

Before Anil Kshetarpal, J.

GURMIT RAM—Appellant

versus

SURINDER PAL AND OTHERS—Respondents

RSA No.156 of 2011

February 6, 2018

Code of Civil Procedure, 1908—Specific Relief Act, 1963—Limitation Act, 1963—Delay—Latches—Specific performance of agreement to sell—Suit filed within limitation prescribed but after a period of one year from the date the sale deed has been executed in favour of the subsequent purchaser—Plaintiff called upon defendants to come to execute sale deed around 15 days before the date fixed for execution of sale deed—A reading of notice would prove that plaintiff was not in knowledge of house having already been sold—suit could not be said to be belated.

Held that, the learned first appellate court has refused to grant specific performance of the agreement to sell on the ground that the suit was filed after one year of execution of the sale deed. Once the cause of action had arisen in favour of the plaintiff only on 26.02.1999, the suit could not be said to be belated. The plaintiff called upon defendants no.1 and 2 to come and execute the sale deed on the target date vide notice dated 11.02.1999 i.e., around 15 days before the date fixed for execution of the sale deed. A reading of the notice would prove that plaintiff was not in knowledge of house having already been sold. Learned courts have relied upon the statement of PW1 Ramesh Chand to assume that plaintiff was in the knowledge of the sale deed having been executed. A careful reading of the statement of PW1 Ramesh Chand does not prove that fact. The plaintiff is resident of Ranewal, whereas the property is situated in Nawan Shahar City.

(Para 10)

Vikas Bahl, Sr. Advocate with
Abhilaksh Grover, Advocate,
for the appellant.

Sarju Puri, Advocate
for respondent no. 4.

ANIL KSHETARPAL, J.

(1) Plaintiff-appellant is in regular second appeal against the judgments passed by the courts below.

(2) In the considered opinion of this Court, following substantial questions of law arise for consideration:-

(i) Whether discretion to grant a decree for specific performance of the agreement to sell is to be guided by the judicial principle and based upon sound and reasonable reasoning or not?

(ii) Whether the decree for specific performance of the agreement to sell can be refused particularly when the suit is filed within the limitation prescribed but after a period of one year from the date the sale deed has been executed in favour of the subsequent purchaser even if 1 of 6 the target date for execution of the sale deed has not arrived?

(3) Plaintiff filed a suit for specific performance of the agreement to sell dated 30.03.1998 asserting that defendants no.1 and 2(owners) had agreed to sell a constructed house comprised in the area of 7 marlas 5 sarsais for a sum of Rs.3,70,000/-, out of which Rs.1,00,000/- was received as earnest money and sale deed was to be executed and registered on 26.02.1999. Plaintiff further prayed that the sale deed executed by defendants no.1 and 2 in favour of defendant no.3 does not affect his rights. In alternative, the plaintiff prayed for refund of double the earnest money.

(4) Defendants no.1 and 2 contested the suit and pleaded that plaintiff and defendants no.1 and 2 are closely related and they had borrowed a sum of Rs.50,000/- from him which was returned after a period of six months. At the time of advancement of the loan, the plaintiff had obtained their signatures on some blank papers but not returned those papers, informing them that the papers have been misplaced. Defendant no.3 pleaded that he is a bonafide purchaser for consideration.

(5) Both the courts have recorded the concurrent findings of fact that the agreement to sell has been proved on the file and earnest money of Rs.1,00,000/- also stands proved. However, the courts have declined to grant relief of specific performance of the agreement to sell on the following grounds:-

- (i) that the suit filed by the plaintiff is belated as the plaintiff knew that defendants no.1 and 2 have sold the house in dispute to defendant no.3 on 06.04.1998, whereas the suit was filed on 16.03.1999;
- (ii) defendants no.1 and 2 sold the suit property to defendant no.3 within 6 days of entering into an agreement to sell;
- (iii) it appears that the agreement to sell was not prepared for sale deed but it was only prepared as a security document.

(6) Now the stage is set for considering the questions of law framed earlier.

QUESTIONS

- (i) Whether discretion to grant a decree for specific performance of the agreement to sell is to be guided by the judicial principle and based upon sound and reasonable reasoning or not?
- (ii) Whether the decree for specific performance of the agreement to sell can be refused particularly when the suit is filed within the limitation prescribed but after a period of one year from the date the sale deed has been executed in favour of the subsequent purchaser?

