

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

**RSA No.1511 of 2019 and
other connected case
Date of Decision:22.03.2021**

Lalit and others

...Appellants

Versus

Colonel Sudhier Kumar Sardana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Gagan Pardeep Singh Bal, Advocate,
for the appellants (in RSA No.1511 of 2019)
for the respondents (in RSA No.3022 of 2019)**

**Mr. Gursheer Singh Bhandal, Advocate,
for the appellant (in RSA No.3022 of 2019)
for respondent No.1 (in RSA No.1511 of 2019)**

ANIL KSHETARPAL, J.

By this judgment, Regular Second Appeals No.1511 and 3022 of 2019, arising from a common judgment and decree passed by the learned trial Court as well as by the learned first appellate court while deciding a suit for possession by way of specific performance of the agreement to sell shall stand disposed of. The parties to these appeal are being referred to as per their status in the suit.

Regular Second Appeal No.1511 of 2019 has been filed by defendant no.1 to 5, whereas Regular Second Appeal No.3022 of 2019 has been filed by the plaintiff. It may be noted here that defendant no.6 before the trial court as well as before the first appellate court was proceeded

against ex-parte. In memo of parties of the Regular Second Appeal No.1511 of 2019, defendant no.6 has been impleaded as proforma respondent. Defendant no.6 is stated to be lessee of the land.

In the considered view of this court, the following substantial questions of law require adjudication:-

(1) Whether denial of relief of specific performance of the agreement to sell on the ground that the suit was filed after a period of 6 years from the date of agreement is appropriate particularly when the payment of complete amount of sale consideration with delivery of possession stands proved and in the agreement there was no specific date or period for the execution of the sale deed?

(2) Whether after novation of contract, the terms of previous contract, which stand superseded by a new contract, can be made basis to deny the relief of specific performance of the agreement to sell?

At the outset, it must be noticed that both the courts have recorded concurrent findings of fact to the effect that there was an agreement to sell between the plaintiff and late Sh. Ram Sarup Sardana on 03.12.1999 followed by another agreement-cum-receipt dated 28.12.2000 under which the entire sale consideration was paid. The prospective seller/vendor late Sh. Ram Sarup Sardana, who died on 08.12.2001 was the uncle (father's brother) of the plaintiff-Col. Sudhir Kumar Sardana. Late Sh. Ram Sarup Sardana used to reside in Delhi, whereas the land is located in Village Dahima, Tehsil and District Hisar, where the plaintiff resides. Thus,

the parties are closely related.

The execution of the agreement to sell dated 03.12.1999 with respect to the land measuring 92 kanals 11 marlas and receipt of earnest money is not disputed by the parties. However, thereafter defendant no.1 to 3 who are class-I heirs of the original prospective vendor, do not admit the execution of the receipt-cum-agreement dated 28.12.2000 by late Sh. Ram Sarup Sardana on receipt of Rs.17,45, 856/-.

On the death of late Sh. Ram Saroop Sardana, the land was inherited by defendant no.1 to 3. Defendant no.2 and 3 transferred the property in favour of defendant no.1 i.e. Lalit Kumar Sardana. In other words, the widow and the daughter of late Sh. Ram Saroop Sardana transferred the property in favour of Sh. Lalit Kumar Sardana son of Late Sh. Ram Sarup Sardana. Thereafter, defendant no.1 executed two registered sale deed, one in favour of Smt. Sushila wife of Ram Avtar with respect to land measuring 86 kanals and 6 marlas and second in favour of Ajmer with respect to land measuring 51 kanals and 3 marlas. He also executed a lease deed of the land.

The plaintiff filed the suit on 21.12.2006. The plaintiff sought possession by pleading that he was forcibly dispossessed by defendant no.5 and 6 who are famous for land grabbing.

On completion of the pleadings, the learned trial court framed the following issues:-

- “1. *Whether the plaintiff is entitled for a decree for possession by way of specific performance of the agreement dated 03.12.1999 and receipt-cum-agreement dated 28.12.2000 as alleged?OPP*

2. *If issue No.1 is proved then whether the sale deed No.4036 dated 30.06.2006, lease deed No.4038 dated 30.06.06, deed of transfer of lease hold rights No.4053 dated 30.06.06 and sale deed No.5380 dated 08.08.2006 are wrong, illegal, null and void and are liable to be set aside?OPP*
3. *Whether the mutation No.2286 dated 26.07.06, No.2287 dated 26.07.06, No.2288 dated 26.07.06 and No.2293 dated 18.08.06 are also illegal, null and void and are liable to be set aside?OPP*
4. *Whether the suit is not maintainable in the present form?*
5. *Whether the suit is time barred?OPD*
6. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD*
7. *Whether the suit is bade for mis-joinder and non-joinder of necessary parties?OPD*
8. *Relief.”*

