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

CR-6582-2018 (O&M)

Date of decision : 18.03.2019

Kartar Singh (deceased) through LRs

... Petitioner

Versus

Umed Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. G.C. Shahpuri, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-defendant for rejection of the plaint, seeking specific performance of agreement to sell dated 08.09.2009, being barred by law of limitation, has been dismissed.

Mr. Keshav Pratap Singh, learned counsel for the petitioner submitted that the trial Court failed to frame issue of limitation as preliminary and in case, did not find any favour for rejection of the plaint, as it would be a futile exercise to continue with the trial, for the simple reason that the agreement to sell is dated 08.09.2009, whereas the suit has been filed in the year 2016 i.e. after seven years. There are mootable and arguable points in the matter. In support of his contentions, reliance has

been laid to the *ratio decidendi* culled out by this Court in **Amarjit Singh and another V/s Sarabjit Sharma, 2016 (4) Law Herald 2897.**

Mr. G.C. Shahpuri, learned counsel appearing on behalf of the respondent submitted that time was not essence of agreement to sell and the cause of action would only arise, when the breach occurred. Since it is a mix question of fact and law, the plaint cannot be rejected. In support of his contentions, reliance has been laid to the ratio decidendi culled out by Hon'ble the Supreme Court in **Satti Paradesi Samadhi and Philliar Temple V/s M. Sankuntala (D) Tr. LRs and others, 2014 (3) RCR (Civil) 938,** to contend issue of limitation cannot be treated as preliminary.

I have heard learned counsel for the parties, appraised the paper book and of the view that the *ratio decidendi* culled out in **Satti Paradesi Samadhi and Philliar Temple's case** (supra) cannot be treated as exact principle of law derived from the facts of each and every case, starting point of limitation has to be ascertained, which is entirely a question of fact. Though, in the other judgment relied upon by Mr. Keshav Pratap Singh, this Court as per the facts of the case, found fit it for treating the issue of limitation as preliminary, but as a general rule, it is a mixed question of fact and law. The petitioner-defendant would be at liberty to take all possible pleas in the written statement and press the issue of limitation. At the best, this Court can issue a direction to the trial Court to expedite the disposal of the trial.

In view of above, by upholding the impugned order, under challenge, the present revision petition is disposed of with a direction to the trial Court to expedite the trial of the suit, preferably within a period of 1-½

years from the date of receipt of the certified copy of this order, after
affording effective opportunities to the parties.

18.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**