

111-A

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

**RSA-857-2020 (O&M)
Date of decision : 09.08.2022**

Kashmir Singh

...Applicant-appellant

Vs.

Balbir Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. P.S.Dhaliwal, Advocate
for the appellant.

MANOJ BAJAJ, J.

CM-2756-57--C-2020

These applications have been filed under Section 5 Limitation Act, 1963 and Section 151 CPC for condonation of delay of 43 days in filing as well as 03 days in re-filing the appeal.

Heard.

For the reasons mentioned in the applications, same are allowed and delay of 43 days in filing as well as 03 days in re-filing the appeal is condoned.

Applications stand allowed.

Main case

Plaintiff (appellant) is aggrieved against the judgment and decree dated 09.08.2019 passed in civil appeal No.549 dated 22.12.2017, by the first appellate court, whereby it has affirmed the judgment and decree dated

09.11.2017 passed in civil suit No.104 of 07.05.2013, dismissing his suit for specific performance of contract, along with declaration to challenge sale deed No.1037 dated 20.06.2011 executed by defendant Nos.1 to 3 in favour of defendant No.4.

Briefly, the facts of the case are that father of defendant Nos.1 to 3, namely, Kapur Singh was owner in possession of the suit land measuring 02 marla comprised of khata No.229/376 khasra No.46//19/9/8 (0-2) situated at village Arakwas, Tehsil Lehra. After the death of Kapur Singh on 30.12.1987, defendant Nos.1 to 3 became owners of the suit land, who on 04.07.1991, agreed to sell the suit land to the plaintiff for a sum of Rs.3,500/- and received the whole amount and the possession was given to the plaintiff at the spot. It was agreed between the parties that the plaintiff may get the sale deed executed at any time. However, the defendant Nos.1 to 3 never turned up to execute the sale deed and defendant No.4 started threatening the plaintiff to dispossess him from the suit land and aggrieved against the same, the plaintiff filed a suit bearing No.180 of 30.07.2012 for permanent injunction against defendant No.4, wherein he filed written statement to reveal that defendant Nos.1 to 3 had executed sale deed No.1037 dated 20.06.2011 in his favour. On this cause of action, the suit was filed for specific performance of agreement dated 04.07.1991 and further to declare the sale deed in favour of defendant No.4 as illegal, null and void.

The suit was contested by the defendant Nos.1 to 3 and defendant No.4 by filing their respective written statements, wherein defendants No.1 to 3 took preliminary objections regarding its maintainability, *locus standi* etc. and on merits, it was pleaded that they never sold the suit land to plaintiff, or

entered into any agreement to sell dated 04.07.1991 with him. Further, while denying the averment of payment of Rs.3,500/- as sale consideration, it was prayed that the suit be dismissed. In the written statement filed by defendant No.4, it was pleaded that he is the *bona fide* purchaser of the suit land, and that defendants No.1 to 3 were never the owners of the suit property on 04.07.1991, who inherited the property of their father vide mutation No.2559 dated 04.06.2011, therefore, the question of selling or agreeing to sell the suit land in favour of plaintiff, as claimed by him does not arise. The defendants No.1 to 3 had sold the suit land to him vide sale deed No.1037 dated 20.6.2011 for a sale consideration of Rs.70,000/-, and refuting the other averments in the plaint, it was prayed that the suit be dismissed.

Thereafter, the trial Court framed the issues and after considering the evidence adduced by the parties, dismissed the suit vide judgment and decree dated 09.11.2017. Being dissatisfied with the judgment and decree dated 09.11.2017, plaintiff filed first appeal and the same was also dismissed vide impugned judgment and decree dated 09.08.2019. Hence this regular second appeal.

Learned counsel for the appellant has argued that while executing an agreement to sell dated 04.07.1991 by defendant Nos.1 to 3 in favour of the plaintiff/appellant, the possession of the suit property was also delivered to him because the entire sale consideration was also paid to the vendors, and the plaintiff was not aware that the vendors had sold the property to Hardev Singh vide sale deed No.1037 dated 20.06.2011, therefore, when he came to learn about this transaction through written statement filed by Hardev Singh in civil suit No.180 of 30.07.2012 filed by appellant against him, he filed the present

suit. He submits that the appellant was throughout ready and willing to perform his part of the contract, but without examining this, trial Court as well as first appellate Court have proceeded to dismiss his suit only on the ground that the same is barred under Order II Rule 2 CPC. Learned counsel has submitted that one of the vendors, namely, Rattan Singh in his cross-examination stated that he is still ready to execute the sale deed in favour of the plaintiff and despite this Courts have declined the claim of the plaintiff. According to the learned counsel, the impugned judgment and decree passed by the appellate Court as well as by the trial Court deserve to be set aside.

After hearing learned counsel and analyzing the evidence on record, this Court finds that the previous suit filed by the appellant against Hardev Singh seeking injunction was filed on 30.07.2012 and in the said case, vendors of Hardev Singh were not impleaded as party, and when Hardev Singh relied upon a valid title in his favour, plaintiff filed this suit seeking specific performance of contract dated 04.07.1991 and impleaded the vendors of Hardev Singh also. The argument that the appellant came to know about the sale transaction in favour of Hadev Singh after his written statement is not worth acceptance, as the plaintiff never woke up to seek execution of sale deed much less by seeking the relief of specific performance and this shows his lack of interest in the suit property, who was never willing to perform his part of the contract. Strangely, the plaintiff by filing the suit for permanent injunction never thought it proper to seek specific performance of the agreement dated 04.07.1991 against defendant Nos.1 to 3, and simply prayed for injunction, knowing well that he does not hold the title of the land in the eyes of law.

Thus, this Court has no hesitation in holding that the plaintiff has

failed to adduce convincing evidence in support of his claim for specific performance of contract dated 04.07.1991, and further the findings returned by both the Courts, on material issues including maintainability of suit are based upon proper appreciation of evidence and law.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

(MANOJ BAJAJ)
JUDGE

09.08.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No