In order to prove his case, the plaintiff examined PW1 Saroj Kumar, SHO, Shamsheer Singh, Handwriting and Finger Print Expert as PW2, the plaintiff himself appeared as PW3, PW4-Mukesh Kumar, PW5 Kuldeep Singh and PW6-M.L.Sardana, one of the witness of margin of the receipt dated 28.12.2000. Apart therefrom, voluminous record including the agreement to sell, agreement to adjust the loan advance, General Power of Attorney executed by late Sh. Ram Saroop Sardana in favour of Vrija Nand Sardana and Tej Bahadur Sardana, receipt and agreement dated 28.12.2000, the copies of nehri girdawaris (the record maintained by canal authorities)

and jamabandies for the years 1991-1992, 1996-1997 and 2001-2002 were produced.

On the other hand, the defendants examined Lalit Sardana as DW1, Devender Parsad, Forensic Expert as DW2, Sh. M.P.Bhandal, Hawaldar, Army Headquarter, Delhi as DW3, Dr. Sushila Singh wife of Ram Avtar as DW4(Defendant No.1), Randhir Singh as DW6. The defendants also produced documentary evidence including jamabandies for the years 2001-2002 and 2005-2006.

Learned trial court on appreciation of the evidence found that the plaintiff has successfully proved the execution of the agreement to sell dated 03.12.1999 and receipt-cum-agreement dated 28.12.2000 and the suit was filed within time. However, the trial Court held that the respective sale deeds and lease deeds are not liable to be set aside as the plaintiff filed the suit after a period of 6 years and therefore, he is not entitled to the decree for specific performance of the agreement to sell. Thus, the court ordered refund of the amount along with interest @ 12% from the date of filing of the suit till its decision and future interest @6% from the date of decision till its actual realization.

Both the parties preferred first appeal. Learned first appellate court dismissed both the appeals only on the ground that the suit was filed after a period of 6 years from the date on which agreement to sell was executed.

This Bench has heard learned counsel for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below and the lower court record which had been requisitioned. On liberty being granted, learned counsels have also filed

written arguments.

Let's first examine the appeal filed by defendants no.1 to 5.

Learned counsel representing the appellant/defendants No.1 to 5 contends that as per the agreement to sell dated 03.12.1999, the balance payment was payable in three installments; the first installment was to be paid by 30.06.2000, the second installment was to be paid by 31.12.2000 and the 3rd installment was to be paid by 30.06.2001. He, hence, contends that it is not the case of the plaintiff that he paid the amount in accordance with the agreed schedule. He while defending the decrees passed by the courts below submitted that they have established findings of fact and since both the courts have exercised their discretion in accordance with law, therefore, the High Court should not interfere. He further submits that the plaintiff has failed to prove his possession. He also contended that the receipt-cum-agreement to sell dated 28.12.2000 is not proved.

Per contra, learned counsel appearing for the plaintiff has submitted that both the courts below have found that the time was not the essence of the contract and as per the receipt-cum-agreement to sell dated 28.12.2000, the plaintiff was at liberty to get the sale deed executed and registered at any time subject to his availability and convenience. Hence, the courts have erred in declining the relief of specific performance of the agreement to sell alongwith the consequential relief of possession.

Before this Bench proceeds to evaluate the arguments of learned counsel, it is important to note that the limitation for filing the suit for specific performance is provided in Article 54 of the Schedule attached to the Limitation Act, 1963, which is extracted as under:-

<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 notice that performance is refused.”</i>
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On careful reading of the provision, it is apparent that the time from which the period begins to run has been divided in two parts. First part provides that in case the date is fixed for performance, then the period for filing a suit for specific performance would begin to run from the date or the period prescribed for its performance. The limitation for filing the suit is 3 years from the date fixed for the performance of the contract. The second part provides that if no such date is fixed, the time from which the period begins to run would start when the plaintiff has the notice of the fact that performance has been refused. Thus, in a contract where no date/period is prescribed, then the period will begin to run from the date the plaintiff has the notice of the fact that the opposite party has refused to perform the contract. In the present case, it is not the case of the defendants that they gave notice to the plaintiff or the plaintiff previously knew that the defendants have refused to honour the agreement to sell. Thus, the limitation would not begin to run from the date when the agreement to sell was entered into. Both the courts have correctly held that the suit to be within limitation.

