



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117)

RSA No.732 of 2021(O&M)
Date of Decision: 17.03.2025.

Deepak Chandel

...Appellant

Vs

Surinder Nath and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Ashok Kumar, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-3730-C-2021

Prayer in the present application filed under Section 151 CPC is for condonation of delay of 169 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the delay of 169 days in re-filing the appeal is condoned.

RSA No.732 of 2021(O&M)

This is appellant/defendant's appeal against the judgment and decree dated 21.02.2019, passed by the Court of learned Additional District Judge, SAS Nagar, Mohali dismissing the appeal filed against the judgment and decree dated 16.01.2014 passed by the Court of learned Addl. Civil Judge (Sr. Division), Kharar, vide which the suit for permanent injunction filed by the respondent-plaintiffs was decreed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. A suit for permanent injunction was filed by the plaintiffs for restraining the defendant from interfering in their ownership and possession over land measuring 31 Marlas of land (fully described in the plaint) situated in village Naya Gaon, SAS Nagar Mohali (hereinafter referred to as the 'suit property'). It was alleged that an agreement to sell had been executed by the defendant on 08.03.2000 as regards the suit property with the plaintiffs. The total sale consideration was fixed as ₹6,19,875/- at the rate of ₹22,500/- per marla. The sale deed was to be executed on or before 15.06.2000 on payment of the balance sale consideration. It was averred that plaintiffs had always remained ready and willing to perform their part of the agreement but the defendant had been putting off the matter on one pretext or the other. It was alleged that the defendant had started collecting construction material and was threatening to raise construction over the suit property leading to the filing of the suit.

4. The suit was opposed by the defendant. He admitted that an agreement to sell has been executed on 08.03.2000. He, however, took a stand that it was the plaintiffs who were not ready and willing to execute the sale deed.

5. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed:-

- “1. Whether plaintiffs are entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiffs are entitled to mandatory injunction, as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Relief.”

7. Parties led their respective evidence. The trial Court decreed the suit filed by the plaintiffs and restrained the defendant from interfering in the peaceful ownership and possession of the plaintiffs over the suit property by way of raising of construction or otherwise. The defendant was also directed to remove the construction raised by him over the suit property. An appeal was preferred by the defendant which was dismissed by the Court of the learned Additional District Judge, SAS Nagar Mohali, leading to the filing of the present Regular Second Appeal.

8. I have heard learned counsel for the appellant.

9. Learned counsel for the appellant submits that both the learned Courts erred in granting a decree of permanent injunction. However, on a specific query having been put to him, learned counsel concedes that a suit for possession by way of specific performance of the agreement to sell dated 08.03.2000 had been filed by him which was dismissed vide judgment and decree dated 16.04.2011 and appeal against the same was also dismissed on 05.12.2011, wherein the relief of alternate recovery of ₹2,00,000/- was granted. He submits that against the said decision, Regular Second Appeal is pending before this Court.

10. The First Appellate Court, while dealing with the issue, held as under:-

“12. I have given thoughtful consideration to the arguments so advanced and am of the considered view that the present appeal must fail. The controversy in the present case relates to the 31 marlas of land agreed to be sold by the plaintiffs/respondents to the defendant/appellant vide agreement to sell dated 08.03.2000 for a total consideration of Rs.06,19,875/-, the date of performance being fixed as 15.06.2000 and an amount of Rs.03,00,000/- admittedly being

received by the plaintiffs as earnest money. With regard to specific performance of contract on the basis of agreement to sell dated 08.03.2000, the suit filed by the defendant was dismissed vide judgment and decree dated 16.04.2011 Ex. P-3 and P-4, but however, in the appeal, vide judgment and decree dated 05.12.2011 Ex. P-7 and Ex.P-8, alternative relief for recovery of Rs.02,00,000/- was granted to the defendant, against which, as alleged by the defendant, appeal was pending before the Hon'ble High Court.

13. In these set of circumstances, where the suit filed by defendant for specific performance of contract on the basis of agreement, was disposed of in the manner referred to above, the question arising for consideration is whether the defendant was in possession of the suit property and had raised construction, as alleged by the plaintiffs, after filing of the suit.

14. In this regard, it is pertinent to note that the extent of construction made by the defendant and the area covered by the construction was not specifically mentioned in the plaint, neither brought out in the evidence so adduced, but however, the defendant while appearing in the witness box, admitted to have raised construction over 06 marlas of land measuring 110 ft. x 12 ft. towards eastern side of the suit property, thereby identifying and specifying the property over which he had raised the construction. It is alleged by the plaintiffs that they were in possession of the land agreed to be sold except the land referred to above whereas, the defendant alleges to have been handed over the possession of the suit land described above, but however, the agreement to sell in question not depicting the transfer of possession, neither this being established in the suit filed by the appellant/defendant for specific performance of the contract on the basis of agreement to sell dated 08.03.2000 Ex.P-9. Further, besides the area referred to above, where construction stood raised by the defendant, no document or revenue record relating to suit

property introduced into evidence so as to prove the possession of the land in suit to have been handed over to the defendant and suit filed by defendant for specific performance of the contract on the basis of agreement to sell dated 08.03.2000 already having been dismissed, as discussed above, there was no reason to hold the defendant to be in possession of the suit property and the findings returned by the learned trial Court qua issue no. 1 calls for no interference whereas, with regard to issue no. 2, though the area alleged to be in possession of the defendant not being specific and only being mentioned vaguely, the nature and extent of the construction and encroachment being admitted by the defendant in evidence referred to above findings on issue no.2 also do not call for any interference. However, the relief part is modified to the effect that the defendant shall stand restrained from interfering in the possession of the plaintiffs over the suit property, except in due course of law.”

11. I do not find any illegality in the aforesaid findings, especially in view of the dismissal of the suit filed by the appellant-defendant and the matter being pending before the High Court. The concurrent findings of facts, recorded by the Courts do not call for any interference.

12. In view of the same, finding no merit in the present appeal, the same is dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

March 17, 2025

Rekha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No