

RSA-1151-2016 (O&M) 1 2023:PHHC:156288

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

RSA-1151-2016 (O&M)
Date of decision: 02.12.2023
Reserved on : 29.11.2023

Om Parkash and another

....Appellants

Versus

Manjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aashish Chopra, Sr. Advocate with
 Mr. Gagandeep Singh, Advocate for the appellants

 Mr. S.K.Garg Narwana, Sr. Advocate with
 Mr. Sanjay Jain, Advocate for the respondents

ANIL KSHETARPAL, J

1. In this Regular Second Appeal, the correctness of the concurrent findings of fact arrived at by the courts below is assailed by defendant No. 1. The respondents namely Manjit Singh and Kulwant Singh (respondents herein) filed a suit for possession by way of specific performance of the agreement to sell dated 7th June, 2006 with respect to 3 acres of land out of the total land measuring 5 acres, which has been decreed by both the courts below. Defendant No. 2 and 3 namely Sukhdev Singh and Ramakant have already executed the sale deed in favour of the respondents (the plaintiff before the trial court). This appeal, as already noticed that has been filed by defendant No. 1.

2. In order to comprehend the issue involved in the present case, some facts, in brief, are required to be noticed. The parties will be referred to their rank and status in the trial court. All the three defendants entered into an agreement to sell with the plaintiffs on 7th March, 2006 for the sale of 3 acres of land for an amount of Rs.3,63,00,000/-. On 7th March, 2006, they received Rs.15,50,000/- as an earnest money. Thereafter, they received Rs. 15,00,000/- on 27th May, 2006 and Rs. 12,00,000/- on 8th June, 2006. This amount of Rs. 12,00,000/- was in addition to the total agreed sale consideration of Rs. 3,63,00,000/-. As per clause 3 of the agreement to sell, the parties agreed that before the registration of the sale deed, the joint land will be partitioned and the first party namely Om Parkash, Sukhdev Singh and Ramakant will cooperate. It was also provided that the sale deed would be executed on 7th May, 2007.

3. The execution of the agreement to sell and receipt of the amount on various dates as already noticed is not disputed between the parties. Originally, on 12th June, 2007, the plaintiffs filed a suit for mandatory injunction directing the defendants to get the land partitioned in terms of the agreement to sell to perform the part of the contract as mentioned in the agreement to sell and also for passing a decree for the permanent injunction restraining the defendants from alienating the suit property in any manner or issue any other order or direction as the court may, deem fit and

appropriate in the particular facts and circumstances of the case. In the plaint, it was asserted that the plaintiffs always remain ready and willing to perform their part of the contract and on 7th May, 2007 they attended the office of the Sub-Registrar alongwith the balance sale consideration. They also got attested affidavit to prove their readiness. On the very next day, i.e. 8 May, 2007, the plaintiff sent a notice to the defendants to come and execute the sale deed.

4. The defendants, while contesting the suit, claimed that the plaintiffs did not come forward to get the sale deed executed on the given date and hence, the amount of the earnest money stands forfeited and in fact, the defendants remained present in the office of the Sub-Registrar and have sent a reply to the notice given to them on 10th May, 2007.

5. During the pendency of the suit, an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was filed by the defendants, which was disposed of on 9th August, 2012 while observing that the plaintiffs can apply for amendment of the plaint in order to seek the relief of specific performance. Pursuant thereto, amended plaint was filed by the plaintiffs while seeking the relief of specific performance of the agreement to sell. As already noticed, both the Courts, on appreciation of evidence, have concurrently decreed the suit.

6. Heard the learned senior counsels representing the parties at length and with their able assistance perused the paper

book alongwith the requisitioned record, which is available in the digital form.

7. Learned senior counsel representing the appellant submits that the limitation for filing the suit for specific performance of the agreement to sell is three years from the agreed date for execution and registration of the sale deed. He submits that as per Article 54 of Limitation Act, 1963, the period of limitation will begin to run from 7th May, 2007 onwards and will come to an end on 6th May, 2010. Whereas the amended plaint was filed in the year 2012. He further submits that vide the notice dated 10th May, 2007 the earnest money was forfeited and therefore, the plaintiffs were required to file the suit within three years from 10th May, 2007. While relying upon the judgment passed in **Prithi Pal Singh and another vs. Amrik Singh and others 2013 (9) SCC 576** and **T.L.Muddukrishana vs. Smt. Lalitha Ramchandra Rao 1997 AIR (SC) 772**, he submits that the amended plaint will not relate back to the date of the filing of the suit. He further submits that the plaintiffs have failed to prove their readiness and willingness to perform their part of the contract as they have failed to prove their resources to pay the sale consideration.

