

(111)

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

**RSA- 1769-2016 (O&M)
Date of Decision: 05.02.2020**

Gurpal Singh through Legal Heirs Sukhwinder Kaur and another..Appellants

Versus

Sham Lal Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Veneet Sharma, Advocate
for the appellants.

Ms. Rupinder Kaur Thind, Advocate
for respondent No.1-caveator.

Ms. Kavita Arora, Advocate
respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in Regular Second Appeal against the concurrent finding of fact alleged by the Courts below decreeing suit for specific performance for agreement to sell.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by the Courts below.

Learned counsel for the appellant submits that the suit filed by the plaintiff was barred by time as the agreement to sell between plaintiff No.1 and defendant-appellant is dated 07.05.2003, whereas the suit was filed on 10.05.2006. The defendant-appellant was not owner of the property as the allotment of the premises made by the Amritsar Improvement Trust is

not final.

On the other hand, learned counsel for the respondent submits that originally a bigger plot was allotted in the name of Harpal Singh, brother of defendant-appellant. However, subsequently on the request, the entry was made by the Improvement Trust to incorporate name of both the brothers in equal shares. She further submits that as per Article 54 of the Limitation Act, 1963, the limitation would begun to run, from the date fixed for the performance and if no such date is fixed, the date when the plaintiff has the notice that performance is refused by the defendant. Hence, it was submitted that reckoning date from which the limitation begins to run cannot be the date of agreement to sell. She further brought to the notice of the Court that the plaintiffs had served a notice dated 01.05.2006 Exhibit P-29, but the defendant did not come forward to perform his part of the contract, forcing the plaintiff to file the present suit.

This Court has considered submissions. As regards argument with regard ownership of the plaintiff, it has come on record that the Amritsar Improvement Trust had already made an entry in its record in favour of two brothers including the defendant. In these circumstances, defendant now cannot be permitted to turn around and claim that he is not the owner. In any case, the present suit is only for specific performance of the agreement to sell (contract between the parties). The Court has only ordered for specific performance. Question of title, in these proceedings is not directly involved.

In the next argument, learned counsel states that the suit is barred by time. Same is to be noted and rejected particularly in view of the Article 54 of the Schedule to Limitation Act, 1963. Article 54 envisages two different eventualities from which the limitation would begun to run. For

determining the reckoning date, it has been provided that either it will be the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that the performance has been refused. In the present case, after the notice was served in May 2006 to the defendant, he did not come forward to perform his part of the contract. Hence the suit cannot be held to be beyond time barred by time.

Still further the date on which agreement to sell was executed, cannot be taken as a reckoning date to count limitation for filing a specific performance. As regards the argument that the dispute with respect to allotment of the plot is pending, it will be noticed that whatever rights are available to the defendant would stand transferred in favour of plaintiff on execution of the sale deed. For grant of decree for specific performance, it is not necessary that the defendant should be recorded owner in the revenue record.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

(ANIL KSHETARPAL)

Judge

05.02.2020

Pardeep

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No