

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3299 of 2017(O&M)

Date of Order: 04.07.2023

Uday Singh

.Appellant

Versus

Dharam Singh (since deceased) through his LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhanshu Makkar, Advocate
for the appellant.

Mr. Davinder Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. The defendant no.1 in a suit for specific performance of the agreement to sell has filed a regular second appeal against the concurrent findings of fact arrived at by the Courts below. The plaintiffs' suit for specific performance of the agreement to sell dated 13.01.1981 has been decreed by both the Courts below.

2. Some facts are required to be noticed in order to grasp the issue involved:-

It is the case of the plaintiffs that an agreement to sell was executed by the appellant-defendant(Uday Singh) in favour of their predecessor Sh. Baru Ram on 13.01.1981 with respect to land measuring 10 kanals and 4 marlas for a total sale consideration of Rs.13,500/-, on receipt of Rs.2000/- as an earnest money. The agreement to sell was in writing and the parties agreed to execute the sale deed on or before 15.06.1981. The

possession of the property agreed to be sold was handed over to Sh. Baru Ram. On 11.06.1981, the appellant (defendant no.1) received the entire balance sale consideration by executing a supplementary agreement. It was agreed that the sale deed would be executed as and when Sh. Baru Ram calls upon the defendants. Since, the appellant did not perform as part of the agreement, hence, the legal heirs of late Sh. Baru Ram filed a suit on 26.11.2007.

3. Defendant no.1 while contesting the suit claimed that the agreement to sell has been prepared fraudulently and the amount as alleged has never been received. It was further alleged that late Sh. Baru Ram forged the signatures of the appellant on the agreement to sell.

4. In order to prove the agreement to sell, the plaintiffs examined PW1 Sh. Nand Kishore, the scribe of the agreement to sell, PW2-Sh. Ashok Kumar son of Sh. Jagan Nath (marginal witnesses's son), PW4-Sh. Satpal son of Sh. Ram Chander (marginal witnesses's son) and PW5-Sh. Shamsher Singh Malik, Hand Writing and Finger Print Expert. In this case both the marginal witnesses of the agreement to sell had died before the institution of the suit.

5. The trial Court on appreciation of the evidence decreed the suit which in appeal has been upheld.

6. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the judgments passed by the courts below along with the requisition record of the trial Court.

7. The learned counsel representing the appellant while referring to Article 54 of the Schedule attached to the Limitation Act, 1963 submits

that the suit for specific performance of the agreement to sell is required to be filed within a period of 3 years from the date fixed for performance. He submits that there was delay of nearly 26 years in filing the suit. Hence, the decree for specific performance should not have been passed. He further submits that the agreement to sell was never executed by the appellant and both the courts have erred in decreeing the suit. He further contends that the plaintiffs were thoroughly negligent as they never filed this suit during the life time of their father late Sh. Baru Ram.

8. On the other hand, the learned counsel representing the plaintiffs while relying upon the judgment passed by the courts below prays for dismissal of the appeal.

9. At this stage, it would be appropriate to extract Article 54 of the Schedule attached to the Limitation Act, 1963, which reads as under:-

54	For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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10. On careful reading of column no.3, it is evident that the time from which the period begins to run has been divided into two parts. The first part lays down that the time for filing the suit will begin to run from the date or the time fixed for completing the sale. Whereas the second part provides that if no such date is fixed, the time from which the period would begin to run will start only when the plaintiff has notice that the performance is refused. The expression used in the second part is relevant for the

decision of the present case because while supplementary agreement dated 11.06.1981 the appellant received the entire sale consideration. He had already delivered possession on 13.01.1981, the date when the original agreement to sell was executed. It was provided in the supplementary agreement that late Sh. Baru Ram can get the sale deed executed at any point of time. Late Sh. Baru Ram had performed his part of the agreement to sell. In such circumstances, the time or the limitation would begin to run only when the plaintiffs has noticed that the performance is refused. Obviously, it means that the defendant is duty bound to prove that a notice was given to the plaintiffs refusing to perform the agreement to sell. In this case, it is not the defendant's case that at any point of time any notice was given to the plaintiffs refusing to perform the agreement to sell. In these circumstances, the period of limitation will not begin to run from 15.06.1981.

11. The next argument of the learned counsel representing the appellant is with reference to non-execution of the agreement to sell.

12. The execution of the agreement to sell has been proved by the plaintiffs, scribe and the signatures of both the marginal witnesses have been proved by their respective children. Moreover, the Hand Writing and Finger Print Expert has also been examined by the plaintiff. The defendant(appellant) has failed to lead evidence to prove that the signature on the agreement to sell were either forged or he never appended the same. In such circumstances, the findings arrived at by the courts below does not suffer from any material error requiring interference in exercise of jurisdiction in second appeal.

13. The learned counsel representing the appellant further submits

that the court in exercise of jurisdiction under Section 20 of the unamended Specific Relief Act, 1963 should not have been granted discretionary relief.

14. This court has considered the submission of the learned counsel, however, find no substance therein.

15. There is a case where at the time of execution of the original agreement to sell on 13.01.1981, the possession of the property was delivered to the predecessor of the plaintiffs. Thereafter, on 11.06.1981, the entire payment was also received and the predecessor of the plaintiffs continued in possession. In such circumstances, there was no occasion for the court to refuse specific performance.

16. Keeping in view the aforesaid facts and discussions, finding no merit, the appeal is dismissed.

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

July 04, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO