IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.6205 of 2014 (O&M)
Date of decision:15.10.2015

Reeta and others ... Appellants

versus

Shrimati Taro Devi and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.L. Batta, Senior Advocate,
with Mr. Nikhil Batta, Advocate,
for the appellants.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

CM No.14780-C of 2014

For the reasons stated in the application, delay of 30 days in refiling the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.6205 of 2014

1. It is a claim on behalf of the plaintiffs to contend that the knowledge of an agreement entered into by their predecessor will be the starting point of limitation for claiming the amount given as advance by their predecessor. Admittedly, the agreement of sale had been entered into by the plaintiffs' predecessors Krishan Lal was on

20.06.2003 and the time for performance was 1 year. Admittedly, Krishan Lal did not enforce the claim to secure the sale deed and he faced a litigation at the instance of the landlord seeking for ejectment. It appears that in the suit filed by the landlord, it was contended that Krishan Lal had also entered into an agreement to sell but he did not secure the sale within time and he had, therefore, forfeited the advance paid. This was brought on 04.12.2006 in the replication filed in the suit filed by the landlord and according to the plaintiffs that since they came to know about the agreement and the payment by Krishan Lal only on 04.12.2006, the suit filed on 15.01.2009 for specific performance or for return of money must be taken in time.

2. The contention is far fetched and untenable in law. Article 54 of the Limitation Act which sets down the period of limitation for specific performance makes the time for performance as a starting point and not the knowledge. Under the agreement, if there was a clause for forfeiture, it is the enforcement that is contemplated under Article 54. If, under the agreement, return of advance has already stood forfeited, the plaintiffs cannot obtain the benefit of the agreement when they were but representatives of the agreement holder Krishan Lal.

3. The issues raised are correctly decided against the plaintiffs holding that the claim of the plaintiffs was barred by

limitation. The learned senior counsel contends that equity demands that the amount paid by the father must be returned. There could be no equity above law. Equity must give place to the law whether there exists specific provisions to secure legal guidance. The contention cannot be countenanced.

4. The counsel refers that the provisions of Article 55 of the Limitation Act will be applicable. Article 55 is for compensation for breach of a contract when the contract is broken for a period of 3 years. The suit is not for breach of any contract. If at all, the plaintiffs are themselves guilty of such breach of not paying the balance of sale consideration, Article 55 has no application at all.

5. The appeal is dismissed as devoid of merits involving no substantial question of law.

(K.KANNAN)
JUDGE

15.10.2015
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