

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

**C.M. NOS.6782 C OF 2014 & 10146 C OF 2015 &
R.S.A. NO.2852 OF 2014**

DATE OF DECISION: SEPTEMBER 02, 2015

Vijay Kumar

.....Appellant

VERSUS

Akhilesh Chander

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sarju Puri, Advocate,
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.10146 C of 2015

Prayer in this application is for preponement of the hearing of the case as the respondent-plaintiff is pursuing his execution against the appellant-defendant and if the hearing of the case is not preponed, the appeal would be rendered infructuous.

For the reasons mentioned in the application, which are duly supported by an affidavit, the same is allowed and the hearing of the appeal is preponed to today and the same is taken on board for consideration.

R.S.A. No.2852 of 2014

Challenge in this appeal is to the judgement and decree passed
by the Additional Civil Judge (Senior Division), Shaheed Bhagat Singh

Nagar, dated 27.02.2013, by which suit for possession by way of specific performance of an agreement to sell dated 12.08.2003 of land measuring 5 marlas being 1/20th share of the property measuring 5 kanals comprised in Khata No.2347/2783, Khasra No.5214/883 situated at Nawanshahr, has been decreed, against which an appeal preferred by the appellant-defendant stands dismissed by the Additional District Judge, Shaheed Bhagat Singh Nagar, on 28.01.2014.

It is the contention of learned counsel for the appellant that the respondent-plaintiff has not appeared as a witness before the trial Court and only his power of attorney holder, Chander Mohan (PW1) has put in appearance and, therefore, his evidence would not be sufficient in the present case, which is a suit for specific performance, where requirement of law is readiness and willingness of the respondent-plaintiff to perform his part of the contract. In support of this contention, he has placed reliance upon the judgement of Madras High Court in Rajiah Nadar Vs. Manonmani Ammal, 1999 (4) CCC 303. His further contention is that the suit for specific performance preferred by the respondent-plaintiff is time barred as the same has not been filed within a period of three years from the date of agreement to sell dated 12.08.2003. He further contends that since no alternative relief has been claimed by the respondent-plaintiff, therefore, no decree of specific performance can be granted. In support of this contention, he has placed reliance upon the judgement of Karnataka High Court in P.Saravanam and others Vs. V.L.Thiyagaraj, AIR 1988 NOC 40 (KANT.). The alleged agreement to sell is vague and ambiguous as no time has been fixed for execution of the sale deed. He accordingly contends that the judgements and decree passed by the Courts below deserve to be set-

aside and the suit of the respondent-plaintiff be dismissed.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgements passed by the Courts below.

An argument has been raised by counsel for the appellant that as the respondent-plaintiff has not stepped into the witness box to support his case and instead of him, Chander Mohan, his power of attorney has appeared on his behalf, the suit deserves dismissal. It would not be out of way to mention here that said Chander Mohan is not only the power of attorney holder of respondent-plaintiff-Akhilesh Chander but is also his father and an attesting witness of the agreement to sell dated 12.08.2003, Ex.P3 as also the receipt of the same date, Ex.P4. He, therefore, knew the factum of the execution of the agreement to sell and the exchange of consideration amount of ₹1,25,000/-, which was the full and final payment of the land in question and is the real brother of the appellant-defendant. All this clearly establishes the fact that he had first hand knowledge of the transaction, which has taken place between the parties. The Court below has, thus, rightly relied upon the judgement passed by the Supreme Court in Man Kaur (Dead) by L.Rs Vs. Hartar Singh Sangha, 2011 (1) RCR (Civil) 189, where in Para 12, it has summarized the position as to who should give evidence in regard to matters involving personal knowledge, which has been reproduced in Para 16 of the judgement of the learned lower Appellate Court. From a perusal of the same, it is clearly made out that Chander Mohan, father of Akhilesh Chander as well as his power of attorney holder, was competent to give evidence in the matter on his behalf. In view of the above, judgement rendered in the case of Rajiah Nadar (supra), as relied

upon by learned counsel for the appellant, cannot be said to hold the field.

The next argument raised by counsel for the appellant is that the suit has been filed on 08.10.2007, which is beyond a period of three years from the date of agreement to sell i.e. 12.08.2003 and, therefore, the same is time barred. The appellant-defendant has taken a plea that the agreement to sell has not been executed by him. This factum has been rightly disbelieved by the Courts below as the respondent-plaintiff has led cogent and ample evidence, proving the execution of the agreement to sell. In fact, the appellant-defendant has admitted his signatures not only on the agreement to sell dated 12.08.2003, Ex.P3, but also on the receipt Ex.P4. Though he had taken a plea that the signatures were taken on blank papers but he has led no evidence that fraud had been perpetuated on him. On the basis of the evidence on record, the Courts below have rightly held the agreement to sell dated 12.08.2003 to be a duly executed document. It is not in dispute that the agreement to sell, Ex.P3, clearly states that the total consideration amount has been paid and it would be open to the respondent-plaintiff to get the execution of the sale deed at any time. Even the possession was handed over to the respondent-plaintiff. This shows that no date was fixed regarding the execution of sale deed.

As per the provisions of Article 54 of the Limitation Act, 1963, for specific performance of a contract, three years limitation has been prescribed from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. In the present case, as the pleadings and the evidence unfurl itself, the agreement to sell was duly executed on 12.08.2003, on which date total consideration amount was paid and possession handed over and it was left to the

discretion of the respondent-plaintiff to get the execution of the sale deed at his will. This is understandable in the light of the fact that the parties to the agreement were close relatives i.e. plaintiff is the nephew (real brother's son) of the appellant-defendant. The respondent-plaintiff constructed a boundary wall, installed a gate and kept the suit property under lock and key. He visited the site in the Ist week of July 2007 and was astonished to see the boundary wall demolished, gate removed by the appellant-defendant, who had committed criminal trespass in the property. When the appellant-defendant refused to execute the sale deed, a notice through counsel was served upon him on 14.07.2007 by the respondent-plaintiff. The appellant-defendant sent reply to the said notice, in which he denied the execution of the agreement to sell. It is at that stage that the suit for possession by way of specific performance was filed on 08.10.2007. The present suit is, therefore, within limitation.

Reference in this regard can be made to the judgement of Hon'ble Supreme Court in the case of Janardhanam Prasad Vs. Ramdas, 2007 (15) SCC 174, which clinches the matter in favour of the respondent-plaintiff, where it has dealt with Article 54 of the Limitation Act and in Paras 11 and 12, it has been held as under:-

“11. Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under :

<i>“For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”</i>
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12. The Court, in applying the period of limitation, would first

inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter.”

As regards the contention of learned counsel for the appellant that as no alternative relief has been claimed by the respondent-plaintiff, therefore, the decree of specific performance cannot be granted is concerned, the same cannot be accepted as there is no bar to claim damages under Section 73 of the Contract Act, which entitles the appellant-plaintiff to claim damages. That apart, nothing has come on record which would bring the present case within the ambit of Section 16 of the Specific Relief Act, 1963, which deals with personal bars to relief.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.6782 C of 2014 for staying the operation/execution of the impugned judgements and decree is also dismissed.

September 02, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE