

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA-4462-2018 (O&M)
Date of decision: 24.01.2024

SARABJIT SINGH AND ORS

..Appellants

Versus

MANOHAR LAL AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Mittal, Advocate
for the appellants.ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, defendant No.3 assails the correctness of the concurrent findings of facts arrived at by the Courts below is assailed. The plaintiffs had filed a suit for specific performance of the agreement to sell with a decree for declaration that the sale deed executed in favour of defendant No.3 to 7 on 30.10.2009, is not binding on their rights. They also prayed for a decree of permanent injunction. It was the case of the plaintiffs that on 05.10.1964, Sh. Niranjana Singh and Sh. Joginder Singh entered into an agreement to sell with respect to a plot of 1 kanal and 14 marlas at the rate of Rs.100 per marla. The total sale consideration was Rs.3,400/- out of which Rs.3,000/- was paid and the possession was delivered. After taking over possession, the plaintiffs constructed their house with due permission from the Municipal Committee by getting a building plan sanctioned. Thereafter, an electricity connection was issued and they started residing therein. Previously, the plaintiffs filed a suit for permanent injunction as the defendants were interfering in their possession. The aforesaid suit was decreed on 11.07.2013 and it was found that the

agreement to sell was entered into and the plaintiffs were in possession of the property after construction of the building. In this suit, defendant No.1 and 2 did not contest, whereas, defendant No.3 to 7 claims that there was no agreement to sell, executed by Sh. Niranjana Singh and Sh. Joginder Singh (defendant No.1 and 2). It was also claimed that Sh. Niranjana Singh and Sh. Joginder Singh were not owners of 1 kanal and 14 marlas in khasra No.178. Both the Courts on appreciation of the evidence have concurrently found that the agreement to sell was executed by Sh. Niranjana Singh and Sh. Joginder Singh and the sale deed could not be executed because the allotment in their favour was provisional. It was provided in the agreement to sell that on the completion of transfer, Sh. Niranjana Singh and Sh. Joginder Singh will inform the plaintiffs and from the date of receipt of information, the plaintiffs will execute the sale deed within a period of one month. Thus, both the Courts have decreed the suit.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

3. The learned counsel representing the appellants submits that the second suit was barred under Order II Rule 2 of the Code of Civil Procedure, 1908.

4. On being confronted by the Court, he admits that this issue was never pressed before the Courts below.

5. The learned counsel representing the appellants further submits that the suit was filed beyond the prescribed period of limitation as the agreement to sell was entered into in the year 1964, whereas, the suit was

filed on 20.09.2011. This issue has been examined by both the Courts below. It is evident that the sale deed was to be executed on completion of transfer in favour of Sh. Niranjan Singh and Sh. Joginder Singh. Thereafter, they were required to inform the plaintiffs. The defendants have not led any evidence to prove the date on which the intimation was given to the plaintiffs. It is evident that Rs.3,000/- was paid as an earnest money out of the total sale consideration of Rs.3,400/-. The plaintiffs are residing in the house for the last so many years.

6. As per Article 54 of the Schedule attached to the Limitation Act, 1963, when the period of limitation will begin has been divided into two parts. The first part provides for date fixed for performance of the agreement to sell, whereas, the second part provides for a notice by the vendors to the purchasers.

7. In this case, the defendants have failed to prove the date on which the plaintiffs were given notice of refusal.

8. In view of the aforesaid facts and discussion, no ground to interfere is made out.

9. Dismissed accordingly.

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

January 24th, 2024

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(ANIL KSHETARPAL)
JUDGE

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