

**(2010) 12 P&H CK 0558**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 2301 of 2009 (O and M)

Dharampal Singh

APPELLANT

Vs

Balkar Singh and Others

RESPONDENT

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**Date of Decision:** Dec. 2, 2010

**Hon'ble Judges:** Gurdev Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Gurdev singh, J.

CM No. 13531 C of 2010

1. Heard.

2. For the reasons stated in the application, which is supported by an affidavit, order dated 25.10.2010 is recalled and the appeal is restored to its original number.

CM No. 6878 C of 2009

3. For the reasons stated in the application, delay in re-filing the appeal is condoned.

CM No. 6879 C of 2009

4. For the reasons stated in the application and in the interest of justice, time for making up deficiency in the court fee is extended by a period of fortnight.

RSA No. 2301 of 2009

5. This is the second appeal preferred by the Appellant/Plaintiff-Dharampal Singh, whose suit for possession of the land in dispute by way of specific performance of the agreement dated 22.4.1989 was dismissed by the Civil Judge (Sr. Divn.), Ambala, vide judgment and decree dated 7.3.2007 and the first appeal preferred by him against that judgment and decree was dismissed by the Additional District Judge, Ambala, vide judgment and decree dated 9.6.2008.

6. The case of the Plaintiff, as pleaded in the plaint, is that Balkar Singh-Respondent No. 1/Defendant No. 1 was the owner of the land in dispute, who agreed to sell the same in his favour and in favour of Respondent No. 2/Defendant No. 2, in equal share, vide agreement dated 22.4.1989 at the rate of Rs. 38,500/-per acre and received Rs. 2,000/-as earnest money. That land was mortgaged with possession with other Respondents/Defendants for Rs. 34,000/-. The sale deed was to be executed in his favour and in favour of Defendant No. 2 on 15.6.1989. However, Defendants No. 1 and 2 became dishonest and in order to cause wrongful loss to him, Defendant No. 1 executed sale deed in respect of this land in favour of other Defendants stealthily. On 15.6.1989 he asked Defendant No. 1 to execute the sale deed in his favour and in favour of Defendant No. 2 and at that time he came to know that the land had already been sold by that Defendant to the other Defendants on 14.6.1989. He was always ready and willing to perform his part of the contract and it were the Defendants who violated the terms and conditions of the agreement.

7. The suit was contested by the Defendants. Defendant No. 1 in his written statement admitted that the agreement was executed by him in favour of the Plaintiff and Defendant No. 2, after receiving the earnest 3 money. He made a prayer that the suit of the Plaintiff be decreed. However, subsequently, he absented himself from the trial court and was proceeded against ex-parte.

8. Defendant No. 2, in his written statement, pleaded that the earnest money of Rs. 2,000/-was paid to Defendant No. 1 at the time of execution of the agreement only by him and no amount was contributed by the Plaintiff. He further paid Rs. 5,000/-to Defendant No. 1 on 22.5.1989 and writing to that effect was executed on the original agreement itself. He, alongwith Defendant No. 1, approached the Plaintiff to get the sale deed executed on the payment of his share of the sale consideration but he showed his inability to purchase the land due to his financial position and stated that he was free to sell the entire land to Defendant No. 2 and his nephew Nachhattar Singh. The sale deed was executed on 13.6.1989 in his favour and in favour of other Defendants and the same was got registered on 14.6.1989. He also pleaded that the suit is not maintainable and the Plaintiff is estopped from filing the same by his own act and conduct.

9. The other vendees, who were arrayed as Defendants No. 2 (A) to 2 (C), in their written statement took the same pleas which have been taken by Defendant No. 2.

10. In the replication to the written statements of Defendants No. 2, and 2 (A) to 2 (C), the Plaintiff denied the contentions raised therein and reiterated all the averments made in the plaint.

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

1. Whether the Plaintiff is entitled for specific performance of agreement dated 22.4.1989 as alleged against

4 Defendant No. 1,2 and 2 (a) to 2 (c) in respect of the share property mentioned as alleged in the plaint ? OPP

2. If issue No. 1 is proved and in favour of the Plaintiff, whether the Plaintiff is entitled to possession of the suit property ? OPP

3. Whether the suit of the Plaintiff is not maintainable in its present form ? OPP

4. Whether Plaintiff is estopped from filing the present suit by his own act and conduct ? OPD-2

5. Whether the suit of the Plaintiff is liable to be dismissed for non joinder and misjoinder of necessary parties ? OPD2

5A. Whether the suit of the Plaintiff is liable to be dismissed being barred by time ? OPD

7. Relief.

12. To succeed in the suit, the Plaintiff examined himself as PW-3, Subodh Chander (PW-1) and Kanihiya Goel (PW-2). On the other hand, the Defendants examined Sukhdev Singh (DW-1) and Darshan Kumar Jindal, Deed Writer (DW-2). Defendants No. 2 and 3 themselves entered the witness box as DW-3 and DW-4, respectively.

13. After going through the evidence so produced on the record and hearing learned Counsel for both the sides, the trial court decided issues No. 1, 2, 4 and 5-A against the Plaintiff and resultantly, dismissed the suit.

13. I have heard learned Counsel for the Plaintiff.

14. It has been submitted by the learned Counsel for the Plaintiff that it was wrongly held by the lower courts that the suit of the Plaintiff is barred by limitation against Defendants No. 2 (A) to 2 (C). The period of limitation was to be computed from the date of the knowledge of the Plaintiff and he gained the knowledge of the sale deed in favour of those Defendants only on 14.8.2006 when they filed the written statement in the court. The findings recorded by those courts on the issue of limitation are perverse and are based on misreading of the evidence. He further submitted that the evidence produced by the Plaintiff that he was always ready and willing to perform his part of the contract was totally ignored by the those courts while recording the finding against him.

15. I see no force in these submissions of the learned Counsel for the Plaintiff. He pleaded in the plaint itself that he came to know about the execution of the sale deed by Defendant No. 1 in favour of Defendant No. 2 and others on 15.6.1989, which was the date fixed for the execution of the sale deed in his favour and in favour of Defendant No. 2. It cannot be said that the findings recorded by the lower

courts against the Plaintiff are the result of the misreading of evidence or are perverse. The learned Counsel could not point out any evidence, which was produced before the trial court, in order to sustain his submission that the Plaintiff was able to prove that he was always ready and willing to perform his part of the contract.

16. No substantial question of law is involved in the present appeal and the same is dismissed accordingly.