Now let's analyse the arguments of learned counsel for the defendants.

First argument of the defendant is with respect to non-payment of installments as per the agreement to sell dated 03.12.1999. At this stage, it would be important to note that the agreement to sell dated 03.12.1999

was renewed/alterd by subsequent agreement-cum-receipt dated 28.12.2000. Hence, the terms of previous agreement which stood altered could not be enforced or used to deny the relief to the plaintiff. Reference can be made to Section 62 of the Indian Contract Act, 1872, which reads as under:-

62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. —If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

In view of the aforesaid provision, this Bench expresses its inability to accept the first argument of learned counsel for the defendants.

Second argument of learned counsel is that the agreement-cum-receipt dated 28.12.2000 has not been proved. It may be noted here that both the courts have concurrently found that the agreement-cum-receipt dated 28.12.2000 has been proved. Further, Sh. M.L.Sardana, marginal witness of the agreement-cum-receipt dated 28.12.2000 has appeared in evidence and proved the same. Still further, the Station House Officer has deposed in evidence that the signatures of late Sh. Ram Saroop Sardana on the agreement to sell dated 03.12.1999 and agreement-cum-receipt dated 28.12.2000 were got compared from a Government hand writing & finger print expert and were found to be genuine. Still further, the plaintiff has appeared in evidence and deposed that his uncle signed the receipt-cum-agreement dated 28.12.2000. The plaintiff also produced another

handwriting and finger print expert, who has also opined that Ram Saroop Sardana has signed the document. Late Sh. Ram Saroop Sardana was a Captain in the Army. He has signed the document in fluent English. Learned counsel for the defendants has failed to draw the attention of the Court to any difference or discrepancy in the signatures.

Next argument of learned counsel representing the defendants is on the ground of delay and latches.

It may be noted that both the courts below have held that the time was not the essence of the contract. Still further, it is proved that the entire payment of the sale consideration stood paid with liberty to the plaintiff to get the sale deed executed at his convenience. Thus, the suit cannot be said to be suffering from delay and latches so as to deny the relief of possession by way of specific performance. It may be noted here that both the courts have relied upon the judgment passed in **Janardhanam Prasad vs Ramdas (2007) 15 SCC 174**. In the aforesaid judgment, the court found that there was only partial payment. It was further found that the suit was filed after more than 2 years after coming to know of the sale deed and the subsequent vendee has made improvements. In those circumstances, the courts held that the relief of specific performance could not be granted.

The other judgment relied by the court is in **Jai Narain Parasrampuriah vs. Pushpa Devi Saraf, (2006) 7 SCC 756**. In the aforesaid judgment, both the parties were found guilty of serious misconduct. They were also found to have abused the process of courts. Various civil litigations were pending between the parties. In those circumstances, the court ordered refund along with penalty. Thus, the judgments relied upon by

the courts below while denying the specific performance of the contract are not applicable to the facts of the present case.

Next argument of learned counsel is that since the defendants denied the execution of the receipt and pleaded the same to be forged but no replication to the written statement was filed, therefore, the pleading remain unrebutted. It is further submitted that since no rebuttal evidence was led by the plaintiff after the deposition of Sh. Devender Parsad, Handwriting and Finger Print Expert, therefore, the plaintiff has failed to prove his case.

In the considered view of this Court, the argument has no substance. No doubt, in the written statement, the defendants have claimed that the receipt dated 28.12.2000 is forged, however, merely because no replication was filed, would not result in assumption that there is an admission regarding forgery of receipt dated 28.12.2000. The filing of replication is not necessary. Further, the plaintiff has pleaded in his plaint about the execution of the receipt dated 28.12.2000 on receipt of balance sale consideration by late Sh. Ram Sarup Sardana. In written statement, the defendants disputed the same. Thereafter, the plaintiff lead evidence and proved the receipt by examining the attesting witness Sh. M.L.Sardana, Shamsher Singh, Handwriting and Finger Print Expert and Mr. Suraj Kumar, Station House Officer, who had taken the documents including the receipt of Government Forensic Science Laboratory, Madhuban and it was reported that the signatures are genuine. In such circumstances, once the plaintiff has led sufficient affirmative evidence, there was no necessity of rebuttal evidence. It is well settled that the plaintiff can lead rebuttal evidence only with respect to issues, onus whereof was on the defendants.

