore, the defendants were not in possession and it is the plaintiffs who are in possession. Further, in the agreement to sell, which is in writing and signed by the parties, it is specifically recited that the possession of the land has been delivered to the plaintiffs to the extent of 18 biswas each from khasra No. 2398 and 2399. It would be noted here that the property in dispute is situated within the municipal limits of Sonipat which adjoins National Capital Delhi. It has also come in evidence that late Sh. Devi Chand had sold various plots of small size on which a Colony has come up. In such circumstances, once there is a specific recital with regard to delivery of possession in the agreement to sell signed by the parties which has been proved and Dinesh Kumar Gupta has positively deposed that the possession was delivered to the plaintiffs, mere failure of plaintiff No.2 to depose about the delivery of possession in the examination-in-chief would not be sufficient for the Court to record a finding that the stand of the plaintiffs with respect to delivery of actual possession is erroneous.

Still further, the learned first Appellate Court has committed material irregularity while observing that a co-sharer cannot deliver the possession of the specific portion in its possession to someone out of joint property. A co-sharer in actual physical possession of a specific portion out

of the big parcel of joint land is entitled to deliver possession thereof to anyone. No doubt, sale of a specific portion or parcel of land out of joint property by a co-sharer shall be deemed to be sale of undivided share out of joint land. However, there is no bar either in the delivery of possession of specific portion or sale thereof out of the joint land. Thus, the aforesaid observations made by the learned first Appellate Court are erroneous.

The next reason assigned by the learned first Appellate Court is to the effect that the suit has been filed after a period of 33 months from the date of execution of an agreement to sell, therefore, the suit filed by the plaintiffs suffers from laches. It is important to note that the learned first Appellate Court has not held that the suit filed by the plaintiffs is barred by limitation. Article 54 of the Schedule to the Limitation Act, 1963 provides that the limitation for filing a suit for specific performance is three years from the date the cause of action arises. The cause of action has been divided into two parts. If the agreement to sell specifies a date, time or the period for its performance, then the time would begin to run from such time, period or date stipulated in the agreement to sell. In the absence thereof, the limitation would begin to run when the plaintiff has notice that the performance is refused. In the present case, as noted above, no date, time or period for performance of the agreement to sell has been specified. In such circumstances, the cause of action in favour of the plaintiffs arose when the defendants, inspite of service of the notice calling upon them to come and execute the sale deed, did not come forward. Thus, the suit filed cannot be held suffering from unexplained laches.

laches particularly when the entire sale consideration has already been paid. Thus, it is not shown to the Court as to how the defendants suffered during this period of 33 months. The learned first Appellate Court was at fault while arriving at such findings. At this stage, it is important to note that the defendants, while filing the written statement, did not allege that the suit suffered from laches. Consequently no issue on this aspect was framed. Still further, when defendant No.3-Mahesh Kumar appeared in the evidence, he did take a stand that the suit filed by the plaintiffs suffers from unexplained laches. Thus, the observations made by the learned first Appellate Court are not only beyond pleadings but also, beyond evidence.

It is also important to note that the period of limitation in a suit for specific performance do not begin to run from the date on which agreement to sell has been executed. As noted above, article 54 of the schedule attached to the Limitation Act, 1963 provides that the period of limitation would either begin to run from the date fixed for its performance or if no date or period is stipulated, then from the date the plaintiff has notice that the performance has been refused by the opposite side.

The next reason assigned by the Court to deny the relief of specific performance is that it is disputed that late Sh. Devi Chand was owner of the property. It is significant to note that the learned first Appellate Court has itself noted that the defendants failed to prove that late Sh. Devi Chand was not owner of the property agreed to be sold. In para 18, the learned first Appellate Court has observed that the decree suffered by Smt.Challo Devi has not been produced. Thus, from the material available

evidence has been produced by the defendants to prove that late Sh. Devi Chand was not the owner of the property agreed to be sold.

