

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1476 of 2015 (O&M)
Date of Decision: December 10, 2015.**

Ranjit Singh

.....APPELLANT.

VERSUS

Mehmal Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Giri, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

2. This is second appeal against the judgment passed by Additional Civil Judge (Senior Division), Anandpur Sahib, whereby in the suit filed by appellant-plaintiff seeking relief of specific performance of the agreement to sell dated 07.10.2004, alternate relief of recovery of the earnest money with interest, was allowed.

3. The case of the plaintiff, in brief, is that on 07.10.2004, defendants No.1 and 2 namely Mehmal Singh and Joginder Singh entered into an agreement to sell land measuring 4 kanals 8½ marlas as fully described in the headnote of the plaint for a sale consideration of ₹2,80,000/- and received ₹1,40,000/- as earnest money. The date for execution and registration of the sale deed was fixed as 15.09.2005 on which date, he appeared before the Sub Registrar, Nurpur Bedi, where defendant No.1

appeared but expressed his inability to execute the sale deed as defendant No.2 had not turned up. With the consent of the parties, it was decided that the sale deed will be executed on the next day, but on the next day, defendants did not turn up. The plaintiff has alleged that he remained ready and willing to perform his part of the agreement and also issued a notice on 02.09.2008 calling upon the defendants to execute the sale deed but of no avail, hence, this suit.

4. Defendants No.1 and 2 admitted the execution of the agreement dated 07.10.2004 and alleged that they remained present in the office of Sub Registrar from 14.10.2005 to 19.10.2005 to execute the sale deed in favour of plaintiff and also got their presence marked before the Executive Magistrate, Nurpur Bedi. The plaintiff had failed to perform his part of the agreement.

5. Defendants No.3 to 6 are subsequent purchasers of the suit land vide sale deed dated 17.05.2010 i.e. during pendency of the suit.

6. Learned Additional Civil Judge (Senior Division), Anandpur Sahib took into account the fact that on the stipulated date i.e. 15.09.2005 or on the next date, plaintiff was not present before the sub Registrar, Noorpur Bedi. No evidence in this regard was produced, secondly from the date stipulated for execution of the sale deed i.e. 15.09.2005 till 02.09.2008 i.e. Approximately for a period of three years, plaintiff had remained silent and took no steps to get the sale deed executed. This reflects on readiness and willingness to perform his part of the contract. The above observations were affirmed by the first Appellate Court in appeal.

suit was filed within a period of 3 years as provided under Article 54 of Limitation Act. The plaintiff has specifically pleaded that he has been contacting the defendants throughout till the filing of the suit and requesting them to execute the sale deed but they were putting off the matter. The Courts below have committed grave error of law while exercising its discretionary powers under Section 20 of the Specific Relief Act while declining the relief of specific performance of the agreement. The mere fact that plaintiff has not placed on file affidavit of his appearance before the Sub Registrar on 15.09.2005, is no ground to decline the relief of specific performance of the agreement.

8. Section 20 of Specific Relief Act lays down that the jurisdiction to grant decree of specific performance is discretionary and the Court is not bound to grant such a relief merely because it is lawful to do so. The above principle makes it amply clear that discretion to grant specific performance of the agreement and that too after elapse of long period of time, has to be exercised on sound, reasonable, rational and acceptable principle. While scrutinising, ultimate guiding test for a Court is the principle of fairness and reasonableness as may be dictated by the peculiar facts in a case. In case of ***Satya Jain (Dead) through LRs and Ors Vs. Anis Ahmed Rushdie (Dead) through LRs and Ors (2013) 8 Supreme Court Cases 131***, Hon'ble Apex Court has observed that efflux of time and escalation of price of property, by itself, may not be a valid ground to deny the relief of specific performance.

9. Time even if is not the essence of the contract in a transaction for immovable property but it does not imply that every suit filed within the period of limitation provide under Article 54 of Limitation Act seeking the

relief of specific performance should be decreed. Hon'ble Apex Court relying on the observation of *K.S. Vidyandam Vs. Vairavan 1997(3) SCC 1* has observed in case of *Saradamani Kandappan Vs. S. Rajalakshmi and others 2011(4) RCR (Civil) 130(SC)* as follows:-

“Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* and other cases. Be that as it may.

28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyandam (supra)* :

- (i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.
- (ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.
- (iii) Every suit for specific performance need not be decreed merely because it is filed within the period

of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

10. Reverting to the facts of the case in hand, the agreement was allegedly executed on 07.10.2004 and the date for execution and registration of the sale deed was fixed as 15.09.2005. As per the plaintiff, defendant No.1 put in appearance on the stipulated date but the sale deed could not be executed due to non-availability of defendant No.2. He has alleged that parties agreed to execute the sale deed on the next date but on the next day, the defendants did not appear. The cause of action had accrued to the plaintiff to seek the relief of specific performance of the agreement immediately when the defendants did not appear to execute the sale deed. It is quite surprising that plaintiff remained idle and took no action for long period of about three years when he issued a notice on 02.09.2008. Both the Courts have rightly observed that this conduct of the plaintiff speaks volume about his readiness and willingness and that in case, the plaintiff had been ready and willing to perform his part of agreement, he would have issued a legal notice immediately after 15.09.2005. The first Appellate Court has rightly affirmed the finding of trial Court, which in the facts of the case are

legal and appropriate.

11. No substantial question of law requiring determination arises in this appeal, which has no merits.

12. Dismissed.

December 10, 2015.

Sachin M.

**(SURINDER GUPTA)
JUDGE**