

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1617 of 2021 (O&M)

Date of Decision: 11.03.2022

Vikas Kumar

... Appellant(s)

Versus

Sadhu Ram

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rohan Mittal, Advocate
for Mr. Sachin Kaushik, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The appellant is a defendant in the suit for grant of decree of specific performance of the agreement to sell dated 15.06.2002, whereby he agreed to sell the plot measuring 15marlas to the plaintiff.

2. As per the case of the plaintiff, the appellant has executed the agreement to sell on a payment of total amount of ₹1,60,000/- and delivered the possession. The plaintiff also claims that he has constructed a room, apart from encircling the plot with a boundary wall. The defendant contested the suit claiming that the agreement to sell was never entered into and the same is a result of fraud. In the alternative, he asserted that even if the agreement to sell is genuine, the same is not enforceable being unregistered. The defendant admitted that the plaintiff has constructed a room. It was also asserted that on his complaint, FIR No. 404 dated 04.07.2011 was registered against the plaintiff.

was proved by examining the witnesses of the agreement to sell as well as the Handwriting and Fingerprint Expert. It was also found that Sh.Dharampal (the defendant's father) has also signed the agreement.

4. Heard the learned counsel for the appellant, at length and with his able assistance, perused the judgments passed by the Courts below.

5. The learned counsel representing the appellant has contended as under:-

- I) The suit, filed by the plaintiff after a delay of nine years, was beyond the prescribed period of limitation.
- II) Since the agreement to sell evidences the delivery of possession, therefore, it cannot be read in evidence, unless it is registered.

6. Article 54 of the Schedule, attached to the Limitation Act, 1963 (hereinafter referred to as "the 1963 Act") divides the cause of action in two separate parts. The first part of the Schedule provides that the cause of action to file a suit for specific performance of the agreement to sell will begin to run from the date which was agreed to between the parties, as per the agreement to sell. Admittedly, in the present case, no time period or date was agreed to. Hence, the second part comes into play. As per the second part, the limitation to file the suit for specific performance of the agreement to sell would begin to run from the date, the plaintiff has a notice of refusal from the defendant, clearly indicating that he refuses to perform his part of the contract i.e. he has no readiness and willingness to perform his part of contract. In the present case, the defendant has not led any evidence. This aspect has been examined, in detail, in *Lalit and Others v. Colonel Sudhier*

decided on 22.03.2021).

7. The second argument of the learned counsel does not need detailed deliberations as the Division Bench of this Court, while examining the amendment in the Registration Act, 1908, brought in by the legislature in Section 17(1A), inserted by the Act No. 48 of 2001, has held that the amended provisions of Section 17 will not apply to a suit for specific performance as the amended provision is applicable only with respect to the relief of protective possession under Section 53A of the Transfer of Property Act, 1882. Reference in this regard can be made to the judgment in ***Ram Kishan and Another v. Bijender Mann alias Vijender Mann and Others*** 2013(2) RCR (Civil) 419.

8. Keeping in view the aforesaid facts, no ground is made out to interfere. Consequently, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

March 11, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No