8. On the other hand, the learned senior counsel representing the respondents contends that the court while taking on record the amended plaint did not order that it will be deemed to have been instituted on the day the amended plaint was taken on

record. He submits that in the absence thereof, the amended plaint will relate back to the date of institution of the suit, which is within one month from 7th May, 2005, the agreed date. He further submits that the plaintiffs were always ready and willing to perform their part of the contract and in the amended plaint, the plaintiffs have asserted that they are prepared and have resources to perform their part of the contract. He also submits that the plaintiff Kulwant Singh appeared in evidence. The defendants did not challenge the deposition of Kulwant Singh on the issue of readiness and willingness.

9. This Court has considered the submissions and analysed the arguments of the learned senior counsels representing the parties.

10. On a careful perusal of the agreement to sell, it becomes evident that in clause 3 of the agreement to sell, it has been provided that before registration of the sale deed, the partition will take place and the first party will cooperate. However, in clause 6, it has been written that the sale deed would be executed on 7th May, 2007. It is the case of the plaintiffs that the defendants were to file an application for partition of the joint property and the plaintiffs could not file the application for partition as they were not co-owners/co-sharers therein. On 8th May, 2007 the plaintiffs sent a notice calling upon the defendants to get the land partitioned from the competent authorities and to execute the sale deed. While

replying, the defendants claim that they were ready and willing to perform their part of the contract and the plaintiffs were not ready and willing to perform their part.

11. On a careful reading of the unamended plaint, it is evident that the plaintiffs have positively asserted that they are ready and willing to perform their part of the contract and they attended the office of the Sub-Registrar on 07.05.2007 alongwith requisite payments as well as other charges required for registration of the sale deed. It was also asserted by the plaintiffs that the defendants should get the property partitioned and perform their part of the contract. There is a substance in the argument of the plaintiffs that the proceedings for partition could not be initiated by them. It is also evident that an undivided share in the joint property can be sold. In the circumstances, clause 3 of the agreement to sell is not of much importance as far as the relief of specific performance is concerned.

12. This Court has carefully read the judgment passed by the Supreme Court in **Prithi Pal Singh's case (supra)**. In para 11, the Supreme Court culled out the ratio of various judgments on the issue, which reads as under:-

“10. From the ratio of the aforesaid judgments, following points emerge:

(a) merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment;

(b) the dominant purpose of the amendment is to minimise the litigation;

(c) the amendment once allowed and incorporated relates back to the date of the initial institution of the suit;

(d) the Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.

13. In this case, the Court never restricted the application of doctrine of relating back. Hence, the aforesaid judgment does not help the appellants. Even the judgment passed in **T.L. Muddukrishana's case (supra)** is of no help to the appellants as in this case there was a stipulation in the agreement to sell for the partition of the joint property. In these circumstances, originally the plaintiffs filed a suit for grant of decree of mandatory injunction. The facts of the judgment passed in **T.L.Muddukrishana's case (supra)** are different.

14. Once it is held that the amended plaint would relate back to the date of filing of the suit, the date the suit filed by the plaintiffs is within the period of limitation. Hence, there is no substance in the first argument of the learned counsel representing the appellants.

15. The next argument of the learned counsel representing the appellants also does not have substance as the plaintiffs, while filing the suit, alleged that they are ready and willing to perform their part of the contract. In order to prove that fact they have examined one of the plaintiffs namely Kulwant Singh and other

witnesses. They also produced copies of the pay orders Ex.P-6 to P-

8. Moreover, a perusal of the judgments passed by the First Appellate Court, it is evident that the appellants did not challenge the judgment of the trial court on the ground that the plaintiffs have failed to prove their readiness and willingness.

16. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

17. Hence, dismissed.

18. All the pending miscellaneous applications, if any, are also disposed of.

02.12.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE