

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

RSA No.5102 of 2010 (O&M)
Date of decision : 23.02.2016

Ishwar Singh (deceased through LRs)

...Appellant

Versus

Teka and ors.

...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. R.N. Lohan, Advocate for the appellant.

Mr. S.K. Verma, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby suit for specific performance of agreement to sell dated 08.05.1990, has been decreed, in essence, judgment and decree of the trial Court decreeing the suit has been reversed.

Mr. R.N. Lohan, learned counsel appearing on behalf of appellants-plaintiff submits, that time was not essence to seek the execution and registration of the agreement to sell. The entire sale consideration of Rs.10,000/- was paid. The aforementioned fact has been proved through the testimony of PW2 Sultan and PW1 Ramesh Kumar Arora, Deed Writer,

whereas defendants who are none else but the successors-in-interest of the vendor except his self-serving statement did not lead any evidence to prove the averments made in the plaint, much less, disprove the thumb impression of the vendor. PW3 Yashpal, Handwriting Expert has proved the signature of attesting witness of the agreement to sell, who is none else, but the step son of the vendor. The aforementioned evidence was sufficient and rightly so, the trial court granted the discretion under Section 20 of the Specific Relief Act but the lower Appellate Court dismissed the suit on the ground that suit was barred by law of limitation, much less, thumb impression on the agreement to sell of the vendor have not been proved and thus prays that following substantial questions of law arises for determination by this Court:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity as the agreement to sell has been proved by discharging the onus as per Section 101 of the Indian Evidence Act?
2. Whether the suit could be thrown out for being barred by law of limitation when time was not in essence and the suit has been filed within three years from the cause of action as per provision of Article 54 of the Indian Limitation Act?
3. Whether the thumb impression of the executant on the agreement to sell to be compared when the witness has been examined to prove the same?

Mr. S.K. Verma, learned counsel appearing on behalf of respondents submits that vendor died in the year 2003 whereas suit has been

filed on August 2006 after three years of the death. No explanation has come forth in filing the suit, in essence, vindication of the grievance, if any has to be redressed within a reasonable period. The lower Appellate Court has rightly dismissed the suit by holding that plaintiff failed to discharge the onus in proving the ownership. Teka Ram was minor at that point of time. Thus, there is no illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the appeal and submission of Mr. Lohan, for the reasons, that it has not been proved on record that Teka Ram was minor at the time of agreement of sell. Except the self-serving statement of the said witness, no corroborative evidence to substantiate the plea has been brought on record. There has been compliance of Section 68 of the Evidence Act inasmuch as that Deed Writer and one attesting witness have been examined. The aforementioned evidence was enough to prove that vendor had appended his thumb impression. Vendor did not rebut the aforementioned burden by examining the independent evidence. Had it been so, the appellant-plaintiff would have rebutted the same through rebuttal evidence. It is a settled law that where time is not essence of the agreement to sell, a person can seek the specific performance of the agreement to sell from the date of breach/refusal. It has been categorically pleaded in the plaint that defendants attempted to interfere in the possession of the plaintiff who had been put into the possession of the land agreed to be sold. It is in these circumstances, the suit was filed. In my view, the findings rendered by the lower Appellate Court holding the suit to be barred by law of limitation, thus, is not sustainable as

it remain oblivious of the provision of Article 54 of the Indian Limitation Act.

Keeping in view the aforementioned facts, judgment and decree of the lower Appellate Court is set aside.

Question of law as noticed above are answered in favour of appellant-plaintiff and against the respondents-defendants.

Suit of the appellant-plaintiff is decreed.

Appeal is allowed.

23.02.2016

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**(AMIT RAWAL)
JUDGE**