115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4722-2019(O&M)
Date of decision : 22.07.2024

Harchand Singh ...... Appellant-plaintiff

Versus

Mehar Singh & anr. ...... Respondents-defendants

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

***

Present :- Mr. Parvinder Singh, Advocate
for the appellant.

***

PANKAJ JAIN, J. (ORAL)

1 Appellant-plaintiff is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as plaintiff and the respondents as defendants.

2 Plaintiff filed suit for possession by way of specific performance of agreement dated 12.04.1982 *qua* suit land as detailed out in the head note of the plaint and for seeking declaration to the effect that the sale deed dated 22.01.2013 executed by defendant No.1 in favour of defendant No.2 regarding suit land is illegal, null & void and ineffective qua the rights of the plaintiff. Further decree of permanent injunction was sought seeking restrain against defendant No.2 from alienating the suit land and also for restraining defendants from interfering in the peaceful possession of the plaintiff over the same.

3 Plaintiff claimed to be in possession on the strength of agreement to sell dated 12.04.1982 claiming that defendant No.1 agreed to sell suit land in his favour for a valuable consideration of Rs.1400/- and delivered the possession of the suit land to him. It was further claimed that at the time of execution of agreement to sell, the land was mortgaged with one Parduman Kumar. As per the case of the plaintiff defendant No.1 agreed to get the land redeemed and to execute sale deed in favour of the plaintiff within two months from the date of attestation of mutation of redemption. The plaintiff further pleaded that instead of informing him about redemption of land from Parduman Kumar defendant No.1 filed suit for permanent injunction on 15.03.1999 against the plaintiff and one Pritam Singh claiming threat to his possession at their hands. Plaintiff appeared in the said suit, filed written statement on 28.01.2000 propounding agreement to sell dated 12.04.1982 and claimed possession over the suit property. Plaintiff further claimed that defendant No.1 after getting land redeemed from Parduman Kumar obtained further loan of Rs.1,90,000/- creating charge over the property and after repaying the same again created charge by availing loan of Rs.1,00,000/- from Central Co-op. Bank Ltd., Branch Landran. Plaintiff claimed that throughout he was ready and willing to get the sale deed executed as the whole consideration already stood paid but defendant No.1 was trying to alienate the suit land and thus the suit was filed.

4 Defendant No.1-the vendor filed written statement denying agreement to sell dated 12.04.1982. It was further claimed by him that agreement was result of fraud. The answering defendant is an illiterate person having his land abutting to the land of the plaintiff. The documents

were executed for availing 90% subsidy from State of Punjab being small land holder for the purpose of installation of tubewells. So far as the factum of the land being mortgaged with Parduman Kumar is concerned, the same was admitted. Defendant No.1 further pleaded that the suit filed by the plaintiff was hopelessly barred by time.

5 Defendant No.2 filed separate written statement claiming that it was defendant No.1 who was in possession of the suit land and after executing sale deed dated 22.01.2013 possession has been handed over to defendant No.2.

6 On the basis of the pleadings trial Court framed following issues :-

> *"1. Whether the plaintiff is entitled for possession by way of specific performance of agreement as prayed for ?OPP*
> *2. Whether the plaintiff is entitled for declaration as prayed for? OPP*
> *3. Whether the plaintiff is entitled for permanent injunction as prayed for ?OPP*
> *4. Whether the plaintiff has no locus standi to file the present suit? OPD*
> *5. Whether the suit of the plaintiff is not maintainable? OPD*
> *6. Whether the suit is barred by limitation? OPD*
> *7. Relief."*

Issues No.1, 2, 3 & 6 were adjudicated together.

7 Trial Court returned finding with respect to execution of agreement to sell in favour of plaintiff and disbelieved the plea taken by defendant No.1 with respect to fraud. However, on the strength of revenue

record in form of Jamabandis for the year 1982-83, 1987-88, 1992-93, 1997-98, 2002-03, 2007-08 as well as girdawaris of 2008 to 2013 as Ex.DD, Ex.DE, Ex.DF, Ex.DG, Ex.DH, Ex.DJ, Ex.DK and Ex.DL it came to the conclusion that there was no record to prove that plaintiff ever came in possession of the suit property. Trial Court further held the suit filed by the plaintiff seeking specific performance of the agreement to sell dated 12.04.1982 instituted on 29.01.2013 as barred by time and dismissed the suit.

