

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-418-2020

DATE OF DECISION: JULY 20, 2022

BALWINDER SINGH & ANOTHER ...APPELLANTS

VERSUS

PREM SINGH AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. MANDEEP SINGLA, ADVOCATE FOR THE APPELLANTS.

MANOJ BAJAJ, J.(ORAL)

The appellants-plainiffs are aggrieved against the judgement and decree dated 4.10.2019, passed by the first appellate Court in Civil Appeal No.127 dated 12.3.2019, upholding the judgement and decree dated 26.2.2019, by Civil Judge(Jr.Divn.), Derabassi, whereby their suit for specific performance of contract with consequential relief of permanent injunction was dismissed.

Briefly, the facts of the case are that the plaintiffs filed suit for specific performance of agreement dated 26.2.1999 alongwith permanent injunction pleading that Ishro wife of Gurdial Singh (Mother of defendants-respondents) had agreed to sell her share of land measuring 2 biswas comprised in khasra No.493(0-2), situated at village Karkaur, in their favour for a total sale consideration of ₹20,000/-. At the time of execution of the agreement, the entire sale consideration was paid to her and the registration was postponed, however, possession of the suit property was delivered to the plaintiffs and since then they are in possession of the suit property. The plaintiffs were throughout ready and willing to get the sale deed registered

in their favour, but Ishro Devi died on 24.9.2002 leaving behind defendants as her legal heirs. After her death, the plaintiffs requested the defendants on number of occasions to get the sale deed registered, but nothing was done, therefore, a legal notice dated 26.10.2016 was sent to the defendants asking them to get the sale deed registered on 10.11.2016 in their favour. Though the notice was received by them on 26.10.2016, but they did not turn up before the office of Sub Registrar, Derabassi for execution of sale deed. Even after this, various requests were also made to defendants for registration of sale deed, however, there was no response, so the plaintiffs brought suit seeking decree of specific performance as well as permanent injunction.

The suit was contested by the defendants by filing joint written statement and preliminary objections regarding delay in filing the suit, maintainability and lack of valid cause of action were raised, and on merits it was highlighted that Ishro Devi had expired on 24.9.2002, i.e. 14 years before the date of filing of the suit and the suit is barred by limitation. Other averments in the plaint were also denied and in the end, it was prayed that the suit be dismissed.

After completion of pleadings of the parties, the trial Court in all, framed seven issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the trial Court decided the material issues No.1 and 2 against the plaintiffs and in favour of defendants, whereas issues No.3 to 7 were decided in favour of plaintiffs.

Dissatisfied with the judgement and decree dated 26.2.2019,

passed by the trial Court, the plaintiffs preferred appeal bearing No.127 dated 12.3.2019, and the same was also dismissed through the impugned judgement and decree dated 4.10.2019. Hence this second appeal.

Learned counsel for the appellants has argued that the plaintiffs-appellants were throughout ready and willing to perform their part of contract and actually they had paid the entire sale consideration to Smt.Ishro Devi, but the sale deed was not executed and even her legal heirs have failed to respond to the legal notice dated 26.10.2016. He submits that the findings recorded by the Civil Judge (Jr. Divn.) Dera Bassi and upheld by the District Judge, SAS Nagar, Mohali are not based upon correct appreciation of the evidence on record, therefore, interference is warranted by this Court.

During the course of hearing, it is not disputed that the suit has been dismissed by the trial Court on the ground of delay and the said finding was upheld by the appellate Court. He submits that the cause of action would arise from the date of issuance of legal notice as after receiving the same, the defendants have not executed the sale deed in favour of the plaintiffs and the death of Ishro Devi in the year 2002 is irrelevant, as there was no fixed time frame for completing the sale transaction in the agreement to sell dated 26.2.1999. Therefore, the finding on this issue deserves to be set aside.

After hearing the learned counsel and considering the evidence on record, this Court finds that concededly the agreement relied upon by the plaintiffs was executed by Ishro Devi long back on 26.2.1999 and during her lifetime, they never asked the said vendor to execute the sale deed who

died on 24.9.2002, i.e. after more than 3½ years of the execution of the said agreement.

The argument that cause of action would accrue when the legal notice was sent by the plaintiffs to the L.R.s of Ishro Devi is completely misplaced as there is no acknowledgement by the defendants at any stage, much less admitting the agreement claimed by the plaintiffs. Further, a perusal of the impugned judgements reveals that the findings recorded by both the Courts are based upon proper appreciation of evidence and law on the subject. No other point was argued by the learned counsel.

Thus, this Court finds that the appeal does not involve any substantial question of law. Resultantly, the appeal fails and is dismissed.

July 20, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No