

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

**RSA No.1685 of 2002(O&M)
Date of Order: 20.03.2019**

Chhaju Ram

..Appellant

Versus

Surjit Kaur

..Respondent

RSA No.2184 of 2001(O&M)

Harbans Singh and others

..Appellants

Versus

Chhaju Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Khaira, Advocate,
for the appellant (in RSA No.1685 of 2002)
for the respondent (in RSA No.2184-2001)

Mr. Vipin Mahajan, Advocate,
for the appellants(in RSA NO.2184-2001)
for the respondent (in RSA No.1685-2002)

ANIL KSHETARPAL, J(Oral)

By this judgment, Regular Second Appeal No.2184 of 2001 and 1685 of 2002 shall stands disposed of being interconnected and counsel for the parties also admit that both can be disposed of by a single judgment conveniently.

The land in dispute in both the suits is common. One suit is for possession by way of specific performance of the agreement to sell and the second suit is for injunction restraining the defendants from interfering in the peaceful possession of the plaintiff.

The suit for possession by way of specific performance of the

agreement to sell is based upon the agreement to sell dated 12.06.1976. It may be noted here that there was a previous agreement to sell dated 03.07.1975 for sale of the land in dispute for total sale consideration of Rs.9500/-, out of which Rs.1000/- was received as earnest money. Thereafter, further payment of Rs.1500/- was received on 03.02.1976 and endorsement to that effect was made by the defendant-appellant on reverse side of the stamp paper on which the agreement to sell had been scribed. Thereafter, on 12.06.1976, fresh agreement to sell was executed acknowledging previous agreement to sell and receipt of Rs.2500/- (in two installments). The balance sale consideration was also received and it was stipulated that the sale deed can be got executed by the purchaser i.e. Smt. Surjit Kaur at any time within 6 months of the sanction of the mutation. It may be noted here that the defendant-appellant has admittedly sold the land measuring 31 kanals 9 marlas in favour of sons of plaintiff-Surjit Kaur dated 16.03.1982. It has also come on record that the allotment in favour of the defendant-appellant, who is an ex-military man with respect to land measuring 31 kanals 9 marlas is in 1970 and there was restriction on alienation for a period of 10 years. The moment restriction was over, sale deed was executed. Even with regard to the land in dispute involved in the present cases, there was similar restriction and conveyance deed was executed in favour of the defendant-appellant in the year 1980. It was for this reason sale deed could not be executed and hence, total payment agreement was executed. This court has carefully examined both the agreements to sell. On both the agreements to sell, defendant-appellant has signed in fluent English. The stamp papers have been purchased for execution of the agreement to sell. Hence, the plea put forth by the

defendant-appellant that he was made to sign the agreement to sell under the influence of liquor, is not believable.

I have heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below and the record.

Mr. Khaira, learned counsel appearing for the appellant very stressfully submitted that the suit filed by the plaintiff-respondent was barred by time as it was filed after 18 years of the date when the mutation was sanctioned. Hence, he submitted that once there was stipulation in the agreement to sell to the effect that the sale deed would be executed and registered within 6 months from the date of sanction of the mutation i.e. 29.01.1982, therefore, the suit filed by the plaintiff was barred by time. He submitted that the time was essence of the contract.

This court has considered the submissions, however, does not find substance therein.

The aspect of limitation can be examined from two different angles. First in the present case the total sale consideration has been paid. In such circumstances, defendant-appellant was not get any further payment. Hence, defendant-appellant has not suffered on account of delay. Secondly, the agreement to sell is dated 12.06.1976. No specific date for performance of the contract was fixed. It was contingent upon an event happening in future. The event is alleged to have happened on 29.01.1982. However, first part of Article 54 of the Schedule to the Limitation Act, 1963 would have no applicability as held by the Larger Bench of the Supreme Court in the case of Ahmmadsahab Abdul Mulla (D) by proposed Lrs. vs Bibijan & Ors (2009) 5 SCC 462 while interpreting words the 'date fixed'.

Still further, there is no evidence that the defendant-appellant ever informed the plaintiff or ever refused to honour the agreement to sell. No doubt, learned counsel has submitted that since the plaintiff-respondent is residing with her sons and they were in knowledge of the mutation but the facts of the case have to be examined on the basis of law.

Article 54 of the Schedule to the Limitation Act, 1963 is in two parts. First part provides that the limitation would begun to run from the date fixed i.e., agreed upon in the agreement to sell. In absence thereof, second part comes into operation which provides that the limitation would begun to run from the date performance is refused and the plaintiff has knowledge. In the present case, second part would apply and therefore, in absence of any evidence that the defendant-appellant refused to perform the agreement to sell or refused to honour the agreement to sell, the suit filed by the plaintiff has rightly been held to be within limitation by the first appellate court.

As regards, Regular Second Appeal No.2184 of 2001 arising from injunction suit, it may be noted that since in the suit for possession by way of specific performance of the agreement to sell has been decreed, therefore, the same has been rendered infructuous.

Both the appeals are disposed of accordingly.

C.M.No.3838-C-2019

Prayer in this application is for bringing on record the legal representatives of Chhajju Ram, the sole appellant, who has passed away on 21.05.2010.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just

exceptions. The legal representatives mentioned in paragraph 3 of the application are brought on record for the purpose of prosecuting this appeal only.

March 20, 2019
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(ANIL KSHETARPAL)
JUDGE

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