

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

**RSA-3893-2017 (O&M)
Date of Decision: 20.11.2018**

Avinash Kumar Shukla

... Appellant

Vs.

Prem Makhija and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Sanjay Vashisth, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in seeking specific performance of the agreement to sell dated 7.12.1998 in respect of House No.1584, Sector-9, Urban Estate, Faridabad having total area of 160 Sq. Yards agreed to be sold for a total sum of Rs.15,00,000/- against which payment of Rs.12,00,000/- as earnest money. As per the terms and conditions of the agreement, target date for execution and registration of the sale deed was 31.3.2000. It was also alleged that balance sale consideration of Rs.3,00,000/- was paid on 31.3.2000 and the plaintiff through the attorney was put into possession, thus, the time was not essence of the contract. When the defendant refused to execute the sale deed, the cause of action accrued on 7.10.2010 to file the suit.

The defendants opposed the suit of having denied the factum of agreement to sell but admitted the possession to be unauthorized and in that regard set up a counter claim. Even a complaint under Sections 419, 420, 448, 467, 468, 471, 380, 406, 506, 120-B IPC was lodged against the plaintiff. On preponderance of the evidence, the trial Court dismissed the suit on account of limitation and other accounts but no finding has been returned with regard to counter claim. Appeal filed by the appellant-plaintiff was also dismissed.

Learned counsel for the appellant submitted that in view of the provisions of 2nd part of Article 54 of the Limitation Act, time was not essence of the contract. The suit could not have been brought within three years when the breach was alleged. There is a specific pleading in this regard which has gone unnoticed. Therefore, there is a illegality. Assistance of an expert through the process of court has also been taken and he was coherent and consistent despite extensive cross-examination. Possession of the suit property is itself a testimony of payment of entire payment.

I am afraid the aforementioned argument of the learned counsel for the appellant-plaintiff is not sustainable as it is a matter of record that attorney who allegedly handed over the possession died on 22.7.2010 and the suit was filed on 7.10.2010. Thus, finding of fact, suit being barred by limitation is the correct appreciation of law as plaintiff has miserably failed to show that time was not the essence. It is the first provision of Article 54 that would apply. There is not even a single whisper of the alleged breach of the terms and conditions. In the absence of finding on the counter claim, no equity lies in favour of the plaintiffs. The payment of earnest money of Rs.3,00,000/- also remained unproved.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by both the court below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

20.11.2018
rajeev

(AMIT RAWAL)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**