

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

RSA No.2057 of 2014 (O&M)

Date of decision : 22.08.2017

Basant Singh

...Appellant

Versus

Kirpal Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gulzar Mohammad, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 30.05.1996 with the assertion that he entered into an agreement to sell with defendants namely Bharpur Singh and Surjit Kaur for a total sale consideration of ₹7,500/-. It was further asserted that the entire sale consideration has been paid at the time of entering into the agreement to sell.

The defendants contested the suit. The execution of the agreement to sell was denied. The receipt of sale consideration was also denied.

Learned trial Court after appreciating the evidence available on the file dismissed the suit on the following two grounds:-

- i) Surjit Kaur is not signatory to the agreement to sell.
- ii) The suit filed by the plaintiff is barred by limitation as plaintiff has admitted in his cross-examination that he had information of refusal of the defendants to execute the sale deed in the month of May/June 1997 whereas the suit was filed on 12.03.2003.

The first appeal filed by the plaintiff was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has submitted that since total sale consideration had been paid and there was no target date for execution of the sale deed, therefore, there is no limitation. He has further submitted that although it is correct that Surjit Kaur had not signed the agreement to sell but Bharpur Singh had sufficient property and suit could be decreed against Bharpur Singh only.

Article 54 of the Schedule attached to Limitation Act, 1963, reads as under:-

<i>“54. For specific performance of a contract</i>	<i>Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”</i>
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From the reading of Article 54, it is clear that the time from which the period begins to run has been divided into two parts. First part deals with the date for the performance fixed by the parties by an agreement and second part is that if no such date is fixed, when the plaintiff has notice that performance is refused.

In the present case, performance was refused as admitted by the

plaintiff in the month of May/June 1997, therefore, taking starting point of the limitation from the date of refusal, the suit filed by the plaintiff on 12.03.2003 was obviously barred by time.

The agreement to sell is between the plaintiff on one side and Bharpur Singh and Surjit Kaur, on the other side. It is admitted position that Surjit Kaur has not signed, therefore, one of the promisor has not signed the agreement to sell.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts.

Regular Second Appeal is dismissed.

All pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

22.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No