

(2014) 03 P&H CK 0112

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. No. 143 of 1988

Bhikha Ram

APPELLANT

Vs

Surja

RESPONDENT

Date of Decision: March 20, 2014

Citation: (2014) 4 RCR(Civil) 298

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Ajay Jain, Advocate for the Appellant; Sandeep S. Mann, Addl. A.G, Advocate for the Respondent

Judgement

Paramjeet Singh, J.

Instant regular second appeal has been preferred by the appellants-plaintiffs against the judgment and decree dated 20.08.1986 passed by learned Sub Judge 1st Class, Narnaul whereby suit for specific performance filed by the appellants-plaintiffs has been dismissed, as well as, against the judgment and decree dated 02.09.1987 passed by learned Additional District Judge, Narnaul whereby appeal preferred by the appellants-plaintiffs has also been dismissed. For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance i.e. appellants as plaintiffs and respondents as defendants.

2. The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiffs brought a suit against the defendants for specific performance of an agreement to sell dated 11.02.1980. It has been alleged that Smt. Surji widow of Jutha, resident of Village Nain, entered into an agreement on 11.02.1980 with the plaintiffs to sell agricultural land measuring 12 kanals and 12 marlas comprised in Khewat No. 217, Khata No. 325, situated in Village Nain, Tehsil Narnaul for a consideration of Rs. 6500/-, out of which Rs. 6000/- had been paid as earnest money and the sale deed was to be executed upto 14.06.1980 and the remaining amount was to be paid before the Sub Registrar. The expenses of

registration of sale deed were to be incurred by the plaintiffs, who continued to be in possession of the property as tenants. It has been further alleged that Smt. Surji died somewhere in 1981 whereafter one Surja (defendant No. 1) claimed himself to be the nearest heir of Smt. Surji. It has been further alleged that the property has been mutated in the name of Government of Haryana on account of escheat because there was no legal heir to succeed Smt. Surji.

3. Upon notice, defendants appeared and filed their separate written statements. Defendant No. 1 admitted the claim of the plaintiffs, but the Haryana Government denied the same. The State denied the alleged agreement and asserted that it was forged and not binding upon the State. The agreement could not be enforced after the death of Surji. The State further alleged that the suit had been filed by the plaintiffs in collusion with defendant No. 1.

4. On the basis of the pleadings of the parties, the Court of first instance framed the following issues:--

"1. Whether Surji deceased made an agreement dated 11.2.1980 in favour of the plaintiffs? OPP

2. Whether Surji deceased made an agreement willing to perform their part of contract? OPP

3. Whether the present suit is collusive in between the plaintiffs and defendant No. 1 as alleged? OPD

4. Whether the suit is not maintainable? OPD

5. Whether the plaintiffs are estopped from filing the present suit as alleged? OPD

6. Relief."

5. The Court of first instance after perusal of the evidence led by the parties dismissed the suit of the plaintiffs vide judgment and decree dated 20.08.1986. Against that, plaintiffs preferred an appeal, which has also been dismissed by the learned lower appellate Court vide judgment and decree dated 02.09.1987. Hence, this second appeal.

6. I have heard learned counsel for the parties and perused the record.

7. At the time of admission, no substantial question of law was framed. During the course of arguments, learned counsel for the appellant referred to the following substantial questions of law which were taken on record vide order dated 29.08.2013:--

"1. Whether from the oral as well as documentary evidence on record, it stood proved that deceased Surji entered into an agreement to sell the land in favour of the plaintiffs?

2. Whether the plaintiffs in the given facts and circumstances of the case are entitled to a decree for specific performance of the contract, on account of being always ready and willing to perform its part?
3. Whether the judgments and decrees passed by the Courts below, thereby dismissing the suit filed by the plaintiffs in toto are sustainable in the eyes of law being based upon misreading and non-reading of vital evidence."
8. Learned counsel for the appellants contended that both the Courts below have recorded wrong findings. Appellants are collaterals of Surji and are entitled to specific performance. The findings recorded by both the Courts below are against law and facts and, as such, the same are not sustainable in law.
9. Per contra, learned State counsel contended that the property in question has been escheated to the State and mutation has been sanctioned in favour of the State, as such, the plaintiffs are not entitled to specific performance of agreement to sell dated 11.02.1980. The suit has been instituted on 20.07.1982 and the agreement to sell is dated 11.02.1980, as such, the suit is barred by limitation. Otherwise also, the plaintiffs have no right.
10. I have heard learned counsel for the parties and perused the record.
11. The Court of first instance has recorded findings on issue Nos. 1 to 3, which read as under:--

