

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA No. 361 of 2009

Reserved on: 11.12.2019

Decided on: 31.12.2019

Raghubir Singh & othersAppellants

Versus

Prem LataRespondent.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes

For the appellants: Mr. O. C. Sharma, Advocate.

For the respondent: Mr. Ashok Thakur, Advocate.

Sureshwar Thakur, Judge:

The defendants becoming aggrieved, from, the concurrently recorded verdicts, hence, by both the learned Courts below, initially, by the learned Civil Judge, upon, Civil Suit No. 216/1 of 2006/2005, and, latter by the learned First Appellate Court, upon, Civil Appeal No. 42-S/13 of 2008, (i) wherethroughs, the plaintiff's suit, for,

¹ Whether reporters of the local papers may be allowed to see the judgment?

rendition, of, a decree, for, specific performance of contract of sale, drawn inter-se, the litigants concerned, in the year 1993, become decreed, (ii) hence, rear thereagainst, the instant appeal, before this Court, (iii) wherethrough, they strive, to, beget reversal, of, the concurrent verdicts, as, became pronounced against them.

2. This Court, on 1.9.2010, had, admitted the appeal, instituted by the appellants/defendants, against, the judgment, and, decree, rendered, by the learned first Appellate Court, upon, the hereinafter extracted, substantial question of law, for, its hence making, an adjudication thereon:-

1. Whether suit for specific performance of agreement to sell property, which was allegedly executed in the year 1993, was barred by limitation, at the time of its institution, i.e. in the year 2005?

Substantial question of Law No.1:

3. The contract of sale, qua wherewith, both, the learned courts below, hence rendered, concurrent decrees, of, specific performance, vis-a-vis, the land borne therein, became drawn, inter-se respondent/plaintiff, and, predecessor-in-interest, of, the defendants, namely one Ram Karan rather, in the year 1993. As apparent on a reading of the cross-examination, of, the plaintiff, the latter is, a, non-agriculturist, (a) and, hence without, the, apposite valid permission becoming granted, by, the Government of Himachal Pradesh, she became barred, under, the mandate, cast, in Section 118, of, the H.P. Tenancy of Land Reforms Act, to, execute, the, apposite registered deed of conveyance, with, the predecessor-in-interest of the defendants, and, qua the suit land. Also there exists no record(s), nor any evidence rather exemplificatory, qua, hers striving, for, an apposite permission, from, the authorities concerned, nor obviously any validly made permission, became accorded, for,

thereafter, (b) the apposite registered deed of conveyance, inter-se her, and, the predecessor-in-interest, of, the defendants, becoming hence executed. Significantly, unless, the afore strivings, were, evidently made, during, the lifetime of the predecessor-in-interest, of, the defendants, with, whom the plaintiff had drawn, a, contract, of, sale in the year 1993, (c) thereupon a conclusion would become galvanized, vis-a-vis, the plaintiff, being unwilling, and, also unready to execute, the, apposite registered deed of conveyance, with, the afore Ram Karan, the, predecessor-in-interest, of, the defendants, (d) besides, also a further concomitant inference becomes marshaled, vis-a-vis, the relief of specific performance, as, became accorded, by, concurrently recorded verdicts, by, both the learned courts below, hence, warranting, an, interference, becoming hence made, by, this Court.

4. Be that as it may, needless to say, the, afore want(s) rather fortify, an, inevitable conclusion, vis-a-vis, the plaintiff, hence evincing, rather her unreadiness, and, unwillingness to perform, the, afore statutorily enjoined precursory act, for, hers thereafter hence becoming enabled, to entail, upon, the predecessor-in-interest, of, the defendants, to, execute a registered deed of conveyance, with her, and, appertaining to the land, embodied in the agreement, drawn inter-se her, and, the predecessor-in-interest of the defendants, agreement whereof, become drawn, in, the year 1993. Furthermore, throughout, the, lifetime of the afore predecessor-in-interest, of, the defendants/appellants, (a) the plaintiff/respondent, neither insisted upon him, to, execute a registered deed, of, conveyance with her, nor, any evidence exists on record, hence suggestive, vis-a-vis, despite, the afore insistence(s) being made, by the afore, rather during the lifetime, of, the predecessor-in-interest of the defendants, hence, the latter

refusing, to, accede to her request, (b) nor, any evidence became adduced, hence exemplificatory, vis-a-vis, despite, the plaintiff requesting, the, predecessor-in-interest, of, the defendants, to, purvey to her, all the requisite papers/documents, (c) besides, qua despite, repeated insistence(s) becoming made by the plaintiff, upon, the predecessor-in-interest of the defendants hence, to, signature all the relevant documents, (d) yet, the latter omitted to signature, the, relevant elicited documents, or, to purvey the requisite documents, to the plaintiff, (e) for, hence facilitating her, to, process the papers, appertaining to permission becoming accorded, for, the requisite purpose, by the, Government of Himachal Pradesh. The evident lack, of, the afore peremptory evidence(s) hence exemplifying the afore factum probandum, hence, invite an inference, vis-a-vis, the plaintiff, rather omitting to perform, besides also being unready, or, unwilling, to, complete all the statutorily enjoined precursory steps, for,

thereafter hers becoming validly enabled, to, insist upon, the predecessor-in-interest, of, the defendants, to, execute, with, her, a valid registered deed, of, conveyance, vis-a-vis, the suit land. The concomitant effect thereof, is, qua there, being no visible dereliction(s), on the part of the predecessor-in-interest, of, the defendants, (i) and, further effect thereof, is, qua the plaintiff becoming disentitled, to, claim any pronouncement, of, concurrent decrees, of, specific performance of contract, as, became executed inter-se her, and, the predecessor-in-interest, of, the defendants.

5. Even though, no time is prescribed, in, the contract of sale, executed in the year 1993, inter-se the plaintiff, and, the predecessor-in-interest, of, the defendants, (i) yet, lack of any prescription of time, in agreement of 1993, does not yet accord, to, the plaintiff, any, open latitude, to hence, at any stage, rather even after, the, demise, of, the predecessor-in-interest, of, the

defendants, to, institute a suit, for specific performance, vis-a-vis, the agreement, of, 1993, and, against the apt successors-in-interest (ii) unless evidence demonstrative, vis-a-vis, hers hence performing, the, afore statutorily precursories, and, thereafter hers hence becoming validly enabled, to, assuredly evince her readiness, and, willingness to completely perform, the, agreement, drawn inter-se her, and, the predecessor-in-interest, of, the defendants. However, the afore evidence is amiss, significantly rather in contemporaneity, vis-a-vis, the institution, of, the extant suit, nor also there is any evidence, vis-a-vis, hers making any, striving, to, obtain, the, requisite permission, from, the State Government, nor during, the, pendency, of, the lis, the afore striving hence became recoured, (iii) thereupon the plaintiffs' striving, for, rendition of a decree, for, specific performance, of, contract of sale of 1993, was, unamenable, for, being becoming accorded, vis-a-vis, her.

6. The above discussion, unfolds, qua the conclusion(s), as arrived by the learned Courts below, being not based, upon, a proper and mature appreciation, of, evidence, on, record. The substantial question, of law, is, answered, accordingly.

7. In view of the above discussion, the instant appeal, is, allowed, and, the judgments, and, decrees impugned, before this Court, are, quashed and set aside. Consequently, the plaintiff's suit is dismissed. Decree sheet be prepared accordingly. All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.

(Sureshwar Thakur)
Judge

31st December, 2019
(kck)