

¹³⁰ IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1486-2023 (O&M)

Decided on:-28.07.2023

Gurdip Singh (since deceased) through LR's. and ors.Appellants

vs.

Bhupinder Pal Singh and othersRespondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ghulam Nabi Malik, Advocate,
for the appellants.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been made to the judgment and decree dated 02.07.2018 passed by the Court of learned Additional Civil Judge (Senior Division), Faridkot as well as judgment and decree dated 24.01.2023 passed by the Court of learned District Judge, Faridkot, thereby, decreeing the suit for possession by way of specific performance filed at the instance of respondents-plaintiffs.

2. Briefly stating, the facts are that respondent No.3 entered into an agreement to sell dated 16.12.2004, in favour of respondents No.1 and 2 qua sale of the property in question with 20.05.2005 being the target date. As per the facts pleaded in the plaint, earnest money of Rs.1.5 lakh was paid to the vendor, however, in the meanwhile even before the target date, the vendor executed sale deed dated 20.12.2004 in favour of the present appellants, which was registered on 22.12.2004. Faced with this, respondents No.1 and 2 filed suit for possession by way of specific

performance of the agreement to sell dated 16.12.2004, besides even seeking declaration qua the sale deed dated 20.12.2004 executed by respondent No.3 in favour of the present appellants as null and void.

3. Upon notice, the defendants appeared and two separate sets of written statements were filed on their behalf. In the written statement filed on behalf of respondent No.3 herein, though, the execution of the agreement in question was denied, however, thumb impressions thereupon were not disputed. On the other hand, in their written statement, the present appellants raised the plea of they being bonafide purchasers on the basis of sale deed dated 20.12.2004 having been registered on 22.12.2004.

4. The trial Court vide its judgment and decree dated 02.07.2018, decreed the suit filed by respondents No.1 and 2 while recording a finding in their favour as regards the valid execution of agreement to sell dated 16.12.2004 and discarded the plea raised by present appellants of they being bonafide purchasers.

5. Aggrieved thereof, the present appellants filed first appeal, which also came to be dismissed vide judgment and decree dated 24.01.2023 passed by the Court of learned District Judge, Faridkot.

6. While assailing the above-mentioned two judgments and decrees passed by the Courts below, learned counsel for the appellants submits that the suit filed at the instance of respondents No.1 and 2 was clearly barred by limitation as the sale deed in their favour was executed on 20.12.2004, though registered on 22.12.2004, however, the suit was filed on 05.04.2008, which was clearly beyond three years, whereas, respondents No.1 and 2 were having due knowledge about the factum of execution of sale deed in

their favour right from the time of its execution/registration. He also submits that the challenge was made to sale deed dated 20.12.2004, whereas the sale deed in favour of the present appellants was registered only on 22.12.2004 and there was no registered sale deed dated 20.12.2004 in their favour. No other argument has been raised on behalf of the appellants.

7. I have heard learned counsel for the parties and gone through the paper book. I am unable to find any merit in the submissions made on behalf of the appellants.

8. In the present case, the agreement to sell dated 16.12.2004 executed by respondent No.3 in favour of respondents No.1 and 2 has been duly proved on record and the plea set up by respondent No.3 as regards fraud having been played upon her by respondents No.1 and 2 has not been proved. Besides it, the execution of sale dated 20.12.2004 registered on 22.12.2004 in favour of the present appellants has not been held to be a bonafide transaction for the reasons that the present appellants happen to be closely related to respondent No.3 being the nephews, living in the same vicinity and also that no exchange of money was established on record by the present appellants in favour of respondent No.3.

9. On the issue of challenge to the sale deed dated 20.12.2004, registered on 22.12.2004, executed in favour of present appellants by respondent No.3 being barred by limitation, it may be pointed out here that the appellants herein never ever established any prior right in their favour on the basis of any previous agreement as compared to the agreement to sell dated 16.12.2004, executed by respondent No.3 in favour of respondents No.1 and 2. Moreover, the sale deed executed by respondent No.3 in favour

of present appellants was never found to be a bonafide transaction and the same was apparently executed to defeat the rights of respondents No.1 and 2 available to them under the prior agreement to sell dated 16.12.2004. As regards the plea raised by the appellants about the suit being barred by limitation, it may be recorded here that the sale deed executed by respondent No.3 in favour of present appellants was not even required to be specifically challenged in the suit and a mere declaration had to be sought that the same may not affect the rights of respondents No.1 and 2-plaintiffs, who were never party to it.

10. Equally important, suit for possession by way of specific performance of a contract is governed by Article 54 of Schedule I to Limitation Act, 1908, whereas, suit for declaration is covered under Article 58 or 59 thereof. It is recognized construction of Limitation Act that a specific article dealing with a specific subject is to be applied in general and residuary article. Therefore, a suit for possession by way of specific performance is necessarily to be governed by Article 54 of Schedule I to Limitation Act, 1908, which has two limbs; where the date for performance is fixed under the contract, suit can be filed within three years of the said date; if no date for performance is fixed, suit can be filed within three years from the notice that the performance is refused. In the present case, agreement to sell was executed on 16.12.2004 with 20.05.2005 being the target date and thus, the suit was governed by first limb of Article 54 and the same could have been filed within three years from the target date i.e. up to 19.05.2008. Accordingly, the suit filed on 07.04.2008 is clearly within limitation. Nonetheless, the suit for possession by way of specific

performance & declaration could not have been dismissed being barred by limitation, once the relief of possession by way of specific performance was well within limitation. Even otherwise, the registration of sale deed on 22.12.2004 in any case relates back to the date of its execution, which is admittedly on 20.12.2004 and thus, the plea of not challenging the sale deed dated 22.12.2004 is devoid of any merit. No other point has been argued at the instance of present appellants.

11. In view of the discussion made herein above, finding no merit in the present appeal, the same is dismissed.

12. Pending application(s), if any, stand(s) disposed of.

28.07.2023

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(HARKESH MANUJA)
JUDGE

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