

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.1426-2018(O&M)
Date of Order: 13.02.2020

Reeta Rani and another ..Appellants

Versus

Bholi Rani @ Santosh Kumari and others ..Respondents

(2) RSA No.1427-2018(O&M)

Reeta Rani and another ..Appellants

Versus

Bholi Rani @ Santosh Kumari and others ..Respondents

(3) RSA No.5105-2018(O&M)

Rajni and another ..Appellants

Versus

Bholi Rani @ Santosh Kumari and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.K.Mehta, Advocate,
for the appellants (in RSA Nos.1426 and 1427-2018)

Ms. Promila Nain, Advocate,
for the appellants (in RSA No.5105-2018)

Mr. Sanjiv Gupta, Advocate and
Mr. Vaibhav Sehgal, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Through this judgment RSA Nos.1426, 1427 and 5105 of 2018
shall stand disposed of. These three appeals are arising from two civil suits

filed by the respective parties, clubbed together at the stage of evidence and disposed of by a common judgment passed by the trial court as well as by the first appellate court. Counsel for the parties are also ad-idem that these three appeals can be conveniently disposed of by a common judgment.

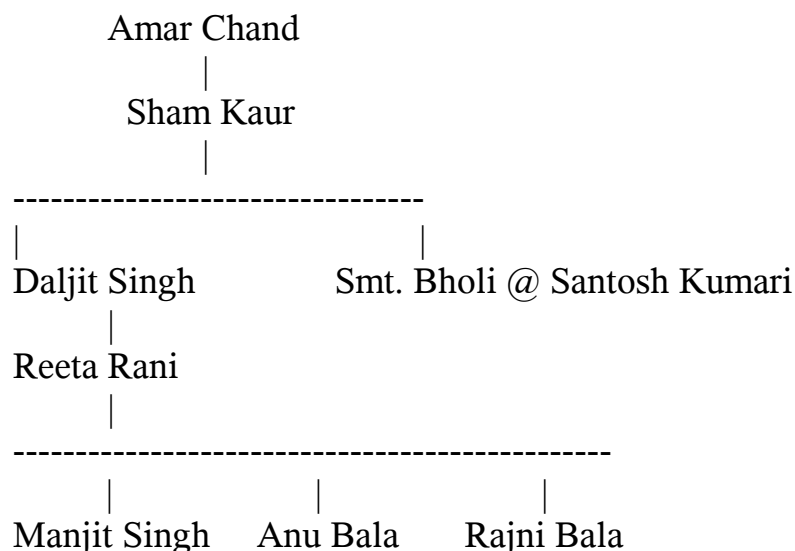
In the considered view of this court, following questions of law arise for determination:-

1. *Whether declaration of biological age of a person submitted by a proposer while purchasing a life insurance policy can be made sole basis to ascertain biological age of that person in a civil suit?*
2. *Whether an agreement to sell becomes void solely on the ground that one of the marginal witness had not attained the age of majority as he was less than 18 years of age on the day it was signed?*
3. *What would be the reckoning date from which the limitation period would begin to run in a case which falls in Part II of Article 54 of the Schedule attached to Limitation Act, 1963?*
4. *Whether for the purpose of determining the reckoning date from which the limitation period would begin to run under Part II of Article 54 of the Schedule to the Limitation Act, 1963, the date of refusal to perform the contract can be determined on the basis of inferences while returning finding that the suit as filed is beyond prescribe period?*
5. *Whether the suit filed for specific performance of the*

agreement to sell can be dismissed on the ground that identity of the property is not established, particularly when it is not disputed by opposite side?

FACTS:-

A small pedigree table would help in understanding inter-se relationship between the parties:-



Smt. Bholi Rani @ Santosh Kumari filed a suit for permanent injunction with following caption:-

“Suit for the grant of permanent injunction restraining the defendants from interfering forcibly and illegally in any manner what so ever in the possession of the plaintiff on the property measuring 200 square yards bearing House No.865/1(Old) 2218 (New), Mohalla Baba Gajja Jain Colony, Sherpur Kalan, Street No.6, Ludhiana as shown in colour red in the site plan attached with the plaint bounded as under:-

East: Plot No.10-B of Daljit Singh, 50'

West: Plot No.12,50'

North: Road 36'

South: Usha Rani 36',

and comprising in Khewat and Khatauni No.1636/1700, Khasra No.27//12/7, situated in the area of Village Sherpur Kalan, Hadbast No.176, Tehsil and District

Ludhiana as entered in the jamabandi for the year 2003-2004 and interfering in the raising of the wall in the property of plaintiff at Point A to B as shown in the site plan and further restraining the defendants from recovering any rent from the tenants in the property of the plaintiff and recovery of amount of rent by way of rendition of account by rendering the accounts of the rent recovered by the defendants from tenants in the property of the plaintiff recovered by them after the death of Sh. Daljit Singh on 22.2.2008, on the basis of oral and documentary evidence under order 7 Rule 1 CPC.”

