In the High Court of Punjab and Haryana at Chandigarh

RSA- 5595 of 2018 (O&M)
Date of Decision: 13.2.2020

Joginder Singh @ Yoginder Singh (dead) through Lrs

---Appellant

versus

Jasbir Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Nitin Jain, Advocate
for the appellant

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Rekha Mittal, J.

Challenge in the present appeal has been directed against decree and judgment dated 1.3.2018 passed by the Additional District Judge, Hisar whereby appeal against judgment and decree dated 25.7.2014 passed by the Civil Judge (Junior Division), Hisar (hereinafter referred to as "the trial court") has been accepted, impugned decree and judgment has been set aside and suit filed by the appellant (since deceased now represented by his Lrs) seeking specific performance of agreement to sell dated 18.12.1992 in respect of land measuring 21 kanal 7 marlas, situated at village Daulatpur, Tehsil and District Hisar, has been dismissed.

As per case set up by the appellant-plaintiff, Jasbir Singh defendant agreed to sell suit land for consideration of Rs. 2,66,875/-. A sum of Rs. 50,000/- was paid as earnest money and balance sale consideration was agreed to be paid on the date of registration of sale deed i.e. 15.4.1993.

By mutual consent of plaintiff and defendant No. 1, date of registration of sale deed was extended upto 15.12.1993 vide writing dated 18.6.1993 and thereafter to 1.2.1994 and then to 15.4.1997. Defendant No. 1 further received a sum of Rs. 40,000/- on 6.6.1995 vide writing made on agreement and balance sale consideration of Rs. 1,76,875/- was received by him through his attorney as per recital made by his attorney on back of the agreement. In October 2005, plaintiff came to know that defendant No. 3, brother-in-law of defendant No. 1 transferred this land to defendants No. 4 and 5 vide registered sale deed dated 29.4.2004 by showing that he is owner of the land vide mutation No. 406 dated 4.6.1997. The said mutation, alleged partition order and subsequent sale deed are not binding upon the plaintiff as order of partition dated 27.5.1997 is without jurisdiction, false and bogus.

The trial court framed issues on the basis of rival claims raised by the parties, noticed in para 5 of the judgment of said court. Having heard counsel for the parties in the light of materials on record, the trial court decreed the suit for symbolic possession of suit land with a direction to defendants to execute sale deed on the basis of agreement dated 18.12.1992. However, the Court in Appeal set aside the judgment and decree passed by the trial court primarily on two counts namely that the appellant failed to prove that defendant No. 2 purportedly received Rs. 1,76,875/- on 18.3.1997 as an attorney of defendant No. 1. Secondly that the suit is barred by limitation as the same was filed in the year 2006 but the last extension for execution of sale deed was upto 15.4.1997.

Counsel for the appellant has assailed the decree and judgment passed by the Appellate Court by raising few submissions. It is argued that defendant No. 1, in reply to para 3 of the plaint, has not specifically denied defendant No. 2 to be his attorney or receipt of Rs. 1,76,875/- on 18.3.1997 and the same amounts to admission on the part of defendant No. 1. In this context, reference has been made to provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 (in short “the Code”). It is further argued that neither Jasbir Singh nor Lalit Pal Singh appeared in the witness box to counter case of the appellant with regard to payment of aforesaid amount to Lalit Pal Singh, attorney of defendant No. 1 when otherwise defendants No. 1 and 2 are relatives.

To assail findings on the question of limitation, it is argued that since entire sale consideration stood paid on 18.3.1997 in view of endorsement made on the back of agreement under the signatures of Sh. Lalit Pal Singh, Advocate, attorney of defendant No. 1 and in the said endorsement, no date was fixed for execution of the sale deed, findings of the court that suit is barred by limitation are erroneous and can not be allowed to sustain. For this purpose, reliance has been placed upon judgment of this court **Parduman Singh and others vs. Satish Kumar and others 2017 (2) Law Hehald 1828.** In addition, it is argued that defendants No. 1 and 2 did not file an appeal against the judgment and decree passed by the trial court but appeal was filed by Raghubir Singh and Balwan Singh, defendants No. 4 and 5 in whose favour the sale deed in respect of suit land was executed by defendant No. 3 in the year 2004. It is argued that Raghubir Singh and Balwan Singh being a third party can not raise an issue with regard to payment of Rs. 1,76,875/- to Lalit Pal Singh as attorney of defendant No. 1. Counsel would state that Balwan Singh in cross examination had admitted payment of aforesaid amount by the appellant to Lalit Pal Singh. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Muddasani Venkata Narsaiah (d) through Lrs vs. Muddasani Sarojana 2016 (3) RCR (Civil) 236.**

I have heard counsel for the appellant, perused the paper book and copies of documents supplied during the course of hearing.

