

(2002) 08 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2735 of 1980

Narinder Kaur and Others

APPELLANT

Vs

Nagina Singh and Others

RESPONDENT

Date of Decision: Aug. 19, 2002

Citation: (2003) 1 CivCC 607 : (2003) 133 PLR 672 : (2003) 1 RCR(Civil) 462

Hon'ble Judges: V.M. Jain, J

Bench: Single Bench

Advocate: None, for the Appellant; Arun Jain and Amit Jain, for the Respondent

Final Decision: Dismissed

Judgement

V.M. Jain, J.

This Regular Second Appeal has been filed by the defendants against the judgments and decrees of the Courts, below, whereby the suit for specific performance, filed by the plaintiff, was decreed by the trial Court and the Appeal, filed by the defendants, was dismissed by the learned Additional District Judge.

2. The facts of the case, in brief, are that Nagina Singh, plaintiff, filed a suit for possession by way of specific performance of the agreement of sale dated 12.10.1968, on the allegations that Pritam Singh had executed the said agreement to sell his land measuring 20 Bighas 18 Biswas for Rs. 10,500/- in favour of Nagina Singh, plaintiff, and Hazara Singh, defendant No. 5, and that a sum of Rs. 300/- was paid to Pritam Singh, at the time of execution of the agreement and that the remaining amount of Rs. 7500/- was to be paid before the Sub Registrar, at the time of registration of the sale-deed. It was also agreed to between the parties in the said agreement that after the partition and the sanctioning of mutation, the sale-deed would be executed within a period of one month. It was alleged that the mutation regarding the partition of the land was sanctioned on 15.6.1971 and on the basis of the said mutation, the land measuring 20 Bighas 18 Biswa, detailed in para 2 of the plaint, was given to Pritam Singh, during partition proceedings and this entry was also made in the jamabandi. It was alleged that after the sanctioning of the

mutation on 15.6.1971, the plaintiff approached Pritam Singh and asked him to execute the sale-deed as per the agreement, but he postponed the matter. It was alleged that on 15.7.1971, the plaintiff had appeared in the office of Sub Registrar and had got his presence noted therein. It was alleged that the Sub Registrar had called Pritam Singh, but he was not present there. It was alleged that the plaintiff had also served registered notice to Pritam Singh to execute the sale-deed, but of no effect. It was alleged that on the other hand, Pritam Singh, defendant No. 1, in connivance with defendant Nos. 2 to 5, had resiled from the agreement. It was alleged that defendant Nos. 2 to 4 were brothers and the son of defendant No. 5, Hazara Singh and they knew about the agreement of sale between the plaintiff and Hazara Singh with Pritam Singh. It was alleged that Pritam Singh had executed the sale deed in respect of land measuring 20 Bighas 18 Biswas dishonestly in favour of defendant Nos. 2 to 4 on 14.9.1971 and in this manner, the rights of the plaintiff had been jeopardised. It was alleged that Pritam Singh could not have made the sale-deed in favour of defendant Nos. 2 to 4, after the agreement of sale in favour of the plaintiff and defendant No. 5, Hazara Singh. It was alleged that the plaintiff was always ready and willing to perform his part of the contract. The plaintiff accordingly sought a decree for specific performance and in the alternative, for the refund of the amount of Rs. 1500/- along with Rs. 5000/-, suffered by him as loss.

3. The suit was contested by the defendants. It was alleged that as per the agreement, the sale-deed was to be executed within one month, after the partition was effected and in this case, the partition was finalised on 20.4.1971 when the instrument of partition was prepared, though the partition was actually effected on 16.11.1970. It was alleged that the suit, filed by the plaintiff, was barred by time. It was further alleged that the plaintiff was estopped by his own act and conduct, in filing the present suit. It was alleged that the plaintiff and defendant No. 5 had declined to get the sale-deed executed within one month i.e. within the stipulated period, after the partition was effected. It was alleged that the sale-deed in favour of defendant Nos. 2 to 4 was executed at the instance and with the consent of the plaintiff. It was alleged that Pritam Singh had sold the suit land to defendant Nos. 2 to 4 for Rs. 8000/-, whereas the agreement with the plaintiff and defendant No. 5 was for Rs. 10,500/-. It was further alleged that defendant Nos. 2 to 4 had no knowledge about the agreement in question and that the sale-deed in their favour was legal and valid.

4. On the pleadings of the parties, the learned trial Court framed various issues. The learned trial Court, after hearing both the sides, decreed the suit of the plaintiff for specific performance of the agreement of sale, on payment of remaining amount of Rs. 9000/- (Rs. 10,500/- minus Rs. 1500/-). The Appeal, filed by the defendants, was dismissed by the learned Additional District Judge, upholding the findings of the trial Court.