On the other hand, Smt. Reeta Rani, Manjot Singh, Anu Bala and Rajni, legal heirs of Daljit Singh filed a suit for possession on 14.09.2009 by way of specific performance of the agreement to sell dated 08.04.1988. Property in question is situated within municipal limits. Old municipal number of the property was 865/1, whereas its new municipal number is BXXX-2218, Mohalla Baba Gajja Jain Colony, Sherpur Kalan, Ludhiana.

It is clear from the pedigree table that the parties are closely related. The plaintiffs in the suit for specific performance of the agreement to sell have filed the suit against sister of their predecessor-in-interest i.e. Daljit Singh. The plaintiffs in the suit for specific performance of the agreement to sell Ex.D1 claim that Smt. Bholi Rani @ Santosh Kumari had agreed to sell suit property to late Sh. Daljit Singh vide agreement to sell dated 08.04.1988 for a sum of Rs.45,000/- on receipt of total sale consideration. Possession of the plot agreed to be sold was handed over to late Sh. Daljit Singh who had also purchased an adjoining separate plot measuring 300 square yards towards West of the plot owned by Smt. Bholi

Rani @ Santosh Kumari and thereafter, constructed a building in one unit of the entire plot including the plot agreed to be sold by Smt. Bholi Rani @ Santosh Kumari. Thereafter, late Sh. Daljit Singh was in continuous possession of the property since 1988. The agreement to sell did not specify the time or period/date for execution and the registration of the sale deed.

On the other hand, Smt. Bholi Rani @ Santosh Kumari has filed a suit claiming that she is owner of the property, having purchased the same vide sale deed dated 27.04.1979, and since her husband went to Dubai in the year 1996, therefore, Smt. Bholi Rani @ Santosh Kumari and late Sh. Daljit Singh jointly constructed the building, gave rooms on rent and both brother and sister used to collect the rent. After the death of their mother Sham Kaur, Daljit Singh had forged the Will of Smt. Sham Kaur and pressurized Smt. Bholi Rani @ Santosh Kumari to admit the correctness of that forged Will. Smt. Bholi Rani @ Santosh Kumari filed a suit challenging the Will in which the Will was discarded by the court. She claims that after the death of late Sh.Daljit Singh, his heirs have set up an agreement to sell which is a forged document. Smt. Bholi Rani @ Santosh Kumari never executed any agreement to sell dated 08.04.1988 in favour of Daljit Singh.

Learned trial Court consolidated both the suits and permitted the parties to lead their evidences. Learned trial court on appreciation of evidence decreed the suit for grant of decree of specific performance while dismissing the suit filed by Smt. Bholi @ Santosh Kumari whereas learned first appellate court has reversed the judgment and decree passed by the trial Court. That is how three appeals have come up for disposal.

Learned counsel appearing for Smt. Reeta Rani and another have submitted that the judgment passed by the learned first appellate court

is erroneous as the first appellate court has erred while returning a finding that the suit filed by Smt. Reeta Rani and others was barred by time or was filed beyond the prescribed time. While elaborating, he submitted that the learned first appellate court has erred in determining reckoning date for limitation to begin to run while inferring refusal. He further submitted that the first appellate court has also erred in returning a finding that since Ram Singh Yadav, one of the marginal witness of the agreement to sell Ex.D1, is proved to be minor, therefore, the agreement is void.

On the other hand, learned counsel representing Smt. Bholi Rani @ Santosh Kumari has defended the judgment passed by the first appellate court while contending that since the relationship between both brother and sister had become strained, therefore, the suit for specific performance of the agreement to sell filed by Smt. Reeta Rani and others has been correctly dismissed.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the court below and the record.

At the outset, it would be appropriate to discuss the evidence led by the respective parties.