8 In appeal preferred by the plaintiff, lower appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

9 Learned counsel for the plaintiff while assailing findings recorded by the Courts below, submits that in part performance of the agreement dated 12.04.1982 plaintiff remained in possession of the suit land throughout. He was never informed with respect to redemption of mortgage at the hands of Parduman Kumar by defendant No.1 and thus there was no cause of action in favour of plaintiff to file suit for specific performance. It was only after sale deed was executed by defendant No.1 in favour of defendant No.2 that the rights of the plaintiff came under cloud and just 7 days thereafter the present suit was filed. Thus, Courts erred in denying the plaintiff decree of specific performance despite the fact that he had already performed his part. Counsel further submits that plaintiff being in possession on the strength of written agreement to sell and having paid whole of the consideration amount, the least the Courts should have granted is decree of permanent injunction in his favour.

10 I have heard learned counsel for the plaintiff and have carefully gone through records of the case.

11 The execution of agreement to sell dated 12.04.1982 has been held to be proved by both the Courts below. The plaintiff claims to be in possession of the suit land on the strength of the same. It has been further claimed that being in possession of the suit land, the cause of action to file suit could have arisen only when the possession of the plaintiff came under cloud. In order to appreciate the argument raised by counsel for the plaintiff, it will be apt to peruse the agreement to sell dated 12.04.1982 which has been placed on record as Annexure A-1 appended to the memo of appeal. The same reads as under :-

Agreement

I. Mehar Singh son of Santu alias Santa son of Jeevan Singh resident of village Mote Majra, Tehsil Kharar& District Ropar.

1 party

I. Harchand Singh son of Kapoor Singh son of Jagat Singh resident of Village Mote Majra, Tehsil Kharar& District Ropar.

2nd Party

1. That the land measuring 1 Kanal 2 Marlas of the 1st party whose Khata No. is 164 min / 222 min Khasra No. 265 (1-2) situated at Mote Majra, Tehsil Kharar, District Ropar has the complete ownership & possession of the same and his sisters and mother has equal share in the same.

2. That the above mentioned land is sold for an amount of Rs.1400/- whose half is Rs.700/- and is sold to 2nd party and agreement is written done and an amount of Rs.1400/- as earnest money has been taken from *the 2nd party by the 1st party and no amount will be taken during the execution of the registry.*

3. That this land is with Sh. Praduman Kumar and the amount has been given by the 1 party but the mutation till today is not verified. The 2nd party will get the registry done after 1 month when the mutation of the land is verified.

4 That it will be the responsibility of the 2nd party to get the registry done from the sisters and the mother and the 1st party has assured the 2nd party of the same.

5. That if 1st party refuses to get the registry done then the 1st party will be liable to pay earnest money of amount Rs. 1400/- and compensation of Rs.1400/- which will be Rs.2800/-. The 2nd party can file a recovery suit in the Hon'ble Court.

6. That if the 2nd party refuses to get the registry done then the earnest money will be confiscated.

Therefore, in the presence of the below mentioned witnesses this agreement has been written and will be kept for record and the same has been read over by the Vasika which is heard and considered to be proper.

Dated: 12.04.1982 (12th April, 1982)
Witness:

12 From the bare perusal of the aforesaid agreement to sell it is evident that there is no recital with respect to handing over of possession to the plaintiff. The Courts below have analyzed the revenue record in form of Jamabandis and khasra girdawaris that has come on record through returned finding that there is no record with respect to plaintiff ever coming in possession. Section 53-A of the Transfer of Property Act, 1882 provides right to transferee who comes into possession in part performance of the Contract. The same reads as under :-

53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the

> *transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:*
>
> *Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."*

13 Thus, one of the primary ingredients of Section 53-A apart from that of written contract is that the transferee in part performance of the contract has taken possession of the property or any part thereof. In the present case, from the covenants contained in the agreement to sell propounded by the plaintiff there is no recital with respect to handing over of the possession. The revenue record also does not support the contention of the plaintiff. In view of above, this Court finds that the Courts below rightly held that the plaintiff is not able to prove his possession over the suit property on the strength of agreement to sell dated 12.04.1982.

14 So far as the question with respect to limitation is concerned, Article 54 of the Schedule appended to the Limitation Act postulates that for specific performance of a contract the period of limitation is three years.

With regard to the date from which the limitation shall begin, the provision provides for two situations. In the first situation where there is a date fixed for the performance, the limitation starts from the said date. In the second situation where no such date is fixed, the statute provides that the limitation shall begin from the date the plaintiff has noticed that the performance has been refused. In the present case, covenant contained at Item No.3 of the agreement *ibid* provides that the land is with Parduman Kumar. Defendant No.1 i.e. the first party to the contract has already paid the mortgage money but the mutation is yet to be verified. It was further agreed that the second party i.e. the plaintiff will get the registry done after one month when the mutation of the land is verified.

15 The question in the present case is :

Whether the date for performance of the agreement to sell was fixed or not?

