

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

**RSA-1526-2021 (O&M)
Date of decision: 10.04.2023**

HUKUM SINGH

...Appellant

VS

RAMPHAL

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashwani Gaur, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)
CM-6105-C-2021

For the reasons stated in application, same is allowed and delay of 103 days in re-filing the appeal stands condoned, subject to all just exceptions.

Main case

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 18.03.2019, as upheld by learned First Appellate Court vide its judgment and decree dated 11.12.2019.

3. Facts as noticed by Courts below are as under:-

“In brief, the case of the original plaintiff Hukam Chand is that the defendant Ramphal was the owner in possession of plot measuring 100 sq. yards comprised in rectangle and killa No.29//20/1/4 situated within the revenue estate of village AkbarpurBarota, Tehsil and District Sonapat (hereinafter called the suit property) which he got as per gift deed dated 09.03.1994. The defendant inked into an agreement of sale of the suit property with the plaintiff in lieu of Rs.25,000/- on

08.03.2000. The vacant possession of the suit property was handed over to the plaintiff and it was agreed that the sale deed would be executed as and when the defendant would be eligible to execute the sale deed as on the gift deed dated 09.03.1994 it is mentioned that the defendant could not execute any sale deed for 20 years. In the year 1910 when the defendant threatened to interfere in the peaceful possession of the plaintiff over the suit property, he filed a civil suit against the defendant. After expiry of 20 years the defendant is competent to transfer the suit property in favour of the plaintiff. The plaintiff asked the defendant to execute the sale deed but in vain. Now through this suit the plaintiff has sought a decree for specific performance of the agreement of sale dated 08.03.2000. As a consequential relief, the plaintiff has sought a decree for permanent injunction restraining the defendant from leasing/alienating/mortgaging etc. of the suit property to any other person forcibly and illegally in any manner.”

4. Upon notice, defendant appeared and filed written statement taking preliminary objections on the grounds of maintainability, locus standi, barred by limitation etc.,

4.1 On merits, suit was resisted mainly on the ground that defendant is owner in possession of the suit property. He never inked any agreement of sale nor received any sale consideration. The physical possession of the suit property is with the defendant where he has constructed six rooms and one staircase. He has taken an electricity connection in his house. Plaintiff is not entitled to get any decree for specific performance of the agreement of sale. All other averments were also denied.

5. Replication was not filed. Based on rival pleadings, following issues were framed:

- “1. Whether the plaintiff is entitled to a decree for specific performance as prayed for? OPP*
- 2. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the present suit is hopelessly time barred? OPD*
- 6. Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue Nos.1 and 2 were decided against plaintiff and in favour of defendant and issues No. 3 to 5 were disposed of as not pressed. Consequently, suit of plaintiff was dismissed with costs by learned trial Court vide impugned judgment and decree dated 18.03.2019.

8. Feeling aggrieved, plaintiff went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

9. Shorn of unnecessary details, the submissions herein are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record, inasmuch as the agreement to sell in question was a full payment agreement in which possession of the suit property was delivered to plaintiff/appellant. Further, the plot in question was gifted by Gram Panchayat to defendant vide gift deed dated 09.03.1994 and as per Rules 5A/13A of the Punjab Village Common Lands (Regulation) Rules, 1964, a donee is debarred from transferring the gifted land for 20 years. Learned Courts below failed to appreciate the fact that since 20 years elapsed in the year-2014 and instant suit was filed in the year-2015, the suit of plaintiff cannot be said to be barred by limitation.

10. No doubt, the learned trial court observed that on onus issue No. 3 (of limitation) the defendant had neither produced any evidence nor

was it pressed during final arguments and accordingly, the same was disposed of against the defendant, as not pressed. However, its findings on issues No. 1-2 were recorded against the plaintiff holding thereby holding that the plaintiff had failed to prove that he was entitled to decree for specific performance and/or for permanent injunction. The learned first appellate court framed following questions for determination:

- (i) *“Whether or not the defendant had inked an agreement of sale dated 08.03.2000 ?*
- (ii) *Whether or not the plaintiff was ready and willing to perform his part of the agreement?*
- (iii) *Whether or not the plaintiff is entitled to get any specific performance of the agreement of sale ? “*

By recording elaborate reasons, the learned first appellate court answered all these questions against the plaintiff-appellant. For ready reference, the relevant parts of its judgment are extracted below:

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“In the instant case also, a perusal of the cross-examination of PW-2 Giri Ram, the attesting witness reveals that the agreement of sale was written by a scribe at Tehsil compound and stamp papers were purchased by defendant Ramphal but the plaintiff has not examined the scribe and in the absence of examination of scribe it cannot be said that the plaintiff has proved the execution of agreement of sale in question.

