

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

**RSA No.5676 of 2014 (O&M)**

**Date of decision:16.11.2015**

Satya Pal

... Appellant

Vs.

Ashish Kumar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Present:- Mr. Abhishek Yadav, Advocate  
for the appellant.

**AMIT RAWAL J. (Oral)**

The appellant-plaintiff is in Regular Second Appeal against the findings of lower Appellate Court, whereby, the judgment and decree of the trial Court decreeing the suit for specific performance of the agreement to sell dated 30.05.1991, has been set aside.

Mr. Abhishek Yadav, learned counsel appearing on behalf of the appellant-plaintiff submits that as per agreement to sell dated 30.05.1991, time was not essence of the agreement and it was agreed that sale deed shall be executed and registered after one

month of the receipt of the notice. The entire amount was allegedly paid. Defendants No.1, 2, 4 and 5 were proceeded against ex-parte and suit was contested by defendant No.3 on account of the fact that defendant No.1 had suffered a collusive decree on 02.09.1994 regarding her half share in favour of defendants No.2 and 3. Legal notice dated 09.02.2006 was served upon the defendants. Thereafter, suit was filed on 21.04.2006.

The trial Court, after noticing the evidence and thumb impressions of the vendors, which have been proved on record, decreed the suit. The lower Appellate Court erroneously held that agreement to sell was not proved and the same was surrounded by suspicious circumstances and the suit was barred by law of limitation. Thus, findings rendered by the lower Appellate Court reversing the well reasoned finding of the trial Court are fallacious and suffer from illegality and perversity, therefore, substantial questions of law arise to be determined by this Court.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

It is a matter of record that appellant-plaintiff is not signatory to the agreement to sell. As per statement of DW5-Rattan Lal Stamp Vendor, entry bearing No.12607 dated 30.05.1991 was not signed by anybody and it is the said entry vide which the stamp paper for agreement to sell was sold. The lower Appellate Court found that since the agreement to sell was surrounded by suspicious

circumstances as it was not clear as to whether the Smt. Sarti and Chanderwali had signed the agreement to sell or not.

There is another aspect of the matter. Decree was suffered by defendant No.1 in favour of defendants No.2 and 3. If there is breach of the agreement to sell, nothing prevented the appellant-plaintiff to send a legal notice to the defendants and thereafter file a suit for specific performance. Despite the aforementioned facts, legal notice dated 09.02.2006 was sent and the suit was filed in April, 2006. In my view, the appellant-plaintiff cannot be permitted to take the aid of Article 54 of the Limitation Act.

It is settled law that once time is not essence of the agreement and during currency of the agreement, there is breach, cause of action arises to seek vindication of the grievance.

It has also been proved on record through the testimony of DW3 - Kanwar Singh, HRC, DC Office, Rewari that Sarti and Chanderwali, vendors had executed a pattanama bearing No.858 dated 30.05.1991 in favour of real brother of plaintiff for a period of 09 years. It is understandable that both agreement to sell and lease deed are of same date, i.e., 30.05.1991. In my view, the finding given by the lower Appellate Court with regard to agreement to sell having surrounded by suspicious circumstances, is correct and perfect finding.

I do not intend to differ with the findings rendered by the lower Appellate Court, being the last Court of facts and law, much

less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

**(AMIT RAWAL)  
JUDGE**

**November 16, 2015**  
savita