

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

RSA No. 3950 of 2018

Date of decision: 19.02.2020.

Daya Nand

..... Appellant.

Versus

Maya Devi and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. A.S. Khaira, Advocate, for the appellant.

ANUPINDER SINGH GREWAL, J. (ORAL)

The appellant/plaintiff has challenged the judgments and decrees of the Courts below whereby the suit preferred by him for specific performance of the agreement to sell dated 05.06.1995 and symbolic possession with a consequential relief of permanent injunction has been dismissed.

Learned counsel for the appellant/plaintiff contends that the Courts below have erroneously dismissed the suit of the appellant/plaintiff on the ground of delay although the appellant/plaintiff had always been ready and willing to perform his part of the agreement to sell and it were the respondents/defendants, who had been delaying the execution and registration of the sale deed on one pretext or the other.

Heard.

The appellant/plaintiff had filed a suit for specific performance of the agreement to sell dated 05.06.1995 and symbolic possession with a consequential relief of permanent injunction pleading that the appellant/

plaintiff had entered into an agreement with the respondents/defendants to sell the suit land. The suit land was partly owned by respondents/defendants No. 3 and 4, who were minors at that time and, therefore, it was necessary for them to have obtained permission for alienating the suit land. Respondents/defendants No. 3 and 4 were minors of the age of 8 and 5 years, respectively, at the time of execution of the agreement to sell and, therefore, they attained majority in the year 2005 and 2008, respectively. The instant suit had been preferred by the appellant/plaintiff on 17.07.2013. I, therefore, have no hesitation in holding that the findings of the Courts below in dismissing the suit of the appellant/plaintiff as barred by limitation do not suffer from any illegality.

Even assuming that no permission had intentionally been taken by the respondents/defendants for alienating the suit property, the appellant/plaintiff ought to have promptly filed the suit at least within the period of limitation after respondents/defendants No. 3 and 4 had attained the age of majority. Nevertheless it has come on record that after the execution of the agreement to sell, an application (Ex. P5) was preferred seeking permission to sell the property of the minors. The application had been allowed on 09.04.1997. Therefore, there is no justification for the delay in approaching the Court and not filing the suit within the period of limitation.

It is also apt to notice that both the attesting witnesses, namely, PW5 Sant Ram and PW6 Sher Singh, who were examined, did not support the case of the appellant/plaintiff and had denied any knowledge about the agreement to sell. They had even denied their signatures/thumb impressions on the same.

Although PW4 Suresh Kumar son of late Ramdhari, who was stated to be the scribe of the agreement to sell, had been examined and he tried to support the case of the appellant/plaintiff with regard to the agreement, but his testimony had rightly been rejected, as he had not placed on record copy of the register wherein the entries with regard to the agreement to sell had been made by his late father. He had also admitted, in his cross-examination, that the thumb impressions on the agreement and the receipt of payment did not tally with the thumb impressions on the entries in the register. Consequently, I do not find any illegality in the judgments passed by both the Courts below. The appeal stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

19.02.2020
Ramesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No