

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1230 of 1996 (O&M)

Date of Decision: 25.02.2019

Mohinder Pal (deceased) through his LRs

....Appellant

VERSUS

Raghubir Kumar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod Khunger, Advocate
for the appellant.

Mr. Bhag Singh, Advocate
for the respondent.

SURINDER GUPTA, J.

First issue raised in this appeal is as to whether suit filed by the appellant was within limitation?

2. Learned then Sub Judge Ist Class, Ambala while dismissing the suit of plaintiff-respondent held that it is beyond limitation. However, in appeal, learned Additional District Judge, Ambala set aside the finding of learned trial Court on the issue of limitation with the observation that time was not the essence of contract and the limitation, as such, will start from the date when the vendee came to know that prospective vendor is not willing to execute the sale deed as per agreement dated 17.06.1986.

3. Second point raised is as to whether plaintiff has been successful in proving that he was ready and willing to perform his part of the contract? Learned trial Court on appraisal of evidence reached the conclusion that plaintiff has failed to prove this ingredient to be entitled to seek the relief of specific performance of agreement while Ist Appellate

Court did not agree with the observation of trial Court and reversed the

same.

4. In later part of the judgment parties will be referred to as the 'plaintiff' and 'defendant' as per civil suit.

5. As per case of plaintiff, defendant-Mohinder Pal vide agreement dated 16.07.1986 agreed to sell his house situated in village Jandli for a sale consideration of ₹12,000/- out of which he received ₹11,000/- as earnest money. The date for execution and registration of sale deed was fixed as 30.12.1986. On the date fixed, plaintiff appeared before the Sub-Registrar, Ambala to get the sale deed executed but the defendant did not turn up and he (plaintiff) moved an application to get his presence marked.

6. The suit was filed on 04.01.1990 and admittedly, period of limitation for filing suit had expired on 30.12.1989 and Courts after vacations in December opened on 02.01.1990 and before the date of filing of the suit i.e. 04.01.1990, 02.01.1990 and 03.01.1990 were working days.

7. The defendant while contesting the suit on the plea of limitation also denied execution of the agreement.

8. On the issue of execution of agreement, learned trial Court recorded finding that the defendant had executed agreement to sell dated 16.07.1986 to sell his house to plaintiff for a sale consideration of ₹12,000/-. However, on the issue of readiness and willingness of plaintiff to perform his part of the contract it was observed that he had failed to prove his readiness and willingness to perform his part of the contract. On the issue of limitation, findings were recorded by the trial Court against plaintiff with the observations in para 23 of the judgment, which reads as follows:-

“23. The onus to prove this issue was on the defendant. It is

stated by learned counsel for the defendant that this civil suit filed by the plaintiff was barred under article 54 of the Limitation Act which says that limitation period prescribed under this article for filing suit for specific performance of the contract was three years. The time from which period begins to run was to be counted from the date fixed for performance. In this case while applying the aforesaid provisions on the facts of the present case, the time fixed for specific performance of the contract with regard to agreement to sell dated 16.07.1986 was fixed for 30.12.1986. On that day sale deed was to be executed by defendant in favour of the plaintiff and, therefore, under Article 54 of the Limitation Act the time for filing suit for specific performance was began to run from 1st January, 1987 and the period of three years would expire on 31st December, 1989 whereas the present suit had been instituted on 04.01.1990. The plea of the plaintiff that the present suit had been filed immediately after winter vacation was not tenable as the court had opened on 2nd January which was a Tuesday and the plaintiff could have filed this suit on 2nd January whereas he has filed this suit on 04.01.1990. Section 3 (i) of the Indian Limitation Act clearly bars the filing of the suit after expiry of the period of limitation. It is stated in this Section that subject to the provisions contained in

Sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. Thus from bare reading of this Section, it is evident that suit filed after the prescribed period of limitation had to be dismissed and there is no provisions for condonation of delay in the suits which are filed after expiry of the period of limitation.”