Oral evidence:-

Smt. Bholi Rani @ Santosh Kumari has appeared as PW4. From the reading of the statement, particularly the cross examination, it is apparent that Smt. Bholi Rani @ Santosh Kumari does not know as to when Daljit Singh had constructed the entire building, although, she has claimed that it was jointly constructed and she had contributed money for same, but no record had been produced to prove that fact. She also admitted that

entire premises is a single unit having only one gate for entry and exit. She further admits that electricity, water and sewerage connections are in the name of late Sh. Daljit Singh, her brother. In fact, electricity connection is only one which is also in the name of Daljit Singh. She has stated that her brother used to pay her share from the rent collected but on reading of the entire statement it is apparent that she is not telling the truth because in the later part of the cross examination she admits that Smt. Reeta Rani widow of Daljit Singh was not paying any amount. She has denied execution of the agreement to sell. Smt. Bholi Rani @ Santosh Kumari has also produced a certified copy of the sale deed through which the plot in question was purchased on 27.04.1979 while taking a stand that the original sale deed was in possession of Smt. Sham Kaur, her mother, which is now in possession of Smt. Reeta Rani. Smt. Bholi Rani @ Santosh Kumari has also examined Sh. Anil Kumar Makol as PW1, an official from the office of Life Insurance Corporation to prove that one of the marginal witness of the agreement to sell i.e. Ram Singh Yadav was minor on the day the alleged agreement to sell was executed.

On the other hand, Smt. Reeta Rani has herself appeared as DW4 and she has also examined both the marginal witnesses of the agreement to sell i.e. Vikramjit and Ram Singh Yadav. She has also examined officials of the Electricity Supply Company, Municipal Committee etc.

Documentary Evidence:-

Ex.D1 is original agreement to sell executed between the parties. Ex.D12 to Ex.D36 are receipts /bills/invoices issued by Municipal Corporation towards municipal tax, water and sewerage charges. All the

receipts were produced by Smt. Reeta Rani with respect to period from 1986 to 2004. Similar is the position with regard to water and sewerage bills. Smt. Reeta Rani has also produced on file electricity consumption invoices/receipts from 1999 to 2012.

Circumstantial Evidence:-

It is admitted fact on the record that late Sh. Daljit Singh during his life time was collecting the rent and managing the entire premises. The entire building is a single unit having only one gate for entry and exit. The electricity connection to the entire premises is one which is in the name of late Sh.Daljit Singh. The water and sewerage connections are also in the name of late Sh.Daljit Singh and were being paid by him earlier and after his death by Smt. Reeta Rani, his wife. Rather on the reading of evidence of Smt. Bholi Rani @ Santosh Kumari, it becomes clear that she even does not know what type of construction has been constructed on both the plots.

Keeping in view the aforesaid facts, learned trial court has correctly drawn a conclusion that previously late Sh.Daljit Singh and after his death, legal heirs of late Sh.Daljit Singh are in possession of the entire property including the suit property pursuant to the agreement to sell. Learned first appellate court has not reversed the aforesaid finding.

The reasons recorded by learned first appellate court.

First reasons is that the suit filed by the plaintiff is beyond the prescribed time as agreement to sell is dated 08.04.1988, whereas the suit for specific performance was filed on 14.09.2009. As noticed above, no date, time or period for performance of the agreement to sell (for getting the sale deed registered) is provided in the agreement to sell. Learned first appellate court has held that since the relationship between both brother and

sister was strained, therefore, Smt. Bholi Rani @ Santosh Kumari shall be deemed to have refused to perform her part of the contract. The first appellate court has also inferred refusal on the basis of the statement of Vikramjit Singh, a marginal witness of the agreement to sell on the ground that late Sh.Daljit Singh had been requesting Smt. Bholi Rani @ Santosh Kumari for execution and registration of the sale deed but she had been putting it off. The first appellate court has also recorded that on 29.11.2006 a settlement was arrived at before the Police where late Sh.Daljit Singh and Smt. Bholi had signed, hence, the refusal of Smt. Bholi to perform her part of the contract is liable to be inferred from the date of compromise.

