

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

117

CR-1131-2023

Date of decision: 20.02.2023

Tirath Singh

...Petitioner

Versus

Darshan Lal and another

...Respondents

CORAM: HON'BLE MR.JUSTICE ARUN MONGA

Present: Mr. Shehbaz Thind, Advocate
for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. Tara Dutt, Advocate
for respondent-Caveators.

ARUN MONGA, J. (Oral)

Instant petition has been filed under Article 227 of the Constitution of India with a prayer for setting aside the order dated 18.11.2022 (Annexure P-3) whereby in a suit for specific performance of agreement to sell dated 16.10.2013 and for permanent injunction filed by respondents herein, application filed by petitioner/defendant under Order 7 Rule 11 CPC was dismissed by learned Civil Judge (Junior Division), Ludhiana.

2. Brief facts first, as pleaded in the revision petition.

2.1. Respondents filed a suit seeking specific performance of a null and void agreement to sell dated 16.10.2013 in respect of land measuring 40 Kanals 4 Marlas forming part of total land measuring 258 Kanals 14 Marlas. Respondents also sought relief of permanent injunction and further relief of recovery of Rs.4,65,00,000/- with interest.

2.2. The said civil suit is not legally maintainable and in order to save valuable time of Court, petitioner/defendant moved application under Order 7

Rule 11 CPC for rejection of plaint, which was dismissed vide order impugned herein.

2.3. It is further submitted that learned trial Court while passing the impugned order has failed to take into consideration the fact that there was no cause of action with respondent/plaintiffs to file the suit as on 31.12.2014, the sale deed was presented to Sub Registrar, Ludhiana for registration but the same was not registered. Meaning thereby, respondents should have filed a suit under Section 77 of the Registration Act, 1908 and suit for specific performance of agreement to sell in question after a delay of 7 years is not maintainable on the said cause of action.

2.4. It is further submitted that learned trial Court while passing the impugned order has not taken into consideration the fact that the relief of recovery which has been sought in the civil suit is with regard to amount which already stands forfeited and limitation period for filing suit for recovery has also elapsed. Accordingly, there is no cause of action in favour of respondents to file the civil suit.

3. Having heard the arguments of learned counsels for the parties, it transpires that the objections as to the maintainability of the suit are essentially two-fold i.e., (i) limitation; and (ii) plaintiff having not resorted to remedy under Section 77 of the Registration Act, 1908 as plaintiffs are seeking the specific performance of the same very agreement for which the Registrar of sale deeds had passed the specific order and same cannot be registered as a sale deed.

4. In the premise, I am of the view that both these issues are to be adjudicated only after the respective parties adduce their evidence *qua* the contentions/pleadings. Being so, the parties are at liberty to either file an appropriate application and/or otherwise seek framing of the issues with regard

to the aforesaid contentions and learned trial Court is expected to render its findings on the same before proceeding further on its merits.

- 5. Accordingly, the revision petition is disposed of in above terms.
- 6. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

20.02.2023
Harish Kumar

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