

(2010) 10 P&H CK 0357

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 4100 of 2010 (O and M)

Anita Kumari

APPELLANT

Vs

Manohar Lal Sud

RESPONDENT

Date of Decision: Oct. 29, 2010**Hon'ble Judges:** Gurdev Singh, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Gurdev Singh, J.

The Appellant-Defendant, Anita Kumari, has preferred this second appeal against the judgment and decree dated 2.8.2010 passed by Additional District Judge, Hoshiarpur, vide which he accepted the appeal preferred by the Respondent-Plaintiff, Manohar Lal Sud, against the judgment and decree dated 25.8.2006 passed by Civil Judge(Senior Division), Hoshiarpur, dismissing suit of the Respondent-Plaintiff for possession of the land in dispute measuring 28 marlas situated in village Sutheri, Fatehgarh Road, Tehsil and District, Hoshiarpur, fully detailed in the heading of the plaint, by way of specific performance of the agreement to sell dated 11.11.1991, and decreed his suit.

2. The case of the Plaintiff, as pleaded in the plaint, is that Arun Kumar, husband of the Defendant, was the owner of the land in dispute, who agreed to sell the same in his favour for Rs. 1,26,000/-, vide agreement dated 11.11.1991 and received Rs. 81,000/- as earnest money on the date of execution of the agreement. The balance amount was to be paid at the time of the execution of the sale deed, which was to be executed and got registered after the lifting of the ban, which had been imposed regarding the registration of the sale deeds. That ban was lifted in the year 1999. He approached Arun Kumar many a times with the request to execute the sale deed and to get the same registered after receiving the balance sale consideration of Rs. 42,000/-, but every time he took up the excuse to wait for his recovery from the illness. Ultimately, he died on 26.11.2000 and it was told by the Defendant that her

husband had executed a Will dated 15.4.2000, thereby bequeathing the land in dispute in her favour. She represented that she was bound by the terms and conditions of the agreement and agreed to execute the sale deed after the sanction of the mutation in her favour. To that effect, she also executed the writing dated 27.12.2000 on the back of the original agreement. The mutation was sanctioned in her favour in July, 2001 and thereafter, he approached her for the execution of the sale deed as per the terms and conditions of the agreement but she was not willing to do so. Therefore, he filed suit for specific performance.

3. The suit was contested by the Defendant. In her written statement, she admitted that her husband was the owner in possession of the land in dispute, which was bequeathed in her favour. She denied the other contentions and pleaded that the alleged agreement and writing dated 27.12.2000 are forged and fabricated documents. The suit of the Plaintiff is not within time and having not approached the court with clean hands, is not entitled to the equitable relief of specific performance.

4. In the replication, the Plaintiff denied the contentions of the Defendant and reiterated her averments made in the plaint.

5. On the pleadings of the parties, following issues were framed by the learned trial court:

1. Whether Arun Kumar, husband of Defendant executed the agreement to sell dated 11.11.1991 in favour of Plaintiff? OPP

2. Whether writing dated 27.12.2000 was executed between the parties? OPP

3. Whether Plaintiff is entitled to possession of the suit property by way of specific performance of agreement to sell dated 11.11.1991? OPP

4. Whether in the alternative Plaintiff is entitled to recovery of the suit amount along with interest as prayed for? OPP

5. Whether suit is within limitation? OPP

6. Whether agreement dated 11.11.1991 and writing dated 27.12.2000 are forged and fabricated documents? OPD

7. Relief.

6. To succeed, the Plaintiff herself stepped in the witness box as PW-1 and examined Manpreet Singh as PW-2. On the other hand, Defendant stepped into the witness box as DW-1. After going through the evidence, so produced on the record and hearing counsel for both the sides, learned trial court decided issues No. 1, 2 and 6 in favour of the Plaintiff and other issues in favour of the Defendant and resultantly dismissed his suit. As already stated above, the appeal preferred by the Plaintiff against that judgment and decree was accepted and his suit was decreed.

7. I have heard counsel for the Appellant-Defendant.

8. It has been submitted by counsel for the Appellant-Defendant that there was no such ban on the registration of the sale deeds, as pleaded by the Plaintiff, and that the suit was to be filed within three years of the execution of the agreement. The suit having filed in the year 2002, is barred by time and substantial question of law arises, "whether the suit is within the time?"

9. It is not a relevant fact as to whether there was actually a ban on the registration of the sale deeds. Lower courts were to see the recital of the agreement and it was recited in the agreement itself that the sale deed was to be executed after the lifting of the ban. Even if it is assumed that there was no such ban, even then, it cannot be said that the suit is barred by limitation as the Plaintiff proved on record the writing dated 27.12.2000, which was executed by the Defendant, on the back of the original agreement, after the death of Arun Kumar. Vide that writing she bound herself with the terms and conditions of the agreement and agreed to execute the sale deed after sanctioning of the mutation in her favour. That writing amounts to ratification of the agreement itself. The suit was filed within three years of the sanctioning of the mutation in favour of the Defendant.

10. No substantial question of law arises in this appeal and the same is dismissed accordingly.