9. On appeal, learned Additional District Judge, Ambala reversed the findings of learned Sub Judge, Ist Class, Ambala on this issue with observations as follows:-

“11.So, it is clear that the parties are to mention specifically in the contract, if there was essence of time, which a nowhere in the present case. In the agreement Ex. P-1, the respondent was to show a sale deed got executed in his favour from the previous owners regarding the property in dispute. Before the purchase of property, a sale deed was yet to be executed in his favour. But the respondent has failed to show that he has shown such sale deed to the appellant. Not to talk of showing such sale deed, the respondent has denied the execution of the agreement mentioned above. All these circumstances show that before the execution of the sale deed the respondent was to get a sale deed executed in his favour and that the time was not the essence of the contract. In such cases, when the time is not essence,

*the period for limitation is to be completed from the day, when the prospective vendee came to know that the prospective vendor is not willing to execute the sale deed as opined in **Bhagwan Singh's case (supra)**. The appellant has alleged in para no. 7 of the plaint that just a week ago i.e. from 04.01.1990 (the date of presentation of plaint) respondent-defendant has flatly refused to perform his part of the contract. The respondent did not deny this fact in the written statement specifically and only averred that it was not admitted and hence denied. It was not a specific denial when a denial about any fact is not specific, amounts to an admission of that fact. So, in these circumstances it is to be deemed that one week before 04.01.1990, the respondent backed out from the agreement. Thus, the limitation is to be computed on 28.12.1989. In this way, it is clear that the suit was within time.....”*

10. Before proceeding further, it will be relevant to discuss scope of Section 100 CPC and interference in finding of fact recorded by Courts below in second appeal. While defining principles relating to Section 100 CPC in case **Hero Vinoth (minor) vs. Seshammal, 2006 (5) SCC 545**, Hon'ble Supreme Court observed as follows:-

“25. The principles relating to Section 100 CPC, relevant for this case, may be summarized thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal

effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

- (ii) *The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the*

settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

11. Keeping in view the above settled proposition of law in ***Hero Vinoth's case (supra)***, I proceed further to evaluate the findings of Ist Appellate Court on both the points as discussed above, which gives rise to substantial question of law.

12. As per agreement dated 16.08.1986, the date for execution of sale deed was fixed as 30.12.1986. Plaintiff has alleged that on the stipulated date, he had appeared before the Sub-Registrar, Ambala and moved application (Ex. P-2), which is in Hindi and English translation of which is as follows:-

“Submitted that Mohinder Pal son of Garibu Ram, resident of village Jandli, *Tehsil* and District Ambala had agreed to sell the

house situated in village Jandli (Ambala) **owned by him** for a sale consideration of ₹12,000/- and received ₹11,000/- as earnest money. The sale deed was to be executed till 30.12.1986 as per terms settled in the agreement dated 16.08.1986. I am ready to get the sale deed executed but Mohinder Pal is putting off the matter. Therefore, it is prayed that my presence may be marked. I have ready money to get the sale deed executed.”

13. The application (Ex. P-2) was returned to plaintiff with the observation that there is no provision to get the presence marked, as such, application is returned.

14. It is evident that plaintiff was conscious of two facts while moving application dated 30.12.1986; firstly, that Mohinder Pal is owner of the house agreed to be sold; and secondly, he is not ready to get the sale deed executed.

15. The question, which arises for consideration, is as to what action a prudent man will take in such circumstances. Either vendee will call upon the vendor to execute the sale deed or he will serve him a legal notice calling upon him to perform his part of the contract or file a suit seeking the relief of specific performance of agreement as early as possible. There is bald averment in the plaint that plaintiff had been approaching the defendant but he was putting off the matter one way or the other and ultimately refused to do the needful to get the sale deed executed. While appearing as PW-1 plaintiff has stated that on 30.12.1986 he appeared before the Sub-Registrar with the requisite amount to get the sale deed executed but the defendant did not turn up. He has nowhere stated that he

ever approached the defendant to get the sale deed executed. His statement is totally silent on this issue. This shows hollowness of his pleadings that time and again he had been approaching the defendant to get the sale deed executed. The fact that after the date of execution of the sale deed i.e. 30.12.1986, plaintiff has remained silent for a long period of three years and has not taken any step to get the sale deed executed, show that no steps were taken by the plaintiff to seek execution of the sale deed by the defendant and this recoils on the plea put forth by him that he was ready and willing to perform his part of the contract.

