

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.860 of 2015 (O&M)

Date of Decision: May 10, 2018

Om Parkash & others

...Appellants

Versus

Lajjo Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Amit Jain, Advocate,
for the appellants.

AMIT RAWAL, J.

The present Regular Second Appeal is at the instance of the appellant-plaintiffs, whose suit filed on 17.1.2013, seeking specific performance of the agreement to sell dated 28.3.2006, had been rejected while entertaining the application of the respondent-defendants under Order 7 Rule 11 of CPC. Since Order 7 Rule 11, as per the definition of Section 2 (2) CPC, is decree, the appellant-plaintiffs preferred an appeal before the Lower Appellate Court, but the same was also dismissed. It is in this backdrop of the matter, the present appeal has been filed.

Mr.Amit Jain, learned counsel appearing on behalf of the appellant-plaintiffs submitted that the time was not the essence of the agreement and, therefore, the limitation as per Article 54 of the Limitation Act would start run when there is a refusal. There is a categoric averment in Para 11 of the plaint that the plaintiffs came to know about the refusal. The agreement to sell is dated 28.3.2006. As per recital of the agreement to sell, cause of action would accrue in favour of the vendee only when defendant

No.1 Lajjo Devi had obtained the permission from the Court with regard to

the age of minor, namely, Jitender, who was aged 17 years at the time of execution of the agreement to sell and, therefore, on acquiring the knowledge of the aforementioned fact, the suit was filed.

There is no representation on behalf of the respondent-defendants despite service as has been noticed in the orders dated 27.3.2017 and 23.2.2018. Accordingly, I proceed to decide the appeal.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-plaintiffs.

Concededly, the aforementioned suit had been filed in January, 2013 and at the time of execution of the agreement to sell, Jitender-defendant No.2 was aged 17 years, but he attained the age of majority on 28.6.2006. No explanation has come forward as to what appellant-plaintiffs had been doing for all this period.

The readiness and willingness was also wanting. When this Court particularly raised the question with regard to the readiness and willingness, Mr.Jain submitted that the entire sale consideration in lieu of the agreement had been paid and the possession of the suit property was handed over. I am afraid, the suit was not maintainable as the readiness and willingness has to be throughout in view of the law laid down in **B.Vijaya Bharathi Versus P.Savitiri & Ors., 2017 (4) Civil Court Cases 291 (SC) (Para 17)**. The law of limitation for filing the suit as per Article 54 of the Limitation Act is three years. It cannot be believed that the plaintiffs did not know about the fact that Jitender had not acquired majority for all this period. The suit is bereft of any reasoning or wanting pleading as to what

steps the plaintiffs during all this period had taken. In my view, the Courts below have rightly exercised the jurisdiction vested in it while entertaining the application under Order 7 Rule 11 CPC. The findings of fact and law arrived by cannot be said to be suffering from perversity or illegality.

For the reasons mentioned above, the appeal is devoid of merit and the same is hereby dismissed.

May 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No