At this stage, it would be appropriate to extract Article 54 of the Schedule attached to the Limitation Act, 1963.-

54. <i>For specific performance of a contract.</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.</i>
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On careful reading of the aforesaid Article 54, it is apparent that the reckoning date for calculation of limitation has been divided into two parts. First part provides that when the date is fixed in the agreement to sell for the performance, the reckoning date would be the date agreed to for the purpose of calculating limitation. In Part-II, it has been provided that if no such date is fixed, then the date when the plaintiff has notice that the performance is refused by the other side will be the date for the purpose of calculating limitation.

The statute uses a particular phraseology. It has to be proved that the plaintiff has the notice that the performance has been refused by the other party. Question is “whether such refusal can be assumed on the basis of inferences or not?” In the considered view of this Court, once the

language is explicit, it would not be appropriate for the court to draw conclusion of refusal only on the basis of inferences.

Now let's analyse the reasons in detail.

First reasons is that relationship between the parties were strained because there was a compromise before the police and Smt. Bholi Rani @ Santosh Kumari had also filed a suit questioning Will of Smt. Sham Kaur set up by late Sh.Daljit Singh. Admittedly, the aforesaid Will of Smt. Sham Kaur was not with regard to the property in dispute. The suit property along with the adjoining property was purchased by Smt. Bholi Rani @ Santosh Kumari and late Sh.Daljit Singh (brother and sister) by 2 separate sale deeds. It may be noted here that Smt. Bholi Rani @ Santosh Kumari had filed a suit for permanent injunction with regard to the suit property on 24.08.2009 and on receipt of notice, Smt. Reeta Rani and others filed the present suit. This is the only litigation between the parties qua the suit property.

Learned first appellate court has relied upon a settlement arrived at between various other persons including late Sh.Daljit Singh and Smt. Bholi Rani @ Santosh Kumari, mark 'X' and 'Y', dated 29.11.2006. It may be noted here that the aforesaid documents have never been admitted in evidence or exhibited. In any case, the aforesaid settlement is with respect to a different property situated in Raju Colony, therefore, it has nothing to do with the property in dispute.

It may be noted here that the entire sale consideration under the agreement to sell had been paid at the time of execution of the agreement to sell. Liberty was given to late Sh.Daljit Singh to get the sale deed executed and registered in his name or in the name of his nominees on any date,

month or year. In such circumstances, limitation period cannot be said to have commenced unless and until Smt. Reeta Rani had the notice of the fact that Bholi Rani had refused to perform her part of the contract. At the most, it can be inferred from the date when she received notice of the suit for permanent injunction filed.

In the present case, Smt. Bholi Rani @ Santosh Kumari never claimed that she ever informed Smt. Reeta Rani and others or their predecessor late Sh. Daljit Singh that she is not accepting the agreement to sell or is refusing to perform her part of the contract.

This matter can be examined from another angle. It has come in evidence and correctly found by the trial court, not reversed by the first appellate court that late Sh. Daljit Singh and after his death his family members are in possession of the entire property and enjoying rent/usufruct thereof. In these circumstances, the limitation for filing the suit as provided in Part II of Article 54 of the Limitation Act, 1963 cannot be said to have commenced from settlement with respect to a different property.

Now let's examine next reason.

Learned first appellate court has found that since Ram Singh Yadav, one of the marginal witnesses of the agreement to sell is proved to be minor on the day the agreement to sell was executed, therefore, the agreement is void. In the considered view of this Court, the finding of the first appellate court suffers from error on two counts:-

- (1) The agreement to sell is not required to be attested by a marginal witness. Still further the marginal witness of a document is not party to the transaction/contract in strict sense. Hence, even if marginal witness was below 18

years by few days that would not be sufficient to hold that a written contract signed by the parties is void.

- (2) Learned first appellate court has also erred in recording a finding that Ram Singh Yadav, a marginal witness was minor on 08.04.1988.

From a careful perusal of the evidence, it is apparent that the court has arrived at such conclusion on the basis of proposal form, report of the agent, medical certificate, copy of policy, copy of review slip, copy of declaration of the policy holder regarding age, copy of statement of proposal, copy of deposit receipt, copy of another proposal form, Ex.P8 and other copy Ex.P9 and copy of another policy, Ex.P10 and review slip Ex.P11. In the considered view of this Court, the declaration in the proposal form given by the proposer with respect to one's biological age cannot be conclusively treated as a proof of that person's biological age in a civil suit. This is a self declaration given by the person who wishes to purchase the policy. Such documents are on the basis of the information supplied by the proposer or his/ her guardians. The Insurance Company has not taken school admission or discharge certificate or any other document to prove that fact. Therefore, it would not be safe to conclude on the basis of these documents to return a finding that Ram Singh Yadav was minor. Hence, the finding of the first appellate court of declaring the agreement to be void on the basis of minority of one of the marginal witness is also set aside.

