

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

Regular Second Appeal No.2112 of 2015 (O&M)
Date of decision:12.10.2015

Manjit Kaur and others

... Appellants

versus

Sant Ram and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kanwar Yuvraj Singh, Advocate,
for the appellants.

Mr. Rajesh Kumar and Mr. Inderjeet Sharma,
Advocates, for the respondents/Caveators

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The defendants, who lost the suit, are the appellants before this court. There was an agreement of sale in favour of 3 plaintiffs on 14.06.2008 in respect of 160 kanlas of land. Out of total consideration of ₹2,57,60,000/-, ₹50 lacs had been received as advance on the date of agreement and ₹8 lacs had been received on 14.08.2008. The period stipulated under the agreement was 05.11.2008 and the plaintiffs contended that they were present before the Sub-Registrar's office and two of them got the presence

noted and the 3rd plaintiff one Mahabir, gave evidence in court that he was also present. The defendant's contention was that the plaintiff was never willing to perform his part of the contract, as was clearly evident from the fact that the 3rd plaintiff had not itself shown his presence at the Registrar's office. It was the further contention that lack of readiness was evident from the fact that the suit was filed 2 ½ years after the stipulated time and if there had been readiness, he would have immediately filed the suit. It was also the further contention that the pleadings were not in accordance with the form prescribed under the CPC and lastly, in the cause of action column, the time stipulated under the agreement for performance had not been specifically spelt out.

2. Readiness and willingness is a mixed question of fact and law. If one of the plaintiffs had not recorded his presence before the Sub-Registrar's office like the other two did, it must be the fact elicited at the time of trial as to why the 3rd plaintiff Mahabir did not have his presence recorded. Mahabir had given evidence that he was present at the Registrar's office and it was, therefore, crucial that he had been questioned on when two others had the presence noted, why he alone could not do so. Nothing was elicited in the cross-examination against Mahabir's assertion that he was present at the Registrar's office. When there is no particular legal requirement that a person's presence is got noted by the Registering Officer or

somebody at the Registrar's office, the fact that Mahabir did not get his presence noted will not disqualify him from securing specific performance when an opportunity to cross-examine him and elicit the truth was lost by the defendants.

3. The limitation for enforcement of specific performance is 3 years under Article 54 of the Limitation Act and the suit cannot failed by the only fact that it was instituted not merely after the time stipulation to 2 ½ years later. The Supreme Court itself has held in **Mademsetty Satyanarayana Versus G. Yelloji Rao and others-AIR 1965 Supreme Court 1405** that if there is a delay, it is a delay sanctioned by law. Delay must be such as to infer abandonment of right or a clear inability to garner resources for securing a sale deed within the stipulated period. I asked the counsel whether there was anything elicited about their creditworthiness or their alleged inability to mobilize resources and to make balance of payment. The counsel would argue that there was no such questioning done but he would approach it through a purely legal standpoint that the suit filed 2 ½ years later must be taken as expression of plaintiff being not ready and willing. I can make no inference in the manner canvassed.

4. The failure to make a reference to the time stipulation as one of the causes of action cannot result in dismissal of the suit itself. If the suit was without a cause of action, it would even make

possible for a plaint to be rejected under Order 7 Rule 11 CPC. The expression “cause of action” is not a term of art. It is normally to be expressed to assess whether the plaintiff had an enforceable right through a suit. If the plaintiffs were making reference to the date of agreement, the time for obtaining a sale deed and their own readiness and willingness and there were specific pleadings as regards each one of these aspects, I would understand that there was sufficient cause of action for the plaintiff to sue and the suit was well founded. While the expression “readiness and willingness” itself is strictly mandated under Section 16(c) to be stated in the plaint, the cause of action for a suit will be gathered from the overall consideration of all the pleadings and want of reference about the time stipulation in the cause of action column is not so serious, when from the reading of the whole plaint, such cause of action is seen to exist.

5. The counsel refers to a judgment of the Supreme Court in **Saradamani Kandappan and others Versus S. Rajalakshmi and others-2011 (4) RCR (Civil) 130** that a person cannot come to court after 1 or 2 years merely because the law of limitation makes possible for him to do so. I have no quarrel with the proposition that the plaintiff's readiness must proceed for the entire period when the time for enforcement had matured. If the plaintiffs would express the readiness in court and say that they were all ready and only the

defendant was responsible for the delay, it is a matter that has to be elicited clearly that the plaintiffs did not have resources or they were making same excuse without sufficient evidence. The counsel makes no endeavour to point out to me any aspect of oral evidence at the trial and the line of examination of the witnesses adopted to elicit that there was a complete lack of readiness in spite of assertions made by the plaintiffs. I have already stated that the readiness and willingness has to be established as a matter of fact in order to examine whether the legal requirement under Section 16(c) is satisfied. There is almost a sense of over reliance of law without grounding a case on fact in the first place.

6. I find that the courts below have committed no error in granting decree in favour of the plaintiffs. Second appeal grapples with no substantial question of law in favour of the defendants/appellants and the question of law as discussed is against the defendants. The second appeal is dismissed.

(K.KANNAN)
JUDGE

12.10.2015
sanjeev