Still further, Document and Finger Print Expert only gives its

opinion, however, the same is not binding on the Court. Both the courts have found the depositions of the attesting witness, opinion of the expert produced by the plaintiff as also opinion of the the Government Forensic Science Laboratory to be worth acceptance. Hence, there is no substance on this argument.

In the written arguments, learned counsel has further submitted that in the receipt dated 28.12.2000, the description of the land has not been recited therefore, it could not be specifically enforced. The argument of learned counsel is fallacious. The agreement-cum-receipt dated 28.12.2000 is in continuation of an agreement to sell dated 03.12.1999 executed between the same parties. The agreement-cum-receipt dated 28.12.2000 specifically refers to the agreement to sell dated 03.12.1999. Therefore, both the documents have to be read together. It is not in dispute that the detailed description of the land agreed to be sold has been recited in the agreement to sell dated 03.12.1999.

Next argument of learned counsel for the defendants is that the agreement-cum-receipt dated 28.12.2000 was not executed on stamp paper but on plain paper with adhesive stamps. In this regard, it may be noticed that it is not the case of the defendants that the document does bear the revenue stamps of the required amount. It is well known that due to shortage of stamp papers of small denomination, with the permission of the competent authority, the revenue stamps are affixed. There was nothing unusual about it. Still further, the agreement to sell has been scribed on the proper stamp paper. The receipt is in continuation thereof.

Next argument of learned counsel is that the agreement-cum-receipt dated 28.12.2000 required registration. In this regard, it may be

noticed that the learned counsel has failed to draw attention of the Court to the law on the subject which requires a receipt to be registered.

Next argument of learned counsel is with respect to examination of Sh. M.L.Sardana through Local Commissioner. It is contended that the examination of the witness through Local Commissioner renders it questionable and not worth credence. It may be noted here that the learned counsel has failed to draw attention of the court to the prejudice caused to the defendants. It is not their case that the Local Commissioner did not grant their counsel opportunity to cross-examine. After amendment of the CPC, examination of witnesses through Local Commissioner has become the norm and not exception. Hence, this court expresses its inability to accept the argument.

Next argument of learned counsel is that the agreement-cum-receipt dated 28.12.2000 is ante-dated. It has been submitted that intentionally a date prior to 28.04.2001 has been recited so as to avoid compulsory registration. It may be noted here that the argument of learned counsel is again without substance. Late Sh. Ram Sarup Sardana died on 08.12.2001 and therefore, there can be no question of ante-dating the receipt once Sh. Ram Sarup Sardana had signed and thumb marked the receipt.

Still further, even after 28.04.2001, the receipt does not require registration. Learned counsel is probably referring to amendment in Section 17 of Registration Act, 1908 by Act No.48 of 2001 requiring the agreement to sell coupled with delivery of possession to be compulsorily registrable for the purpose of protecting the possession under Section 53-A of the Transfer of Property Act, 1882. In the present case, the suit is for specific performance and not for protecting possession under Section 53-A of the

Transfer of Property Act, 1882. A Division Bench of the Court in **Ram Kishan and another vs. Bijender Mann alias Vijender Mann and others, 2013(2) Civil Court Cases, 188** have authoritatively pronounced that the unregistered agreement to sell couple with a delivery of possession can be made basis to file a suit for specific performance of the agreement to sell post the amendment. Hence, the argument of learned counsel has no substance.

Keeping in view the aforesaid discussion, this Bench is of the considered view that the plaintiff is entitled to relief of possession by way of specific performance of the agreement to sell on execution of the sale deed. Accordingly, it is declared that it would not be appropriate to deny the relief of possession by way of specific performance of the agreement to sell, only on the ground that the suit was filed after a period of 6 years from the date of agreement particularly when the time is not the essence of the contract and the entire sale consideration after delivering possession had been paid. It is further held that the terms of previous agreement cannot be used to deny the relief of a specific performance of the agreement to sell particularly when there has been novation/alteration of the contract in view of the provision of Section 62 of the Indian Contract Act, 1872.

Hence, the Regular Second Appeal No.3022 of 2019 is allowed, whereas Regular Second Appeal No.1511 of 2019 is ordered to be dismissed.

**22nd March, 2021
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**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**: Yes/No
: Yes/No**