(7) Both the Courts below have found that the agreement to sell and payment of earnest money stands proved. As per written agreement to sell, the date for execution and registration of the sale deed was 28.02.1999. The total sale consideration, as per the agreement to sell is Rs.3,70,000/-. The plaintiff filed a suit on 16.03.1999 i.e., after a period of 20 days from the date the cause of action accrued to him as per the Limitation Act. The sale deed in favour of defendant no.3 has been executed for Rs.1,12,500/-, which is less than even 1/3rd of the amount for which the sale deed was to be executed in favour of the plaintiff. Of course, defendant no.3 has tried to put forth a story that he had also paid Rs.3,37,000/- vide a separate receipt, however, the sale deed is only for Rs.1,12,500/-. The registered sale deed does not show that any other payment was paid or was payable by 3 of 6 defendant no.3 to defendants no.1 and 2. Thus, it is obvious that receipt for Rs.3,37,000/- is a created document, so as to mislead the Court. Once a registered sale deed does not make a reference to any separate payment and the

total consideration recorded in the sale deed is Rs.1,12,500/-, the additional payment cannot be believed.

(8) Further defendant no.3, the purchaser, has not stepped into the witness box. His wife Dalveer Kaur appeared as an attorney. It may be significant to note here that on the day her wife appeared, defendant no.3 was alive. She has admitted that bargain for the sale of the house was struck only one day prior to 06.04.1998 i.e., 05.04.1998. There was no prior agreement to sell. She has stated that her husband inspected the revenue record but no enquiry was made from the office of Sub-Registrar before purchase.

(9) Still further, a careful reading of the sale deed dated 06.04.1998 proves that no payment was made before the Sub-Registrar. Even a sum of Rs.1,12,500/- was not paid in the presence of the Sub-Registrar or at the time of execution of the sale deed. It is recorded in the sale deed that the entire sale consideration has already been paid to defendants no.1 and 2. Both the courts have overlooked this fact once the deal was struck only a day before the execution of the sale deed, it is not believable that the payment of the sale consideration was made in advance. This also militates against the receipt put forth by defendant no.3 that the additional payment of Rs.3,37,000/- was paid. Receipt is dated 06.04.1998 i.e., day of the registration of the sale deed.

(10) QUESTION NO.(ii) Whether the decree for specific performance of the agreement to sell can be refused particularly when the 4 of 6 suit is filed within the limitation prescribed but after a period of one year from the date the sale deed has been executed in favour of the subsequent purchaser? The learned first appellate court has refused to grant specific performance of the agreement to sell on the ground that the suit was filed after one year of execution of the sale deed. Once the cause of action had arisen in favour of the plaintiff only on 26.02.1999, the suit could not be said to be belated. The plaintiff called upon defendants no.1 and 2 to come and execute the sale deed on the target date vide notice dated 11.02.1999 i.e., around 15 days before the date fixed for execution of the sale deed. A reading of the notice would prove that plaintiff was not in knowledge of house having already been sold. Learned courts have relied upon the statement of PW1 Ramesh Chand to assume that plaintiff was in the knowledge of the sale deed having been executed. A careful reading of the statement of PW1 Ramesh Chand does not prove that fact. The plaintiff is resident of Ranewal, whereas the property is situated in Nawan Shahar City.

(11) Learned first appellate court has also erred in concluding that it appears that the agreement to sell was only a security document and not in fact agreement the sell. The agreement to sell is in writing. The findings of both the courts is that execution of the agreement to sell is proved on the file. Out of the total consideration of Rs.3,70,000/-, Rs.1,00,000/- was paid as earnest money. The stamp paper for execution of the agreement to sell was purchased for the purpose of execution of the agreement to sell on 30.03.1998. Defendants no.1 and 2 are working in the Court premises as typists.

(12) Both the questions posed (supra) are answered in favour of the appellant.

(13) In view of what has been discussed above, this Court is of the opinion that both the courts did not exercise their discretion guided by the judicial principle based upon sound and reasonable reasoning. Hence, the findings of the courts are set aside.

(14) The regular second appeal is allowed.

Shubreet Kaur