In any case, this Court, with the able assistance of learned counsel for the parties, has examined the aforesaid aspect in depth. As per jamabandi for the year 2001-2002, late Sh. Devi Chand was owner to the extent of approximately 156 biswas of land. From the careful examination of the revenue record including jamabandies and mutations, it is apparent that even if all the transactions of sale executed by late Sh. Devi Chand are taken into consideration, still he was left with 65 bighas of land, whereas the present agreement to sell is with regard to 1 bigha and 16 biswas of land, which comes to 36 biswas. Thus, the defendants have failed to prove their stand that late Sh. Devi Chand was not left the land agreed to sold. Still further, although the defendants did take a stand in the written statement and in oral evidence, made a bald assertion, however, did not lead reliable, convincing and corroborating evidence to substantiate the aforesaid stand. Learned counsel for the defendants further failed to put forth any convincing arguments to establish this aspect. Further, while deciding a suit for specific performance of agreement to sell, the Court is not required to give declaration with regard to the ownership of vendor in the absence of a specific issue framed thereon. In view of the aforesaid, the learned first Appellate Court has committed material irregularity.

The next reason assigned by the learned first Appellate Court is also erroneous. The learned first Appellate Court has held that during the period of 33 months, the prices of the land might have increased manifold.

Such finding by the learned first Appellate Court is again beyond the

pleadings and evidence led by the parties. The defendants did not plead that prices of the land agreed to be sold have increased and therefore, they have suffered prejudice. At the cost of repetition, the entire sale consideration stood paid at the time of execution of the agreement to sell.

Learned counsel appearing for the respondents has forwarded the written submissions through official email. It has been contended that the defendants while filing the written statement had objected to the suit on the ground that the agreement to sell dated 22.05.2006 and the receipts are bogus documents. Learned counsel has heavily relied upon the judgment & decree dated 06.12.2004 (Ex.D1 & D2). This Court has carefully examined the judgment (Ex.D1) passed on 06.12.2004. This suit was filed by Mahesh Kumar son of late Sh. Devi Chand. He claimed to be a co-owner of the joint khata to the extent of 1/8th share. Mahesh Kumar claimed that certain sale deeds of separate portion of the joint land executed by his father be declared to be of undivided share from the joint khata. The learned trial Court, after appreciating the evidence, held that since late Sh. Devi Chand was a co-sharer/co-owner, therefore, the sales made by him with regard to specific portion of the property would be deemed to be executed representing undivided share of the joint property and it would be to the extent of the share of late Sh. Devi Chand. On careful reading of the aforesaid judgment, it is apparent that there was neither any issue nor any finding has been given that late Sh. Devi Chand has already sold his entire share and he is not left with any share in the property.

The suits with regard to the cancellation of the sale deeds

pending in the learned Courts below. It will be noted here that such pendency does not have any effect the decision of the present case. Mere pendency of the suits does not debar this Court from deciding the present appeals.

The next submission is with reference to the previous share purchased by Dinesh Kumar Gupta and other close relatives of their father. It has been asserted that Dinesh Kumar Gupta and others were well aware of the pendency of the suit and judgment & decree dated 06.12.2004. In this regard, it will be noted that the judgment & decree dated 06.12.2004 has already been discussed by this Court. The plaintiffs have not pleaded that they are not in the knowledge of the judgment & decree dated 06.12.2004. However, the aforesaid judgment merely grants a declaration to the plaintiff-Mahesh Kumar that he is co-owner and sale of any specific portion by late Sh. Devi Chand would be deemed to be sale of undivided share from a joint khata.

Before I part with this judgment, this Court is compelled to observe that the learned first Appellate Court has failed to record any definite finding before reversing the judgment of the learned trial Court. It was not appropriate on the part of the learned first Appellate Court to reverse the finding of fact without recording any definite finding and the reasons for reversing the findings recorded by the learned trial court after critical analysis of the evidence.

Keeping in view the aforesaid facts, the questions of law framed in the beginning are answered in favour of the plaintiff/appellants. It

judgment passed by the learned trial Court without recording definite finding or the reasons for reversing thereof after critical analysis of the reasons with reference to error in the application of law or misreading or non-reading or misconstruction of the evidence available on record. It is further declared that it is not appropriate for the Court to decline the relief of specific performance on the ground of laches particularly when the entire sale consideration has been paid and the suit was filed within limitation. It is also held that the period of limitation do not begins to run from the date on which the agreement to sell was executed.

In view of the aforesaid observations, Regular Second Appeal No. 5107 of 2017, filed by the plaintiff, is allowed while setting aside the judgment & decree passed by the learned first Appellate Court. The judgment and decree of the learned trial Court shall stand restored. Consequently, Regular Second Appeal No. 1326 of 2018, filed by the defendant, is dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

October 21, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No