"6. The plaintiffs examined P.W. 1 Hazari Lal who claims himself to be an attesting witness of the agreement Ex. Pl. PW2 Tara Chand also claims himself to be an attesting witness of the agreement whereas PW3 Madan Mohan claims that he scribed the agreement on 12.2.1980 on which day Rs. 6000/- were paid to Smt. Surji. At the time of his statement in the Court on 1.3.1983, the deed writer did not bring his register of documents. Perhaps he did so intentionally and it was on the insistence on behalf of Haryana State that the witness was directed to bring the register on 2.3.1983. On that day the deed writer admitted that there is no entry in his register that Rs. 6,000/- had been advanced to Smt. Surji. Witness further stated that the entry of agreement in question was at serial No. 26 of his register and that there were entries of two more documents at serial No. 27 and 28 executed by Smt. Surji. The Government Pleader has argued that there are certain suspicious circumstances which are required to be taken into consideration before coming to the genuineness of the agreement set up by the plaintiffs. It is just possible that thumb impression of Smt. Surji might have been obtained in the register of deed writer when her thumb impressions were obtained at two other places in the register. The deed writer Sh. Madan Mohan admitted that at the end of every year the register of documents has to be got checked and signed from Sub Registrar but the register brought by him had not been so checked and signed. The witness further admitted that a criminal case has already been registered against him but he expressed ignorance as to whether allegation against him was that he had prepared

a forged agreement. The witness could very easily admit or deny the allegations and he was not expected to parry direct reply of the question. The other suspicious circumstance pointed out on behalf of defendant No. 2 is that when substantial part of sale consideration had allegedly been paid to Smt. Surji at the time of execution of agreement, the sale deed was not to be kept pending for a long time as has been done in the present case. Still another circumstances pointed out is that the plaintiff did not make any effort to get the sale deed executed during life time of Smt. Surji and they gave notices to Haryana State or Surja much after the death of Smt. Surji and date fixed for registration of sale deed. No explanation is coming from the side of plaintiff as to why did they not give any notice to Smt. Surji for getting sale deed executed and registered in their favour. The plaintiffs have not placed on record any documents showing the death of Smt. Surji but there is a copy of mutation No. 1631 escheating the property of Smt. Surji in favour of Haryana State. That mutation was attested on 15.9.1982 and therein date of death of Smt. Surji has been given as 5.4.1982 according to the register maintained by the village chowkidar. The plaintiffs have not been able to remove all the doubts and they have not been able to explain the suspicious circumstances appearing against them. When the last date for execution and registration of sale deed had been fixed to be 14.6.1980, the plaintiffs were expected to give a notice to Smt. Surji to get the sale deed executed in their favour on or before 14.6.1982 in case Smt. Surji had orally declined to execute the sale deed but the plaintiffs did not do so and gave notices to the defendants only on 13.4.1982. It has not been explained why the plaintiffs did not do so before the date of expiry of agreement in their favour. The plaintiffs have also not been able to prove that they were ready and willing to perform their part of contract during the life time of Smt. Surji. They got produced and proved one application dated 15.6.1982 purporting to have been moved in the office of Sub Registrar on 15.6.1982 at 1.25 p.m. Copy of that application is Ex. PW4/A, that has been proved by PW4 Sh. Devi Dayal Sanghi, Registration Clerk. Plaintiff Bhikha Ram examined himself as PW7. No explanation is coming why such application was not moved before the Sub Registrar during the life time of Smt. Surji and before the date of expiry of agreement and why any registered notice was not given to Smt. Surji in her life time to get executed and registered sale deed in favour of plaintiffs.

7. In view of evidence on record and the above discussion one can safely conclude that plaintiffs have failed to prove that Smt. Surji executed any agreement in their favour on 11.2.1980 and that they have been ready and willing to perform their part of contract at any time before the expiry of last date for execution or registration of sale deed or during life time of Smt. Surji and further that when the plaintiffs have failed to tell how Surja is connected with Smt. Surji and that defendant has admitted the claim of the plaintiff it can also be safely concluded that the suit is collusive between plaintiffs and defendant No. 1. So, all these issues were decided against the plaintiffs."

12. Finding has thus been recorded that plaintiffs did not take any step during life time of Smt. Surji to get the sale deed executed and registered in their favour in pursuance of agreement to sell. The finding has also been recorded that there is nothing in the pleadings of the plaintiffs that they approached the office of Sub Registrar on 14.06.1980. The date of notice is after the death of Smt. Surji and there is no reason as to why the plaintiffs had been sitting silent during the life time of Smt. Surji and conclusions have been drawn that the plaintiffs were and are not ready and willing to perform their part of contract. The aforesaid findings have been affirmed by the lower appellate Court.

13. Concurrent findings of fact have been recorded by the Courts below. Learned counsel for the appellants failed to show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. No question of law, much-less substantial question of law, as claimed, arises in this second appeal.

14. No other point has been argued.

15. In view of above, I do not find any illegality or perversity in the impugned judgments and decrees of the Courts below. Dismissed. No order as to costs.