

2024:PHHC:003219
**139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-145-2023 (O&M)
Date of decision: 10.01.2024

Jatinder Singh

....Appellant

Versus

Mohan Singh through his LRs Gurdeep Singh and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Nakul Sharma, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, defendant no.4 assails the correctness of the concurrent findings of fact, arrived at by the courts below while decreeing the plaintiffs' (respondents herein) suit for the specific performance of the agreement to sell.

2. In order to comprehend the issue, some relevant facts, in brief, are required to be noticed.

3. The plaintiffs filed the suit on the basis of the agreement to sell dated 23.01.2008, executed by Sh.Gurbachan Singh son of Kishan Singh with respect to land measuring 1 kanal 13.68 marlas on receipt of Rs.1,25,000/- out of the total sale consideration of Rs.1,50,000/-. It was agreed between the parties that the sale deed would be executed on 22.01.2010. By that time, Sh.Gurbachan Singh was in possession of the property, however, it was owned by the Provincial Government. The proceedings for

transfer of land in favour of Sh.Gurbachan Singh were pending. Ultimately, in the open auction, the property was transferred in favour of Sh.Gurbachan Singh. Thereafter, the writ petition was filed in the High Court, in which a compromise was arrived at. The agreement to sell was produced before the High Court. Ultimately, the writ petition was decided on 01.06.2012. On 22.01.2010, the plaintiffs attended the office of the Sub-Registrar for the execution of the sale deed, however, the defendants did not come. After having served a notice on 31.12.2012, calling upon the defendants to come for registration of the sale deed on 07.01.2013, the plaintiffs filed the suit on 17.01.2013. On 17.01.2013, the plaintiffs attended the office of the Sub-Registrar. While contesting the suit, the defendants claimed that there was neither any agreement to sell nor any earnest money was paid. Primarily, the suit was contested on the ground that Sh.Gurbachan Singh on the date of execution of agreement to sell, was not the owner of the property.

4. Both the courts, on appreciation of evidence, have concurrently found that the agreement to sell was executed and defendants has admitted its execution. The courts have also found that as per Section 13 of the Specific Relief Act, 1963 and Section 43 of the Transfer of Property Act, 1882, Sh.Gurbachan Singh, who became an owner subsequently, is liable to honour the agreement to sell as he had become owner.

5. Heard the learned counsel representing the appellant at length and with their able assistance perused the paperbook.

6. Learned counsel representing the appellant submits that there is a delay of nearly 5 years in filing the suit and therefore, the discretionary relief should not have been granted. He submits that the agreement to sell was entered into on 23.01.2008, whereas the suit was filed on 17.01.2013. He further submits that there was no agreement executed between the parties on 28.01.2005, which has not been disclosed.

7. This Court has considered the submissions made by the learned counsel representing the appellant.

8. As per the provisions of the Schedule attached to the Limitation Act, 1963, a suit for specific performance can be filed within a period of 3 years when the cause of action arises. The period of limitation will begin to run from the date when the sale deed was to be executed. In this case, the sale deed was to be executed on 22.01.2010. Admittedly, the suit was filed within the prescribed limitation period. Furthermore, out of the total amount of Rs.1,50,000/-, Rs.1,25,000/- was paid to the predecessor of the defendants in 2008. The remaining payment was only Rs.25,000/-. Moreover, the litigation was pending and that was decided in June, 2012.

9. Hence, there is no delay in filing the suit.

10. With reference to the next argument, the learned counsel representing the appellant was requested to show the written statement where this issue has been taken up, however, he fairly admits that this objection was never taken in the written statement.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Hence, dismissed accordingly.

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

10.01.2024

rekha

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No