Before adverting to merits of the case, in view of factual controversy raised by the parties, it would be appropriate to deal with the question of limitation in filing the suit for specific performance regarding agreement dated 18.12.1992.

Indisputably, as per the last extension made by defendant Jasvir Singh, the time was extended to 15.4.1997 though the said endorsement of extension does not appear to have any date. The appellant has raised a plea that balance sale consideration of Rs. 1,76,875/- out of total consideration of Rs. 2,66,875/- was paid to Sh. Lalit Pal Singh as attorney of defendant No. 1 vide endorsement dated 18.3.1997 appended at the back of original agreement of 18.12.1992 Ex. P1. Assuming for the sake of arguments that plea of appellant with regard to payment of balance sale consideration to Lalit Pal Singh can be accepted, the said endorsement has neither cancelled nor modified the previous agreement between the appellant and defendant No. 1 extending date for execution of sale deed upto 15.4.1997. That being so, the appellant can not derive any advantage to his contention from endorsement dated 18.3.1997 to extend period of limitation, to be reckoned with effect from 15.4.1997. Reliance upon the judgment of this Court in **Parduman Singh and others' case (supra),** in this context, is highly misplaced and patently misconceived. In the said case, the target date for execution and registration of sale deed was 10.1.1986. On that day, plaintiff remained present in the office of Sub Registrar but defendants did not turn up. Later, the vendor(s) received various payments, detailed in para 2 of the judgment and the last payment of Rs. 5000/- was made on 6.6.1989. In view of peculiar facts and circumstances, it was held that suit filed on 2.6.1992 i.e. within a period of three years from 6.6.1989 cannot be said to be barred by limitation. On the contrary, in the instant case, no payment was made by the appellant subsequent to 15.4.1997 nor there are materials on record on the basis whereof it can be held that cause of action for the first time accrued to the appellant-plaintiff within three years from the date of filing of suit instituted on 13.3.2006. That being so, I find it difficult to differ with findings of the Appellate Court that suit filed by the appellant is barred by limitation. No sooner the suit is found to be barred by limitation, nothing survives for consideration qua merits of the case.

Sh. Lalit Pal Singh, Advocate, filed the written statement and specifically denied receipt of any amount and even execution of agreement by defendant No. 1 in favour of the plaintiff. Defendant No. 1, in para 3 of the preliminary objections, raised a plea that suit has been filed by the plaintiff in collusion with defendant No. 2 with a view to cheat the answering defendant. In para 6 of the preliminary objections, there is reference to registered general power of attorney No. 411 dated 20.11.1996 executed by him in favour of Naresh Kumar defendant No. 3 who executed sale deed dated 29.4.2004 as an attorney of defendant No. 1 in favour of defendants No. 4 and 5.

Counsel for the appellant may be right in his submission that in response to para 3 of the plaint wherein there is reference that balance sale consideration of Rs. 1,76,875/- was received by defendant No. 1 through his attorney i.e. Defendant No. 2 on 18.3.1997 as per recital made on the back of agreement, there is no specific denial with regard to receipt of Rs. 1,76,875/- by defendant No. 2 on 18.3.1997 as attorney of defendant No. 1. However, it was repeatedly asserted by defendant No. 1 that last date for registration of sale deed was extended upto 15.4.1997 and plaintiff can not be heard to say in 2006 that no date for execution and registration of sale deed was fixed. It was also pleaded that plaintiff has no right to file the instant suit after a period of more than 8 years from 15.4.1997 and the suit is barred by limitation.

Order 8 Rule 5 of the Code deals with specific denial. A relevant extract therefrom reads as follows:-

> "Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to

be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Indisputably, the Court did not pass any order in favour of the appellant on the basis of non-specific denial of the aforesaid fact contained in para 3 of the plaint. On the contrary, the court framed issues and called upon the appellant-plaintiff to prove his case on the basis of evidence meaning thereby that appellant was required to prove that fact otherwise than by such admission of defendant No. 1 more particularly in the circumstances that defendant No. 2 denied to have received any such payment from the plaintiff/appellant.

The appellant failed to produce any evidence that defendant No. 2 was ever appointed as an attorney by defendant No. 1 or lawfully acknowledged receipt of payment on behalf of proposed vendor. The Appellate Court has rightly held that appellant can not derive any advantage to his contention from endorsement dated 18.3.1997 in absence of evidence on record that defendant No. 2 was attorney of defendant No. 1. In view of the above, this court need not to dilate on other issues as it would amount to undertaking an exercise in futility at the cost of making the judgment lengthy. Analyzed from any angle, I do not find an error much less perversity in the impugned judgment that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is dismissed in limine.

(Rekha Mittal)
Judge

13.2.2020
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No