

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

RSA No.2306 of 2019 (O&M)

Date of Decision: 04.09.2019

Dharambir Saroha

.....appellant

Vs.

Poonam Devi

.....Respondent

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.A.K.Goyal, Advocate, for the appellant.

DR. RAVI RANJAN, J. (Oral Judgment)

CM No.6210-C of 2019

This application has been filed under Section 151 of Code of Civil Procedure, 1908 for condoning the delay of 34 days in re-filing the present appeal.

Heard.

In view of the averments made in the application, this application is allowed and delay of 34 days in re-filing the appeal is hereby condoned. This order would be subject to all just exceptions.

RSA No.2306 of 2019 (O&M)

This appeal is directed against the judgment and decree dated 19.12.2018 passed in CA/428/2016 by the District Judge, Sonapat, by which he has affirmed the judgment and decree dated 12.08.2016 passed by the Civil Judge (Sr.Divn.), Sonapat and has dismissed the appeal with costs.

Short facts which would be necessary for consideration of *lis* stand enumerated as under:

The plaintiff-respondent filed a suit seeking a relief for specific

performance of contract to sell dated 21.05.2007. Allegation is that the

plaintiff entered into an agreement with defendant to sell the suit property which is a plot measuring 300 Sq. yards of the land comprised in Khewat No.313 Khata No.456 and other descriptions which stand fully detailed in the plaint, for a valuable consideration of Rs.6,90,000/-. It is claimed that on the date of agreement itself, Rs.6,80,000/- was paid as earnest money in the presence of witnesses and a receipt thereof was executed to that effect by the defendant/appellant and the balance amount of Rs.10,000/- was undertaken to be paid by the plaintiff within a period of 10 days. Eventually, on 28.05.2007, the plaintiff paid the remaining amount of Rs.10,000/- also for which a separate receipt was granted in the presence of witnesses. It is further case of the plaintiff that the defendant also delivered the actual physical possession of the plot on the date of agreement itself and it was agreed between the parties that the defendant would execute and get the sale deed registered as and when desired by the plaintiff and as such, though the sale was complete but a formal sale deed was left to be executed in future. It is further alleged that the plaintiff requested the defendant several times to execute the sale deed in her favour but he refused to do the same. Though, the plaintiff remained ready and willing to get the sale deed executed as she had already paid the entire consideration amount but no deed was paid by the defendant and he did not come forward to accede her request. Hence, the suit was filed.

On notice, the defendant appeared and contested the suit by filing a written statement. A challenge was first made on the issue of maintainability of suit and alleging the agreement to be false, fictitious and fabricated document and second plea was taken regarding the suit being time

been denied.

On the basis of the rival pleadings, the trial Court framed the following issues:

1. Whether vide agreement dated 21.05.2007, defendant agreed to sell the plot in question fully detailed in para No.1 of the plaint in favour of plaintiff for total sale consideration of the Rs.6,90,000/- and received a sum of Rs,6,80,000/- as earnest money?OPP
2. Whether plaintiff was/is ready and willing to perform his part of contract? OPP.
3. Whether the plaintiff is entitled to a decree for specific performance of contract dated 21.05.2007?OPP.
4. Whether in the alternative, plaintiff is entitled to the decree for recovery of earnest money alongwith damages and interest @ of 12% per annum?OPP
5. Whether the suit of the plaintiff is not maintainable? OPD.
6. Whether suit of the plaintiff is time barred? OPD
7. Whether plaintiff is estopped by her own act and conduct to file the suit? OPD
8. Whether plaintiff has no locus-standi to file the present suit? OPD
9. Whether proper fees affixed on the plaint? OPD
10. Relief.

Issue Nos.1, 3 and 4, being inter-connected, have been considered together by the trial Court. The *onus probandi* to prove the issue being upon the shoulders of the plaintiff, she examined herself as PW1 and reiterated the allegations made in the plaint regarding the execution of the agreement to sell, delivery of possession in her favour, payment of entire consideration of Rs.6,90,000/- and receipt thereof having been granted by the defendant to the plaintiff. She has stated in her deposition that actual and physical possession was delivered to her on 21.05.2007 itself being the date of the agreement and since then the plaintiff was in possession of the suit property but despite several requests, the defendant did not execute the sale deed for which a legal notice was sent to the defendant but she, while

answering it, has refused to execute the sale deed. To prove the execution of agreement to sell, the plaintiff examined one Prem Singh as PW-2, the witness of agreement to sell. In his evidence, he has supported the version of the plaintiff and has proved his signature on the agreement to sell and receipt thereof. In his cross-examination, he has stated that out of total amount, Rs.6,80,000/- was paid by the plaintiff in cash on 21.05.2007 and remaining outstanding amount of Rs.10,000/- was paid later on. Though the plaintiff has paid the entire sale consideration to the defendant, still he was denying to execute the sale deed. Bijender son of Hari Chand and husband of the plaintiff has also been examined as PW-3. Satish Kumar PW-4 is an official witness who has proved the re-allotment letter Ex.PW4/A of the land in question in the name of defendant-Dharambir Saroha. Naresh Kumar, Clerk has proved the copy of the site plan Ex.PW5/A. That apart, Parveen Kumar and Rambhaj, Consumer Clerk, SDO Model Town, Sonapat, were examined as PW6 and PW7 respectively. The plaintiff, in order to prove the execution of agreement to sell, has also examined Sh.V.B.Kashyap, handwriting and finger print expert as PW8 who has filed his report being Ex.PW8/A stating that the three disputed signatures Q1, Q2 and Q3 on the agreement to sell Ex.P1 including one at the time of purchasing the stamp Ex.P2 are of defendant-Dharambir Saroha. He also examined disputed signatures Q4 and Q5 on the receipts ExP3 and he has opined after comparing the disputed signatures with one admitted signatures of the defendant that those are of Dharambir Saroha. After making analytical examination of the all the signature, he opined that the disputed and admitted signatures have been written by one and the same person, i.e.,