It may be noted here that other marginal witness of the agreement to sell i.e. Vikramjit has appeared as DW1 and supported the case of Smt. Reeta Rani. When he appeared in evidence, he was 70 years of

age. Learned first appellate court has basically held that agreement to sell is not proved because of the fact that Ram Singh Yadav did not come forward to face cross-examination. Even if the evidence of Ram Singh Yadav is ignored, the second marginal witness Vikramjit had appeared and proved the agreement to sell. The original agreement to sell has been produced. Still further, the circumstances which had been noted above, clearly indicate that Smt. Bholi Rani @ Santosh Kumari had relinquished her rights in the property and did not object to late Sh. Daljit Singh or his family collecting entire rental income for a period of more than 20 years.

Learned first appellate court has also tried to pick holes in the statement of Vikramjit Singh by referring to the fact that Vikramjit Singh had stated that husband of Smt. Bholi Rani @ Santosh Kumari was also present at the time when agreement to sell was executed but he was not made a marginal witness of the agreement to sell. That would always depend upon the wish of the parties. It is not an universal rule that if the husband of a proposed vendor is present, he has to be made marginal witness.

Learned first appellate court has also held that in the agreement to sell certain columns for filling khasra numbers in which the land is situated are blank and therefore, the description of the property as recited in the agreement to sell is vague.

This court has carefully read the agreement to sell, Ex.D1. It is recited in an agreement that municipal number 865/1, Baba Gajja Jain Colony, Sherpur Kalan, Ludhiana is being agreed to be sold. The details of surrounding properties on all four directions have been given. Length and breadth of the plot agreed to be sold has also been recited. It is also

specified that towards West, plot owned by late Sh. Daljit Singh, the intended purchaser, exist. Even the area of the plot has been given.

In these circumstances, it cannot be said that in absence of complete description of the property as given in the agreement to sell is vague. Still further, Smt. Bholi Rani @ Santosh Kumari never disputed the identity of the property. No issue on this aspect was framed . Before the learned trial court she never objected to the specific performance on the ground that the identity of the property is vague. The property falls in municipal area. It is identified by municipal number allocated. In the present case, not only municipal numbers have been given but the colony and the area in which the property is located has been recited along with the details of the owners of the surrounding properties. Hence, first appellate court has also erred on this court.

In view of the aforesaid discussion, now let's proceed to answer the questions which have been framed.

It is held that declaration with respect to age of a person submitted by the proposer while purchasing an insurance policy cannot be taken as a conclusive proof of biological age of that person in a civil suit. An agreement to sell does not become void merely because one of the marginal witness was yet to attain age of majority i.e. 18 years after few days. The suit for specific performance of the agreement to sell governed by Part-II of Article 54 of the schedule to the Limitation Act, 1963, cannot be dismissed on the ground that it is beyond the prescribed time unless the plaintiff has notice of the fact that the performance has been refused by the other party. The reckoning date for limitation to begin to run in a case governed by Part II of Article 54 of the schedule to the Limitation Act, 1963

cannot be assumed on the basis of inferential conclusions. The suit for specific performance cannot be dismissed on the ground that the identity of the property in the agreement to sell is vague particularly when the opposite party does not dispute that fact.

In view of the aforesaid, the judgment and decree passed by the learned first appellate court is set aside and the judgment passed by the trial court is restored. Consequently the suit No.399 dated 14.09.2009 for specific performance of the agreement to sell shall stand decreed in favour of the plaintiffs. Whereas Civil Suit No. 226 dated 24.08.2009 filed for grant of decree for permanent injunction by Smt. Bhooli shall stands dismissed. The plaintiffs in Civil Suit no.399 shall be entitled to get the sale deed executed. Smt. Bholi Rani @ Santosh Kumari is directed to get the sale deed executed and registered within a period of 3 months, failing which the plaintiffs shall be at liberty to get the sale deed executed and registered through process of court. The plaintiffs Reeta Rani etc. are also granted decree for permanent injunction while restraining Smt. Bholi Rani @ Santosh Kumari as prayed for in the suit.

Appeals allowed.

13th February, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No