

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

**RSA No. 679 of 2016 (O&M)
Date of Decision: 12.02.2016**

Amar Nath

.....Appellant

Vs.

Vinod Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.K. Arya, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

This 2nd appeal has been filed by the plaintiff after his suit for possession by way of specific performance was dismissed and the 1st appeal against that judgment was also dismissed.

He had filed the suit seeking specific performance of an agreement to sell, dated 01.03.1995, said to have been entered into with the six respondents herein, for the purchase from them, of the suit land measuring 19 kanals and 07 marlas, in village Purowal Arian, Tehsil and District Gurdaspur. An alternate prayer was made for recovery of Rs. 2,20,000/- paid as consideration for the suit property.

2. As per the plaintiff, the respondents along with one Pushpa Devi, were owners in possession of the suit land and as per the agreement, the land was purchased by the appellant-plaintiff @ Rs. 90,000/- per acre and at the time of execution of

the agreement on 01.03.1995, he had paid to all of them Rs. 20,000/- as earnest money. The sale deed was to be executed by 31.05.1996.

On 27.05.1995, the respondents along with Pushpa Devi, were paid another sum of Rs. 30,000/- and thereafter, another Rs. 50,000/- on 31.10.1995, all against receipts. Thus, a total sum of Rs. 1,00,000/- is claimed to have been paid by the appellant to the respondents and Pushpa Devi, till 31.10.1995.

It was further alleged in the plaint that when the appellant approached the defendants and Pushpa Devi two days before 31.05.1996, showing them the remaining amount of sale consideration, stamp and registration charges, requesting them to reach the tehsil compound on 31.05.1996, to execute the sale deed, he was told that since he is already in possession of the suit land, the remaining payment could be made some time later.

As per the appellant-plaintiff, another sum of Rs. 20,000/- was paid on 10.02.1997, Rs. 20,000/- on 18.05.1997, Rs. 50,000/- on 31.01.1999 and Rs. 30,000/- on 08.03.2001, again all against receipts. Thus, as per the appellant, by the last date he had paid a total of Rs. 2,20,000/-, i.e. the total consideration amount, to the respondents and Pushpa Devi. Thereafter, he is again stated to have requested them to execute the sale deed but the respondents and Pushpa Devi kept putting it off on one pretext or the other.

At some time, before filing of the suit, Pushpa Devi is stated to have died. The respondents are her legal heirs.

As per the plaint, the appellant was in cultivating possession of the suit land since the year 1947.

3. Upon notice having been issued, the respondents-defendants did not appear before the learned Additional Civil Judge (Senior Division), Gurdaspur and were proceeded against *ex parte*, vide order dated 19.09.2011.

To prove his case, the appellant appeared as PW-1 and tendered a copy of the agreement to sell dated 01.03.1995 as Exhibit P-1, the receipts issued on 27.05.1995 and 31.10.1995 on payment of Rs. 30,000/- and Rs. 50,000/- respectively, as Exhibits P-2 and P-3 and the other four receipts dated 10.02.1997, 18.05.1997, 31.01.1999 and 08.03.2001 as Exhibits P3 to P-6.

Legal notice issued by the appellant was exhibited as Ex. P-7 and its postal receipts as Exhibits P-8 to P-13.

The appellant also examined one Shingara Singh, stated to be the attesting witness of the agreement Ex. P-1. He also tendered the '*Jamabandi*' for the year 2004-05 as Exhibit P-13.

4. In the light of the evidence, including the testimonies of the appellant and Shingara singh, the learned Additional Civil Judge (Senior Division) found that the appellant-plaintiff had duly proved the agreement to sell dated 01.03.1995 but since it was to be executed on 31.05.1996 and the suit had been filed on 17.02.2009, i.e almost 13 years later, it was held to be beyond limitation.

Consequently, the suit was dismissed.

5. In appeal, the appellant pleaded that since receipts for consideration paid continued to be issued right up-til 08.03.2001, the target date for execution of the sale deed should not be taken to be 31.05.1996, since the consideration amount was received willingly by the respondents and Pushpa Devi, upto 2001.

The learned appellate Court after considering the provisions of the Limitation Act, 1963, specifically Article 54 of the Schedule thereto, agreed with the learned Additional Civil Judge (Senior Division), that since the date fixed for execution of the sale deed, as per agreement to sell dated 01.03.1995, was 31.05.1996, limitation expired in May 1999 and the suit had, therefore, been instituted almost 10 years beyond the period of limitation.

The appellants' appeal was also, consequently, dismissed.

6. Before this Court, Mr. R.K. Arya, learned counsel for the appellant, submitted that both the Courts below have ignored the fact that despite a target dated of 31.05.1996 having been fixed in the agreement to sell, for execution of the sale deed, factually that date lost all meaning after the respondents continued to receive sale consideration against receipts until 08.03.2001. Hence, he submitted that limitation could not in any case start running from 31.05.1996, that date, by conduct of the parties, having been obviously extended, with no other end date specified.

7. Having considered the above argument of learned counsel, I find myself unable to agree with it, in view of the fact that even accepting that 31.05.1996 was no longer a material date for execution of the sale deed, undoubtedly the last date on which sale consideration was received was 08.03.2001. Even considering that a reasonable date for execution of the sale deed would thereafter be expected, by which the respondents would execute the sale, the fact remains that the appellant-plaintiff remained silent for 08 years even thereafter. Though the date when the legal notice (Ex. D-7) was issued, is not discussed anywhere in the judgments of the Courts below, in my opinion that would also make no difference, in view of the fact that whether the legal notice was issued soon after 08.03.2001 or at any time prior to filing of the suit, the suit itself was not instituted till 17.02.2009. As such, it was clearly instituted well beyond limitation.

Though, otherwise, the appellant would at least have been entitled to recovery of Rs. 2,20,000/- stated to have been paid by him to the respondents (and their predecessor-in-interest -cum-co-sharer, Pushpa Devi), and an alternative plea for the same was also made in the suit, however, in view of the fact that the appellant kept silent for at least 08 years after the consideration amount was paid and limitation for filing a suit for recovery of money is also three years, I find no fault with the judgments of the Courts below.

Consequently, the appeal is dismissed in *limine*, with

no orders as to costs.

CM No. 1855-56-C-2016 and CM No. 1854-C-2016

In view of the fact that the appeal itself has been dismissed on the ground given above, the question of condoning the delay in filing and re-filing the appeal is rendered academic.

Similarly, the application filed under Section 149-A CPC for permission to make good the deficiency in Court fee, has also been rendered academic.

(AMOL RATTAN SINGH)
JUDGE

February 12, 2016
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