16. Learned trial Court has rightly observed that plaintiff had failed to lead any cogent and convincing evidence to show his readiness and willingness to perform his part of the contract and pleadings cannot take place on proof. No prudent man will sit idle for such a long time of more than three years waiting for execution of the sale deed as per terms of the agreement executed more than 3½ years before filing of the suit. Ist Appellate Court while setting aside the findings of learned trial Court on this score got swayed by the pleadings and has not even noticed the statement of plaintiff wherein he was totally silent about his readiness and willingness to perform his part of the contract or the steps taken by him to get the sale deed executed. Learned Ist Appellate Court based its findings only on the fact that plaintiff had appeared before the Sub-Registrar on 30.12.1986 without taking note of the fact that the suit was filed on 04.01.1990 i.e. after a period of more than three years of his appearance before the Sub-Registrar for which he has not come with any explanation regarding the steps taken by him to get the sale deed executed.

Observations of Ist Appellate Court that plaintiff has proved his readiness

and willingness to perform his part of the contract is without any evidence on record. There is recital in the agreement that defendant will get the sale deed of the disputed house executed in his favour from Hans Raj and Amar Nath. Application (Ex. P-2) moved by the plaintiff before the Sub-Registrar shows in unequivocal terms that there was no doubt in the mind of plaintiff that the defendant was exclusive owner of the suit property. In case the plaintiff had any doubt about ownership of the defendant he must have mentioned this fact in the application.

17. In view of my above discussion, I am of the considered opinion that the findings recorded by the Ist Appellate Court that plaintiff has been able to prove his readiness and willingness to perform his part of the contract are perverse, illegal and not based on proper appreciation of evidence on record.

18. While setting aside the findings of learned trial Court on the issue of limitation, Ist Appellate Court observed that time was not the essence of the contract. While reaching this conclusion, it took note of the fact that in the agreement to sell it was incorporated that defendant will get the sale deed of the disputed house executed in his favour from previous owner of the property.

19. The question, which arises for consideration, is as to whether above observations are based on pleadings and evidence produced on file? In the entire plaint, plaintiff has nowhere alleged that the defendant had not got executed the sale deed of the disputed house from the previous owners, namely, Hans Raj and Amar Nath. It is nowhere the case of plaintiff that he could not file the suit within limitation as he was not aware about the title of defendant over the suit property. As already discussed, plaintiff has

categorically stated before Sub-Registrar in his application dated 30.12.1986 (Ex. P-2) that the defendant is owner of the disputed house, which he agreed to sell to him. While moving application (Ex. P-2) there remained no doubt in the mind of plaintiff that the defendant was not coming forward to get the sale deed executed. He had not served any notice on the defendant calling upon him to come forward to get the sale deed executed or raising any doubt about his title. The language of agreement (Ex. P-1) is clear and unambiguous regarding the date settled for execution of the sale deed. It was specifically stated in the agreement that plaintiff could get the sale deed executed before 30.12.1986 in his favour or in favour of any other person on payment of balance sale consideration. It is highly improbable and unbelievable that plaintiff had paid about 90% of the sale consideration, had not insisted on delivery of possession of the property agreed to be sold to him. He remained idle and did not take any step for a long period after the targeted date settled by the parties for execution of the sale deed. The plaintiff was aware of the date fixed for execution of the sale deed and had appeared before the Sub-Registrar on that date and moved application (Ex. P-2) to get his presence marked. Keeping in view above facts and circumstances, this observation of Ist Appellate Court that time was not the essence of contract is without any basis. Even in the plaint, plaintiff has nowhere alleged that time was not the essence of contract and has also not so stated while appearing as PW-1. He has not stated even a single word about the alleged term of execution of the sale deed by Hans Raj and Amar Nath in favour of defendant.

