

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1486 of 2021 (O&M)

Date of Decision: 10.12.2021

Desh Raj (Since Deceased) through his LRs

... Appellant(s)

Versus

Satwant Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harkesh Manuja, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The defendants, in a suit for grant of decree for possession by way of specific performance of the agreement to sell, assails the findings of fact arrived at by the First Appellate Court while decreeing the suit. The trial Court dismissed the suit being barred by limitation. It is pertinent to note here that the appellants (successors-in-interest of late Sh.Desh Raj) remained *ex parte* before the trial Court. Some facts are required to be noticed.

2. The plaintiff has filed a suit with specific assertion that the predecessor-in-interest of the defendants agreed to sell a plot measuring 550 square yards, vide a written agreement to sell dated 08.01.1987, on receipt of the entire sale consideration of ₹24,000/-. In the said agreement to sell, no time, period or date for getting the sale deed registered was agreed upon. In the year 1989, the land was the subject matter of compulsory acquisition and it has been released from the acquisition in the year 2014. Thus, the plaintiff

filed a suit on 30.07.2014 asserting that he requested the defendants to

execute the sale deed, but without any positive result.

3. As already noticed, the appellants (successors-in-interest of late Sh. Desh Raj) did not opt to contest the suit. The trial Court dismissed the suit on the ground that the suit is barred by limitation. Whereas the First Appellate Court, on re-appreciation of the evidence, has held that Part-II of Article 54 of the Schedule to the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”) is applicable in the present case and therefore, the period would begin to run only when the plaintiff has notice that the performance is refused.

4. Heard the learned counsel representing the appellants at length and with his able assistance, perused the paper-book.

5. The learned counsel representing the appellants, while contending that the suit was filed after a period of 27 years, therefore, the First Appellate Court has erred in recording the finding that the suit is within limitation. While elaborating, he contended that the plaintiff has himself asserted that he has been repeatedly requesting the defendants to honour the agreement to sell. He further contends that the plaintiff has no equity and there is no evidence that the plaintiff was instrumental in getting the land released from the compulsory acquisition.

6. At this stage, it will be appropriate to extract Article 54 of Part-II of the Schedule to the 1963 Act:

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<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>

7. From a careful reading of the aforesaid Article, it is evident that the time from which the period begins to run has been divided in two parts. The first part provides that if the date for performance is fixed, then the limitation would begin to run, from the date so fixed. Whereas in the second part, it is provided that if no such date is fixed, the time from which the period begins to run would start, when the plaintiff has noticed that the performance is refused. In other words, it is necessary for the defendants to prove that the plaintiff has the notice that the performance is refused. In the present case, the defendants have not led any evidence to that effect.

8. While deciding the Regular Second Appeal No. 1511 of 2019 and other connected cases, in “Lalit and Others v. Colonel Sudhier Kumar Sardana and Another”, decided on 22.03.2021, this Bench has examined the aforesaid issue, in detail and formed an opinion that if the second part of Article 54 of Schedule to the 1963 Act applies, then the period of limitation would begin to run only when the plaintiff has the notice refusal by the defendants. Hence, there is no substance in the first argument of the learned counsel.

9. As regards the second argument, it would be noticed that the order of release has been issued by the competent authority in favour of the plaintiff. The First Appellate Court has drawn an inference and held that the order of release on compulsory acquisition of the land has been passed with the efforts of the plaintiff. Such a conclusion has been drawn on preponderance of the probabilities. In the absence of any evidence to the contrary, it would not be appropriate to interfere in the aforesaid finding.

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

interfere. Hence, the present appeal is dismissed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 10, 2021
“DK”

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