

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4330 of 2017 (O&M)
Date of decision: 22.10.2018

Randhir Singh

..... Appellant

Versus

Balwinder Singh (deceased) through LRs

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Chetan Bansal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit filed by him for specific performance of the agreement to sell being time barred.

Agreement to sell as pleaded by the plaintiff is dated 30.04.1999 when out of total sale consideration of Rs.2,00,000/-, Rs.25,000/- was paid as earnest money. Thereafter, there is an endorsement on the agreement to sell dated 01.09.1999 i.e. the original target date acknowledging receipt of Rs.85,000/- and extending the date for performance of the agreement to sell to 31.10.1999. There is another endorsement on the agreement to sell dated 25.09.2000 when another amount of Rs.25,000/- is alleged to have been paid. Admittedly, thereafter on the agreement to sell, there is no endorsement for extension of the time. The plaintiff is admittedly a tenant in the premises in dispute. The plaintiff has pleaded that further amount of Rs.65,000/- has been paid in various installments spanning over a period of three years. These payments are just receipts of the payment of small amounts paid from time to time. It is not mentioned that these payments are in lieu of agreement to sell.

The defendant has claimed that these receipts are towards payment of arrears of rent. In any case, even as per the best case of the plaintiff, the last payment was made on 26.06.2003 whereas the suit was filed on 21.08.2010.

Learned counsel for the appellant submitted that the application for amendment of the plaint as well as additional evidence was moved as the property which was mortgaged had been redeemed from the bank in the year 2008. He submitted that the plaintiff through amendment wants to plead that cause of action accrue to him from the date of redemption.

Learned counsel for the appellant has read over the agreement to sell. In the agreement to sell, it is nowhere provided that redemption of the suit property would be a pre-condition for execution of the sale deed. Still further, the payment, details whereof have been given as additional payments after 25.09.2000 towards agreement to sell are not proved.

Learned counsel for the appellant further submitted that as per Article 54 of the Limitation Act, the limitation would accrue only on the date of refusal. Hence, he submitted that the suit could not be held to be barred by time. He submitted that the refusal on the part of the defendant for the first time was in the year 2010 when the petition for eviction was filed. In the considered view of this Court, the proceedings for eviction of the tenant, cannot be considered as deemed refusal in the facts and circumstances of the present case. The Courts below have rightly concluded that the suit filed by the plaintiff was hopelessly time barred.

In view thereof, there is no ground to interfere.

Appeal is dismissed.

22.10.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No