

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

RSA No.1392 of 2009

Date of decision : 15.11.2016

Parduman Singh and others

...Appellants

Versus

Satish Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. G.S. Bhatia, Advocate for the appellants.

Mr. R.S. Manhas, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellants-plaintiff are aggrieved of the judgment and decree rendered by both the courts below vis-a-vis dismissing the suit for specific performance of the agreement to sell dated 18.01.1985 in respect of land measuring 54 kanals 11 marlas agreed to be sold for a total sale consideration of ₹55,000/- on the ground of limitation.

Mr. G.S. Bhatia, learned counsel appearing on behalf of appellants-plaintiff submits that suit aforementioned was filed seeking specific performance of the agreement to sell in respect of land aforementioned on the premise that target date for execution and registration of the sale deed was 10.01.1986. At the time of agreement to sell, a sum of ₹10,000/- was paid and possession was also delivered but however, on 02.11.1985, another sum of ₹10,000/- and on 02.12.1985, sum of ₹5,000/- was paid. Endorsement at the back of the agreement to sell was also made to this effect. On 10.01.1986, plaintiff remained present in the

office of Sub Registrar but the defendants did not turn up to execute the sale deed. The defendants received the following payments from the plaintiffs after 10.01.1986:-

<u>"Sr. No.</u>	<u>Date</u>	<u>Amount</u>
1.	(1200+1500+300+450)	₹34,50.00
2.	5.9.1986	₹10,000.00
3.	17.5.1987	₹4,000.00
4.	12.6.1987	₹4,000.00
5.	17.7.1987	₹1,000.00
6.	30.11.1987	₹1,000.00
7.	30.7.1987	₹1,000.00
8.	6.6.1989	₹5000.00
Total		= ₹29,450.00"

Last payment of ₹5,000/- was made on 06.06.1989. The suit aforementioned was filed on 02.06.1992 i.e. within a period of three years from 06.06.1989.

He submits that once defendants had accepted the amount after the target date, the time never remained the essence of agreement and, therefore, from the date of refusal as per Article 54 of Limitation Act Part-II, the suit was within limitation. Both the Courts below have non-suited the appellants on the premise that as and when aforementioned payment was paid, it was incumbent upon the plaintiff to incorporate the date seeking extension for execution and registration of the sale deed. All the findings with regard to the receipt of earnest money, much less, sum of ₹5,000/- on 06.06.1989 by son of defendant and as well as readiness and willingness, has been rendered in favour of the plaintiff. The appeal also met with the same fate. However, the defendants also challenge the finding regarding the

receipt of the payment beyond target date i.e. on 10.01.1986 but the same was also dismissed and, there is no challenge to the same in this Court. The findings qua readiness and willingness had attained finality and thus urges this Court for decretal of the suit by setting aside the findings on the ground of limitation.

Mr. R.S. Manhas, learned counsel appearing on behalf of respondents submits that no doubt the respondents-defendants have not filed any further regular second appeal against the dismissal of the appeal qua findings of readiness and willingness, much less, receipt of the payment but can always raise the arguments to support the findings on all issues by taking the aid of Order 41 Rule 33 of the Code of Civil Procedure. Son of the defendant was never authorized to receive the sum of ₹5,000/- alleged to have been entered at the back of the stamp paper/agreement on 06.06.1989 and thus, limitation would not reckoned from such date but from January, 1986 i.e. stipulated date for execution and registration of the sale deed till filing of the suit in the year 1992 is thus barred by law of limitation.

He submits that in case this Court arrived at findings that suit is within limitation, then his client must be compensated in terms of money as agreement to sell is of the year 1985 and thus urges this Court for affirming the findings under challenge vis-a-vis limitation.

I have heard learned counsel for the parties and appraised the paper book and as well as record of the courts below and of the view that once defendant had been receiving the amount as noticed above i.e. an amount of ₹29,450/- and the factum of the signatures of son of the defendant has been proved through the testimony of handwriting expert and

there is no challenge to that effect, limitation in my view cannot be reckoned from 10.01.1986 as time is no longer remain essence of the agreement. Provision of Article 54 Part-II would come into play and thus, suit filed in the year 1992 cannot be said to be barred by law of limitation. The findings on this point is therefore not sustainable and is hereby set aside.

As regards the readiness and willingness, much less, receipt of the amount, there is no challenge to the same despite there has been concurrent findings of fact.

During the course of hearing of the appeal, no material or evidence has been brought to the notice of this Court to differ with the same. Since agreement is of the year 1985, much period had elapsed, therefore, while setting aside the findings and decreeing the suit, I deem it appropriate to compensate the defendants in terms of money.

Accordingly, suit of the appellants-plaintiff is ordered to be decreed subject to the payment of balance sale consideration of ₹25,000/- plus compensation in terms of ₹18.50 lacs, provided the aforementioned amount is to be deposited within a period of 5 months from the date of receipt of certified copy of the order.

On deposit of the aforementioned sale consideration, the defendants shall execute and register the sale deed failing which the appellants-plaintiff shall be entitled to seek the execution in accordance with law.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the

ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 – 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial

Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Accordingly, present appeal is allowed.

15.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No