The defendant, in order to rebut the evidence led by the plaintiff, examined himself as DW-1 reiterating the plea taken by him in the written statement and denying execution of any agreement to sell. However, the trial Court has opined that mere denial of agreement to sell and self serving statement made by the defendant cannot out weigh the oral and documentary evidence led by the plaintiff. The plaintiff's case is further strongly supported by the report of the expert as discussed above. The trial Court has also noticed that in his cross-examination, he has admitted that he filed the application seeking the electricity connection (Ex.PW7/A) and that bears his signature and also identified his signature on the application form Ex.PW7/B, self clarification form Ex.PW7/C, affidavit Ex.PW7/D and Ex.PW7/E with which the expert had compared the disputed signatures of the defendant.

Accordingly, the trial Court held that the plaintiff is entitled to seek relief of specific performance of contract on the basis of concerned agreement to sell.

So far as issue No.2 is concerned, the trial Court has taken a stand that no evidence has been led by the defendant to rebut the claim of the plaintiff so this issue was also decided against the defendant and in favour of the plaintiff.

Issue No.5 has also decided against the defendant.

So far issue No.6 is concerned, the same was also decided in favour of plaintiff holding that plaintiff's suit was not barred by limitation.

Issue Nos.7 and 9 were also decided against the defendant.

Eventually, on the basis of the findings recorded on the

aforesaid issues, the suit of the plaintiff was decreed and defendant was

directed to execute the sale deed in favour of the plaintiff in accordance with the terms and conditions led down in the agreement to sell dated 21.05.2007.

The judgment and decree of the trial Court was put to challenge before the first appellate Court by preferring appeal which was also dismissed and the judgment and decree of the trial Court was upheld.

In the aforesaid background of factual matrix, I have heard learned counsel for the appellant.

The first and foremost point which has been vehemently argued before this Court by the learned counsel for the appellant is with respect to the suit of the plaintiff being barred by limitation. It is urged that the date of alleged agreement to sell being 21.05.2007 and the suit admittedly having been filed in the year 2013, was obviously time barred and thus, on this sole ground itself the suit should have been dismissed by the trial Court. Learned counsel has further submitted that in her cross-examination, the plaintiff has categorically stated that on the date of agreement, registered deed was not executed at the request of the defendant and even after one month she reminded the defendant to execute but he did not pay any heed. It is also stated that despite several attempts, the defendant could not execute the sale deed. On the strength of the aforesaid, it is stated that the limitation has to be counted from the date when the first oral denial was made. However, the trial Court while dealing with the issue, has held that the cause of action would be the date on which letter/legal notice was given to the defendant for executing the sale deed in the year 2013 and when the defendant refused to accede her request by writing a letter. It is admitted

recorded. For better appreciation of the issue, the relevant provision of the Limitation Act, i.e., Article 54 is extracted and reproduced as under:

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which begins to run</i>
54.	For specific performance of a contract.	Three years	The date fixed for the performance,or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

It is apparent from the aforesaid provision that the limitation in a suit for specific performance of contract would start from the date fixed for the performance and in case no such date is fixed then when the plaintiff has noticed that the performance is refused. In the case in hand, the plaintiff's case is that the final refusal by the defendant denying the execution of the sale deed was made in the year 2013 after the said written notice as on earlier occasion, the matter was only being deferred but not denied. Thus, the limitation would start from the date of written refusal in the year 2013. Hence, it has correctly been held by both the Courts below that the suit is not time barred.

The next issue which has been raised by the appellant is that both the marginal witnesses were from the family of the plaintiff itself and one of them being father, has been examined as PW2. Thus, the sale deed could have only been proved if the scribe/stamp vender would have been examined by the plaintiff. The aforesaid limb of argument raised on behalf of the appellant is noted only to be rejected for the reason that, apart from the above, an expert has also been examined who, after comparing the disputed signature on the agreement to sell as with the admitted signature of the defendant on various documents, has come to the conclusion that both

have been written by one and the same person. In such a situation, in my considered view, the defendant/appellant can not raise the issue of proving the sale deed.

Having considered the facts and circumstances of this case as discussed above, this Court is of the considered view that the defendant/appellant has miserably failed to set-forth any good ground or substantial questions of law warranting interference of this Court into the judgment and decree passed by the Courts below.

In the result, this appeal is dismissed.

(DR. RAVI RANJAN)
JUDGE

04.09.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No