20. Hon'ble Apex Court in case of **Ahmmadsahab Abdul Milla (dead) by proposed LRs vs. Bibijan and others, 2009 (5) SCC 462** while

answering the reference “as to whether use of the expression “date” used in Article 54 of the Schedule to Limitation Act, 1963 is suggestive of a specific date in the calendar” has observed in para 7 of the judgment as follows:-

“7. *The inevitable conclusion is that the expression ‘date fixed for the performance’ is a crystallized notion. This is clear from the fact that the second part “time from which period begins to run” refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on ‘when the plaintiff has notice that performance is refused’. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression ‘date’ used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar.....”*

21. In case of **Madina Begum and anr. vs. Shiv Murti Prasad Pandey and others**, 2016 (3) RCR (Civil) 952, two Judges Bench of Hon'ble Apex Court observed as follows:-

“18. *In Ahmadsahab Abdul Mulla (2) (Dead) v. Bibijan and*

Ors., 2009 (2) RCR (Civil) 788; 2009 (1) RCR (Rent) 492; (2009) 5 SCC 462 the following question was considered by a three judge Bench of this Court: *Whether the use of the expression date used in Article 54 of the Schedule to the Limitation Act, 1963 (in short the Act) is suggestive of a specific date in the calendar?*

19. *While answering this question on a reference made to the three judge Bench, this Court considered the meaning of the word date and fixed appearing in Article 54. Upon such consideration, this Court held that the expression date fixed for the performance is a crystallized notion. When a date is fixed it means there is a definite date fixed for doing a particular act. Therefore, there is no question of finding out the intention from other circumstances. It was reiterated that the expression date is definitely suggestive of a specified date in the calendar. Paragraphs 11 and 12 of the Report in this regard are of importance and they read as follows:-*

11. *The inevitable conclusion is that the expression date fixed for the performance is a crystallized notion. This is clear from the fact that the second part time from which period begins to run refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act.*

Even in the second part the stress is on when the plaintiff has notice that performance is refused. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. *Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression date used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.”*

20. *Quite independently and without reference to the aforesaid decision, another Bench of this Court in **Rathnavathi and Another v. Kavita Ganashamdas, 2014 (4) RCR (Civil) 904; 2014 (6) Recent Apex Judgments (R.A.J.) 140; (2015) 5 SCC 223** came to the same conclusion. It was held in paragraph 42 of the Report that a mere reading of Article 54 would show that if the date is fixed for the performance of an agreement, then non-compliance with the agreement on*

the date would give a cause of action to file a suit for specific performance within three years from the date so fixed. But when no such date is fixed, the limitation of three years would begin when the plaintiff has notice that the defendant has refused the performance of the agreement.....”

22. Learned counsel for the respondent has relied on observations of single Bench of this Court in case of **Bhagwan Singh vs. Teja Singh, 1994 (2) PLR 50**, wherein it was observed that period of limitation for seeking specific performance of agreement will commence from the date the plaintiff had knowledge of fact regarding permission having been obtained or that the defendant had a right to transfer the property after expiry of period of restriction. In that case the defendant had to obtain sale certificate and permission from the State for execution of the sale deed. No specific date for execution and registration of the sale deed as per agreement was fixed. In this case specific date for execution of the agreement was fixed and in the absence of pleadings and evidence by the plaintiff that he was prevented from filing the suit due to certain averments in the agreement or for such particular reason, trial Court could not draw any inference in favour of the defendant. Ist Appellate Court has gone beyond pleadings and evidence on file while setting aside well reasoned findings of trial Court on the issue of limitation, as such, the findings of Ist Appellate Court to this effect are also not sustainable being not based on proper appreciation of pleadings, evidence and law on the point.

23. As a sequel of my above finding and reversal of the finding of Ist Appellate Court on issues no.(ii) to (v), this appeal has merit and the

same is accepted with costs. The judgment of Ist Appellate Court is set aside and that of the trial Court is restored.

February 25, 2019
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>