

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

**RSA No.4979 of 2016 (O&M)
Date of Decision.20.05.2019**

Shamsher ...Appellant

Vs

Padam and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Denesh Goyal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in both the Courts below seeking specific performance of agreement to sell dated 30.06.1986 in respect of the suit property in dispute allegedly executed by one Khillu, predecessor-in-interest of the defendants for sale consideration of ₹5000/-. The plaintiff was put in possession. It was alleged that sale deed dated 31.07.2008 was executed by defendant Nos.1 to 11 in favour of defendant No.12 and therefore, cause of action arose to file the suit as time was not essence of the agreement.

Defendants 1 to 3 & 5 to 11 contested the suit and denied the execution of the agreement and taken objection qua limitation but did not deny sale as property in dispute was clear from any agreement or encumbrance.

Defendant No.12 claimed himself to be bona fide purchaser.

Plaintiff examined four witnesses and brought on record agreement Ex.PW1/A, Ex.P1 special power of attorney, Ex.P2 & P3 jamabandis for the year 2001-02, 1996-97, Challan Ex.P4 and copy of FIR No.397 dated 24.11.2008 Ex.P5. On the other hand, defendants examined two witnesses and closed the evidence.

Learned counsel appearing on behalf of the appellant submitted that the time was not essence of the agreement. As and when breach was committed i.e. by virtue of sale deed, suit was filed, which could not have been thrown out on the ground of limitation. The provisions of Article 54 of the Limitation Act, which are in two phases, were not read in correct perspective. The plaintiff had already been in possession and raised construction.

I am afraid aforementioned argument would not be sustainable, as no evidence with regard to possession has been proved or placed on record. There is categoric averment in the plaint that Khillu executant of the agreement to sell/predecessor-in-interest of the defendants refused to perform part of the agreement during his life time. Concededly, he died in 2001 whereas the suit was filed on 29.09.2008. Even under Article 54, limitation, on account of breach, is three years whereas the breach alleged to have occurred in 2008 is totally a figment of imagination.

The appeal is also accompanied by application for condonation of delay of 90 days in re-filing of the appeal. The explanation given is bereft of reasonable and plausible cause.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact, much less,

no substantial question of law arises for determination by this Court.

No ground for interference is made out. Resultantly, the second appeal is dismissed on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

May 20, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No