

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

RSA-5603-2014 (O&M)

Date of decision: 08.03.2022

Surender Singh

....Appellant

Versus

Managat Ram and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Dalal, Advocate for the appellant

Mr. Brijender Kaushik, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The appellant is the plaintiff in a suit for grant of decree of possession by way of specific performance of the agreement to sell. The First Appellate Court has modified the judgment and decree passed by the learned trial court while dismissing the suit qua the share of Smt. Indrawati, daughter of Sish Ram whereas the suit qua the share of Managat Ram (her brother) has been decreed. A Regular Second Appeal filed by Managat Ram i.e RSA-3739-2011 has already been dismissed on 04.07.2014.

Some facts are required to be noticed. The plaintiff filed a

suit on 08.10.2003 for possession by way of specific performance of the agreement to sell dated 15.03.2001. It was asserted that on receipt of Rs.1,00,000/- as earnest money, the defendants (Managat Ram and his sister Smt. Indrawati) executed an agreement to sell with respect to 55 kanals and 5 marlas of joint land. The land was agreed to be sold at the rate of Rs.1,50,000/- per acre. As per the agreement to sell, the sale deed was to be executed on 14.09.2001. The plaintiff also claims that on 12.06.2001 the period for execution of the sale deed was extended by executing a writing signed by Managat Ram on receipt of Rs.2,25,000/- and the period was extended upto 14.12.2001. The suit was filed on 08.10.2003. Defendants contested the suit while filing separate written statements. Defendant no.1 denied execution of the writing dated 12.06.2001 but admitted that the period for registration of the sale deed was extended upto 14.12.2001. Defendant no.1 also admitted that he had received an additional payment of Rs.2,25,000/- on 12.06.2001 from the plaintiff. He also admitted receipt of Rs. 1,00,000/- as earnest money alongwith his sister.

Defendant no.2, while filing separate written statement admitted the execution of the agreement to sell but stated that defendant no.1 (her brother) was never authorized to extend the period for execution and registration of the sale deed.

On appreciation of evidence, learned trial court decreed the suit vide judgment and decree dated 04.11.2009. Both the defendants filed joint first appeal. Learned First Appellate Court has upheld the finding of fact arrived at by the trial court with regard to entering into

agreement to sell on receipt of the earnest money and execution of writing dated 12.06.2001 signed by Managat Ram while extending the date for execution of the sale deed to 14.12.2001 on receipt of Rs.2,25,000/-. However, the First Appellate Court has accepted the appeal with respect to the share of Smt. Indrawati. It has been held that Smt. Indrawati was not a party to the writing dated 12.06.2001 and therefore, the suit filed by the plaintiff qua her is liable to be dismissed.

Heard learned counsel representing the parties at length and with their able assistance perused the judgments passed by the courts below as also the record of the learned trial court, which was requisitioned.

Learned counsel representing the appellant contends that even if writing dated 12.06.2001 is ignored, still the suit filed by the plaintiff was filed within the period prescribed in the Limitation Act, 1963. He submits that the First Appellate Court has upheld the finding of fact arrived at by the trial court with respect to the fact that Smt. Indrawati did execute the agreement to sell on receipt of the earnest money of Rs.1,00,000/- alongwith her brother. He further contends that Smt. Indrawati never gave any notice to the plaintiff after 14.09.2001 calling upon him to execute the sale deed. Hence, he contends that Smt. Indrawati had consented to the extension of the period for registration of the sale deed.

Per contra, learned counsel representing Smt. Indrawati contends that since Smt. Indrawati did not sign the writing dated 12.06.2001, therefore, such writing cannot be enforced against her. He

further contends that terms of the contract have been varied /changed, therefore, in the absence of consent of Smt. Indrawati to the variation, the aforesaid contract cannot be enforced against her.

This case has peculiar facts. The execution of the agreement to sell dated 15.03.2001, on receipt of the earnest money, has been concurrently found to be correct. The suit qua the share of Managat Ram already stands decreed. In such circumstances, the question is whether the plaintiff should be deprived of the relief of specific performance qua the share of Smt. Indrawati or not, particularly when the suit from the date of the original agreement to sell is within the period of limitation?

It is not in dispute that the agreement to sell Ex.P-2 dated 15.03.2001 is common. Sh. Managat Ram and Smt. Indrawati were joint owners of land measuring 55 kanals and 5 marlas. Both were co-sharers. They executed the agreement to sell jointly on receipt of the earnest money. It is also proved that on 12.06.2001 the period for execution of the sale deed was extended by a period of 3 months only. Even if the alleged writing dated 12.06.2001 with respect to the share of Smt. Indrawati is ignored, still the suit filed by the plaintiff is within limitation. Further on a careful reading of the deposition of Smt. Indrawati, who has appeared as DW2, it is evident that she did not visit the office of the Sub Registrar for execution of the sale deed on 14.09.2001. Smt. Indrawati is married and resides in village Achhej, Tehsil Beri, District Jhajjar, whereas the land in question is located in Village Bakhawarpur @ Raiya, Tehsil & District Jhajjar. She has stated

in her deposition that she came to execute the sale deed on 15.03.2001, which is the date of agreement to sell. It is evident that such statement is factually incorrect because as per the original agreement to sell, the agreed date for execution of the sale deed was 14.09.2001.

Further, there is a concurrent finding of fact to the effect that Managat Ram and Smt. Indrawati executed the agreement to sell while making a factually wrong statement. In the agreement to sell, it was recited that the land in question is free from any charge. It has come on record that the land was mortgaged and it is the defendants who did not repay the amount before 14.09.2001. In such circumstances, it is evident that the First Appellate Court has overlooked these aspects of the matter while partially reversing the judgment of the trial court.

Further on analysis of the facts and evidence available, it is evident that Smt. Indrawati was passive a consenting party to the writing deed dated 12.06.2001. She took no steps to call upon the plaintiff to complete the contract on 14.09.2001. Sh.Managat Ram is her brother. He has already lost in the suit. There is no inter se clash of interest between the brother and sister. She, after marriage, is not residing in the village where the disputed land is located.

Consequently, the appeal is allowed. The judgment passed by the learned First Appellate Court to the extent which results in dismissal of the suit filed by the appellant partially qua the share of Smt. Indrawati is set aside and the judgment passed by the trial court is restored. The appellant shall be liable to pay the balance amount to Smt. Indrawati while ignoring the writing dated 12.06.2001.

All the pending miscellaneous applications, if any, are also disposed of.

08.03.2022
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE