

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

RSA-3975-2018(O&M)
Date of decision:24.03.2022

RAJINDER SINGH

...Appellant

Versus

DAVINDER SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Anupam Bhardwaj, Advocate
for the appellant.**

ANIL KSHETARPAL, J (Oral)

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

The plaintiff and the defendant are brothers. While assailing the concurrent findings of fact arrived at by the Courts below, the plaintiff has filed the appeal.

Some facts are required to be noticed.

The plaintiff filed a suit for grant of a decree of specific performance of the agreement to sell along with the consequential relief of permanent injunction. It is the admitted case of the parties that on 12.04.1988, three properties specified in the agreement to sell were agreed to be sold by the defendant in favour of the plaintiff for a total sale consideration of Rs.75,000/- which was paid, there and then. It is also not in dispute that the property registered at Sr. No.2 has already been transferred in favour of the plaintiff's wife. The suit was filed on 13.10.2014. The defendant did not dispute the agreement to sell on receipt of full payment, however, asserted that on return of Rs.40,000/- the agreement to sell was

cancelled and therefore, the plaintiff has no right to claim specific performance of the property listed at No.(i) and (iii).

The trial Court as well as the First Appellate Court dismissed the suit on the following grounds:-

- (i) The plaintiff while appearing in evidence admits the settlement between the parties. He also admits that he did not press the execution of the sale deed.
- (ii) The suit filed by the plaintiff is beyond the prescribed period of limitation as the plaintiff himself while asserting that the defendant has refused to perform the contract, issued notice on 04.08.2009.

Both the Court also noticed that the plaintiff concealed the aforesaid fact while filing the suit.

This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.

The learned counsel representing the appellant submits that the written agreement to sell could not be revoked by an oral agreement.

At the cost of repetition, it may be noted here that the parties are brothers. The appellant himself admits a settlement between the parties after the agreement to sell dated 12.04.1988. Further, the plaintiff did not take any action for a period of 16½ years. This fact also helps the Court in drawing an inference that by a subsequent oral agreement, the parties had resolved their dispute on return of Rs.40,000/- by the defendant to the plaintiff and the present suit is an afterthought of the plaintiff.

The attention of the court has not been drawn to any statutory provision which debars the party from subsequently entering into an oral

agreement.

In view thereof, no ground to interfere with the concurrent findings of fact arrived at by the Courts below is made made.

Dismissed.

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

March 24, 2022
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(ANIL KSHETARPAL)
JUDGE

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