16. *Not only this, the plaintiff has not placed on record the original agreement of sale and only attested copy of agreement of sale Ex.P-5 has been placed on record. It was the duty of the plaintiff to produce the primary evidence in the shape of original agreement of sale and in the absence of the primary evidence, he should seek the permission of the Court to lead secondary evidence. However, in the absence of seeking permission to lead secondary, the certified copy of agreement of sale Ex. P-5 is of no help to the plaintiff particularly when no evidence has been led that the stamp paper for writing Ex.P-5 was purchased by the defendant. Moreover, the defendant has specifically denied the execution of the agreement of sale, however, in Ex.P-1 the defendant Ramphal while filing the reply of the application in the previously instituted suit has admitted his thumb impression on Ex.P-5 but this pleading was never put to DW-1 Ramphal when he appeared in the witness*

box to confront him. Merely examining one of the attesting witness without placing on record the original agreement of sale will not prove its execution. So, the question No.1 posed before this court stands answered accordingly.

Answer to question No.2

17. *So far as question No.2 is concerned, a perusal of the plaint as well as statement of plaintiff on oath, no where reveals that he was remained ready and willing to perform his part of the contract and remained present in the office of Sub Registrar on the day when the defendant has refused to perform his part of the agreement. In the absence of any pleading or proof regarding the readiness and willingness to perform his part of the agreement which was the initial duty of the plaintiff to prove, the plaintiff has failed to prove his constant readiness and willingness to perform his part of the agreement despite the fact that the defendant has denied the execution of the sale. So question No.2 posed before this court stands answered accordingly.*

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20. *A bare reading of Sections 10 and 122 of Act, 1882, shows that Section 10 lays down that in a transfer, the condition restraining alienation, cannot be inserted. Section 122 of Act, 1882 lays down that on happening of certain condition, not depended on the will of the donor, the gift can be suspended or revoked. Present case is not covered under Section 122. According to the plaintiff, gift can be conditional. But there is no question as to whether a gift can be conditional but the real question is that condition, which has been specifically prohibited under Section 10 of Act, 1882 can be imposed in the gift or not. There is no reason to hold that the condition which is specifically prohibited under Section 10 of Act, 1882 is not applicable to gift. This question came for consideration before various courts in under noted cases from time to time, viz Re Dugdale (1888) 38 Ch D 176; Nabob Amiruddaula V. Nateri (1876) 6 Mad HC 356 (Mohomedan Law); Anantha V. Nagamuthu (1882) ILR 4 Mad 200; Ali Hasan Vs. Dhirja (1882) ILR 4 All 518; Bhairo V. Parmeshri (1885) ILR 7 All 516; Muthukamara V. Anthony (1915) ILR 38 Mad 867, 24 IC 120; Narayanan V. Kannan (1884) 7 Mad 315, Brij Devi Vs. Shiv Nanda Prasad, AIR 1939 Allahabad 221; Giani Ram V. Balmakand (1956) 58 Punj LR 114, AIR 1956 Punj 255; Ramasamy and ors V. Wilson Machine Works AIR 1994 Madras 222 (NOC), Jagdeo Sharma V. Nandan Mahto, AIR 1982 Patna 32 and Gorachand Mukherji V. Smt. Malabika Dutta AIR 2002 Calcutta 26 in which the courts have taken the view that condition restraining done from alienation of gift, cannot be imposed and such a conviction is void under Section 10 of the Act, 1882.*

21. *A bare perusal of the aforesaid provision clearly reveals that if there was any clog on the transfer of the property*

in the gift deed then such clog is of no value. The plaintiff was duty bound to file a suit for specific performance within a period of three years of the execution of the agreement of sale when no specific date has been mentioned in the agreement of sale or if no specific time is given then within a reasonable time. It has come in evidence that on previous occasion also the plaintiff has filed a suit for permanent injunction on 01.09.2010 when the defendant has threatened to interfere in his peaceful possession over the suit property, meaning thereby in the year 2010 the defendant had refused to execute the sale deed in favour of the plaintiff, however, the instant suit has been filed in the year 2015 despite the fact that it should have been filed within three years of the refusal of getting the sale deed registered. Since the clog regarding transfer of property was invalid and instant suit has been filed in the year 2015 for the agreement dated 08.03.2000 so the claim of the plaintiff is hopelessly time barred. In view of the aforesaid discussion, the plaintiff has failed to prove the execution of agreement of sale and his readiness and willing to perform his part of the agreement, so he is not entitled to get any decree for specific performance of the agreement in question. So question No.3 posed before this Court stands answered accordingly.”

11. I am inclined to agree with the view taken by learned first appellate Court in answering the aforesaid three questions against the plaintiff appellant and the reasons given thereof. In this and the findings on issues No. 1 -2 recorded by the learned trial Court also against the plaintiff, it is inconsequential even if issue No. 3 (of limitation) had not been pressed before and was disposed of by the learned trial court against the defendant.

12. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

13. No new arguments have been raised other than reiteration of the stand taken before learned Courts below.
14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.
16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.
17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
18. Pending application/s, if any, shall also stand disposed of.
19. No order as to costs.

(ARUN MONGA)
JUDGE

10.04.2023

vandana

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