5. No one had put in appearance on behalf of the appellants, at the time of arguments.

6. I have heard learned counsel for respondent No. 1 and gone through the record carefully.

7. In the present case, the only question that requires consideration is as to whether the suit, filed by plaintiff-respondent No. 1, Nagina Singh, was within limitation or not. In the grounds of Appeal, it had been alleged by the defendant-appellants that the suit was barred by time. It was alleged that the partition proceedings were started by Nagina Singh, plaintiff, and the partition was sanctioned on 7.10.1970. After the sanction of partition, the plaintiff was bound to call for registration of the sale-deed by 7.11.1970, but the plaintiff failed to do so. It was alleged that the plaintiff could have filed the suit for specific performance by 6.11.1973, but the present suit was filed by him on 17.7.1974 and as such, the suit was clearly barred by time. It was alleged that both the Courts had wrongly assumed that the limitation would start when the mutation of partition was sanctioned on 15.6.1971, in as much as the agreement did not provide that the sale-deed would be executed within one month of the sanction of the partition. On the other hand, it was provided that the sale-deed would be executed within one month of the partition. It was alleged that the Courts below had ignored that the partition was sanctioned on 7.10.1970.

8. After going through the record and hearing counsel for the plaintiff-respondent No. 1, in my opinion, no fault could be found with the findings of the Courts below, whereby the suit was held to be within time. Ex.P2 is the agreement between the parties. As per this agreement, Pritam Singh, defendant, had agreed to sell his half share, in the suit land, to Nagina Singh, plaintiff and Hazara Singh, defendant No. 5, for a consideration of Rs. 10,500/-. It was also agreed to that the sale-deed would be executed only after the partition and that Rs. 3000/- had been received as earnest money. It was also agreed to that the sale-deed would be executed within one month of the partition. Ex.D3 is the copy of the Sanad Taqseem, according to which the order of partition was made on 16.11.1970 and as per the copy of the Sanad Taqseem, Ex.D3, the same was prepared on 20.4.1971. In my opinion, neither the date 16.11.1970 could be taken as the date of partition nor the date dated 20.4.1971 could be taken as the date of partition, when the Sanad was prepared, on the facts and circumstances of the present case. In the present case, the parties to the partition proceedings had agitated the matter before the higher authorities. Ex.P8 is the copy of the order dated 18.9.1972, passed by the Commissioner, Patiala Division, which would show that it was a revision petition against the orders, passed by the Assistant Collector and the Collector during partition proceedings and that finally the revision filed by Dalip Kumar, was rejected by the Commissioner, on 18.9.1972. Under these circumstances, it would be clear that the partition of the land had not become final even with the order of partition and the preparation of the Sanad Taqseem. On the other hand, the parties had challenged the partition upto the level

of the Commissioner and finally, the revision petition was disposed of by the Commissioner on 18.9.1971, as per the copy of mutation, Ex.D4. It was only on 15.6.1971 that the mutation of the land in question, was sanctioned in favour of Pritam Singh, in pursuance of the partition proceedings. If the period of limitation is counted from 15.6.1971, the present suit, filed by the plaintiff on 17.7.1974 (on the opening day after summer vacations) would be within time. In my opinion, the Courts below had rightly found that the suit, filed by the plaintiff, was within limitation. In my opinion, on the facts and circumstances of the present case, it could not be said that there is any illegality in the findings of the Courts below in this regard.

9. In the grounds of appeal, it has been alleged that the suit for specific performance, could be decreed only in respect of 1/2 share of the plaintiffs and not in respect of the remaining 1/2 share of defendant No. 5 Hazara Singh. However, I find no merit on this point as well. In the present case, plaintiffs, Nagina Singh, and defendant No. 5, Hazara Singh, had agreed to purchase the suit land from defendant No. 1, Pritam Singh. Since Hazara Singh was no longer interested in purchasing the suit land, Pritam Singh filed a suit for specific performance of the agreement in respect of the entire land. It is not the case where Hazara Singh had given up his right in the suit land as created by the agreement Ex.P.2. Under those circumstances, in my opinion, Nagina Singh, plaintiff, was entitled to seek the specific performance of the entire agreement of sale. So far as the sale of the land in favour of the defendant Nos. 2 to 4 is concerned, it is not the case of the defendants that: Pritam Singh had executed the said sale-deed at the instance of defendant No. 5, Hazara Singh, in pursuance of the aforesaid agreement. In fact, no reference has been made in the said sale-deed with regard to the earlier agreement. Thus, it could not be said that the Hazara Singh had got his 1/2 share sold in favour of defendant Nos. 2 to 4. In fact, it is a case where Pritam Singh had sold the entire land in favour of defendant Nos. 2 to 4, ignoring the claim of the plaintiffs and defendant No. 5, Hazara Singh.

10. In my opinion, no substantial question of law arises in this appeal, which may require interference by this Court in this Second Appeal, especially when there is no illegality in the judgments of the Courts below.

11. For the reasons stated above, the present appeal has no merit and the same is hereby dismissed.