

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

RSA No.1017 of 2017 (O&M)

Date of decision: 09.03.2018

Prem Sagar

... Appellant

Versus

Surjan

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sukesh K. Jindal, Advocate
for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against consistent findings recorded by the Courts whereby suit filed by the respondent/plaintiff for symbolic possession by way of specific performance with consequential relief of permanent injunction was decreed by the trial Court vide judgment and decree dated 14.08.2014 and the judgment and decree passed by the trial Court were affirmed in appeal by the Additional District Judge, Panipat.

Counsel for the appellant has assailed findings of the Courts primarily on two counts. The first submission made by counsel is that as per plea of the respondent/plaintiff, agreement of sale was executed on 02.01.2006 but suit for specific performance was filed on 13.06.2012, therefore, suit filed by the respondent/plaintiff is clearly barred by law of

limitation. In support of his contention, he has relied upon judgment of this Court **Harish Kumar VS. Gopi and another, 2010(9) RCR (Civil) 936**. In addition, it is argued that the respondent/plaintiff has stated in his cross-examination that he met the appellant/defendant after one month from 02.01.2006 for getting the sale deed executed and registered, therefore, cause of action to file the suit accrued after one month of 02.01.2006 and the respondent/plaintiff, at best, could file the suit within three years from the date of accrual of cause of action for the first time.

Another submission made by counsel is that as the respondent/plaintiff did not file the suit immediately after he met the appellant/defendant i.e. one month after 02.01.2006, it negates his plea that he always remained ready and willing to perform his part of the agreement required to be pleaded and proved in compliance with the provisions of Section 16(c) of the Specific Relief Act, 1963.

Apart from the fact that the appeal is barred by limitation having been filed after an unexplained delay of 258 days, contentions raised by counsel for the appellant are devoid of merit and liable to be rejected.

The respondent/plaintiff sought specific performance of agreement of sale dated 02.01.2006 with categorical plea that the appellant/defendant agreed to sell the suit property measuring 100 sq. yards i.e. 3 marlas and 3 sarsahi, detailed in para 1 of the judgment of the trial Court, for a sale consideration of Rs.3,20,000/-. It has been averred that the

appellant/defendant received the sale consideration of Rs.3,20,000/- and possession of suit property was handed over to the respondent/plaintiff and it was agreed between the parties that sale deed will be got executed and registered by the appellant at his desire. It has further been averred that after taking possession of the suit property, respondent/plaintiff raised boundary wall upto the level of DPC and he always remained ready and willing to perform his part of the contract. On the contrary, appellant/defendant denied his having entered into agreement dated 02.01.2006 with the plea that he wanted to take loan from the bank and respondent/plaintiff had acquaintance with some official of the bank and under that pretext, he obtained original sale deed and other document from the appellant and misused the same.

Counsel for the appellant has not advanced any argument to assail findings of the Courts that the respondent/plaintiff had successfully discharged the onus to prove that agreement of sale dated 02.01.2006 Ex.P3 was executed by the appellant/defendant. As per the agreement Ex.P3, the respondent/plaintiff paid the entire sale consideration of Rs.3,20,000/- and possession of land/plot was delivered to the respondent/plaintiff. The appellant has not denied existence of a boundary wall upto the level of DPC over the suit property. The appellant has failed to adduce any evidence to counter evidence led by the respondent that the said boundary wall was raised by him. As per the agreement, the respondent/plaintiff had already paid the entire sale consideration and possession of the land/plot had been

delivered in favour of the proposed vendee, therefore, nothing much was left to be done by the respondent except to meet necessary expenses of registration/stamp etc.

There cannot be dispute about the settled position in law that time is not essence of contract with regard to sale of immovable property unless so intended by the parties which can be gathered from terms and conditions of agreement of sale and other attending/surrounding circumstances. In the case at hand, no date was fixed for registration of the sale deed and it was left at the discretion of the respondent/plaintiff to get the sale deed executed and registered at his desire. Taking into consideration the facts that entire sale consideration already stood paid to the appellant, possession of suit property was delivered in favour of the vendee and the parties agreed to get sale deed executed and registered at the desire of the respondent/plaintiff, it can safely be held that time was not intended to be essence of the contract in the given circumstances. That being so, plea of the appellant that suit for specific performance is barred by limitation is not meritorious and has rightly been rejected by the Courts. The judgment relied upon by counsel for the appellant has no bearing on the facts of the case in hand in view of the observations made in para 11 of the judgment. A relevant extract therefrom reads as follows:-

“It is thus apparent that the agreement and receipt are not genuine documents and are result of collusion between plaintiff and his father-in-law – defendant no.1. It is also significant to notice that that according to the recital in the

agreement as well as plea of the plaintiff, possession of the suit land was also delivered to plaintiff at the time of agreement, but it is in evidence that defendant no.2 is in possession of the suit land. There is also no explanation why the plaintiff did not seek specific performance of the agreement for 5½ years even after having paid entire sale consideration and having not obtained possession of the suit land. Moreover, instead of getting executed the agreement, the plaintiff would have got executed sale deed on the date of agreement itself if he had paid the entire sale consideration on that date. There is no explanation why agreement was executed and why sale deed was not executed on that day.”

To be fair to the appellant, counsel has raised a plea that cause of action to file the suit accrued one month after execution of the agreement in view of facts elicited in cross-examination of respondent/plaintiff. This contention of counsel is highly misconceived and liable to be rejected. Perusal of cross-examination of respondent/plaintiff would reveal that he had stated that he did not remember the date when he asked to get sale deed executed and registered in his favour but it was almost after one month from 02.01.2006. Prem Sagar did not meet him that day. Thereafter, Prem Sagar did not meet him for six years. The matter would have been different had the appellant met the respondent/plaintiff after one month of the agreement and refused to execute and register the sale deed in his favour because in that eventuality, cause of action to file the suit would have accrued to the respondent/plaintiff at that time.

So far as the plea that the respondent/plaintiff was not ready

and willing to perform his part of the agreement, the same is untenable in view of the discussion made hereinbefore. This apart, as the appellant has denied execution of the agreement of sale, he otherwise cannot raise an issue with regard to the respondent/plaintiff either being not ready or willing to perform his part of the agreement.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

09.03.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No