16 While dealing with somewhat similar situation Supreme Court in the case of ***Ramzan V. Hussaini (1990) 1 SCC 104*** held as under :-

> *"6. The relevant provisions in the alleged agreement of sale as quoted in the judgment of the trial court reads as follows:*
>
> > *"This house is under mortgage with Jethmal Bastimal for Rs. 1000. When you will get this house, the description of which is given below, redeemed from M/s Jeth Mat Bastimal and take the papers of the registry in your pos- session, on that day I will have the sale deed of the said house, written, executed and registered in your favour."*
>
> *The question is whether a date was 'fixed' for the performance of the agreement and in our view the answer is in the affirmative. It is true that a particular date from the calander was not mentioned in the document and the date was not ascertainable originally, but as soon*

POOJA SHARMA
2024.08.28 16:57
I attest to the accuracy and authenticity of this order/judgment.

as the plaintiff redeemed the mortgage, it became an ascertained date. If the plaintiff had, immediately after the redemption, filed the suit, could it be thrown out on the ground that she was not entitled to the specific performance asked for? We do not think so. She would have been within her rights to assert that she had performed her part of the contract and was entitled to insist that her brother should complete his part. The agreement is a typical illustration of a contingent contract within the meaning of s. 31 of the Indian Contract Act, 1872 and became enforceable as soon as the event of redemption (by the plaintiff herself) happened. We agree with the view of the Madras High Court in R.Muniswami Goundar and Another v. B.M.Shamanna Gouda and Others, AIR 1950 Madras 820 expressed in slightly different circumstances. The doctrine of id certum est quod certum redid potest is clearly applicable to the case before us which in the language of Herbert Broom (in his book dealing with legal maxims) is that certainty need not be ascertained at the time; for if, in the fluxion of time, a day will arrive which will make it certain, that is sufficient. A similar question had arisen in Duncombe v. Brighton Club and Norfolk Hotel Company, [1875] 10 QB 371, relied upon in the Madras case. Under an agreement, the plaintiff had supplied some furniture to the defendant for which payment was made but after some delay. He claimed interest. The rule at Common Law did not allow interest in such a case, and the plaintiff in support of his claim relied upon a statutory provision which could come to his aid only if the price was payable at a certain time. Blackburn, J. observed that he did not have the slightest hesitation in saying that the agreement contemplated a particular day, which, when the goods were delivered would be ascertained, and then the money would be payable at a certain time; but rejected the plaintiff's demand on the ground that the price did not become payable by the written instrument at a certain time. The other learned Judges did not agree with him, and held that the statute did not require that the document should specify the time of payment by mentioning the day of payment. If it specified the event upon which the payment was to be made, and if the time of event was *capable of being ascertained, the requirements of the section were satisfied. The same is the position in the case before us. The requirement of Article 54 is not that the actual day should necessarily be ascertained upon the face of the deed, but that the basis of the calculation which was to make it certain should be found therein. We, accordingly, hold that under the agreement the date for the defendant to execute the sale deed was fixed, although not by mentioning a certain date but by a reference to the happening of a certain event, namely, the redemption of the mortgage; and, immediately after the redemption by the plaintiff, the defendant became liable to execute the sale deed which the plaintiff was entitled to enforce. The period of limitation thus started running on that date. The case is, therefore, covered by the first part of Article 54 (third column) and not the second part."*

17 In the present case it has come on record that the name of Parduman Kumar as mortgagee was reflected in Jamabandi for the year 1987-88 Ex.DE but in the subsequent Jamabandi for the year 1992-93 Ex.DF the same does not find mention. Thus, it can be well inferred that entry with regard to redemption of mortgage must have been made in the revenue record prior to year 1992-93. Present suit has been filed in the year 2013.

18 There is another angle from which the facts of the present case need to be gazed. It is the pleaded case of the plaintiff himself that vendor i.e. defendant No.1 filed suit for permanent injunction against him on 15.03.1999. In the written statement filed on 28.01.2000 plaintiff propounded agreement to sell dated 12.04.1982. Defendant No.1 filed replication denying execution thereof. Thus even if the second situation as contemplated under Article 54 of the Schedule is said to be applicable to the present case, refusal came to the notice of the plaintiff on the date of filing

of replication dated 03.08.2000. Even from that date, instant suit filed in the year 2013 seeking specific performance of the agreement to sell dated 12.04.1982 is barred by time.

19 In view of above, this Court finds that no fault can be found with the findings recorded by the Courts below while dismissing the suit filed by the plaintiff.

20 As a sequel of the aforesaid discussion held hereinabove, present appeal is dismissed being without merits.

21 Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

22.07.2024
Pooja Sharma-I

Whether speaking/reasoned: Yes
Whether reportable: Yes