

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

107

**SAO No.38 of 2022 (O&M)
Reserved on : 30.11.2022
Date of Decision : 09.12.2022**

Buta Singh & Ors.

....Appellants

VERSUS

Sher Singh

....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mohit Rathee, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellants against the order dated 24.11.2021 passed by the lower Appellate Court whereby it set aside order dated 07.11.2017 passed by the Trial Court and remanded the matter with a direction to decide the issue of limitation along with other issues at the end of trial after giving opportunities to both the parties for leading evidence. The Trial Court had vide order dated 07.11.2017 held the suit as time barred and dismissed the same.

The facts in brief are that the plaintiff-respondent filed a suit for specific performance of agreement to sell dated 15.05.2010 averring that defendant-appellant No.1 on his behalf and on behalf of his brother i.e. defendant-appellant No.2, who was minor, had executed an agreement to sell dated 15.05.2010 qua the suit property and also received the full consideration amount of Rs.3,10,000/-. The date for execution of the sale deed was fixed as 30.11.2010. The sale deed was not executed and a Panchayati Faisla dated 29.06.2014 was entered between the parties whereby

the defendant-appellant Nos.1 and 2 agreed to execute the sale deed on or before 29.07.2014. However, even thereafter the defendant-appellant Nos.1 and 2 failed to execute the sale deed in favour of the plaintiff-respondent and transferred the suit property in favour of defendant-appellant No.3 vide sale deed dated 31.10.2014. Hence, the suit was filed.

Defendant-appellant Nos.1 and 2 filed a written statement and contested the suit raising inter-alia the plea that the suit was time barred. Defendant-appellant No.3 filed a separate written statement. The plaintiff-respondent filed his replications.

On 15.02.2016 the Trial Court framed the following issues :

1. Whether the plaintiff is entitled to the decree for declaration and specific performance as prayed for?
OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the suit of the plaintiff is time barred?
OPD
6. Relief.

On 16.09.2017, while the plaintiff-respondent was leading his evidence, an application was moved by the defendant-appellants for treating Issue No.5 as a preliminary issue. The plaintiff-respondent filed a reply and

contested this application. Vide order dated 07.11.2017 the Trial Court held the suit as time barred and dismissed the same. The plaintiff-respondent filed an appeal against the said order and vide the impugned order dated 24.11.2021 the lower Appellate Court set aside the order dated 07.11.2017 and remanded the matter with a direction to decide the issue of limitation along with other issues at the end of trial after giving opportunities to both the parties for leading evidence. Hence, the present appeal by the defendant-appellants.

Counsel for the defendant-appellants contended that the lower Appellate Court has erred in passing the impugned order. According to him the suit is based upon agreement to sell dated 15.05.2010 whereunder the date for execution of the sale deed was fixed as 30.11.2010 whereas the suit was filed on 31.10.2014 and was, thus, clearly time barred and was rightly dismissed by the Trial Court. Reliance has been placed upon **Madhukar vs. Sangram [2001 (2) RCR Civil 704]** and **Sathyanath & Anr. vs. Sarojamani [2022 (2) RCR Civil 957]**.

Heard counsel for the defendant-appellants.

The order passed by the lower Appellate Court shows that the plaintiff-respondent had averred that the sale deed was not executed by the date fixed in the agreement to sell and a Panchayati Faisla dated 29.06.2014 was entered between the parties whereby the defendant-appellant Nos.1 and 2 agreed to execute the sale deed on or before 29.07.2014. The plaintiff-respondent also led extensive evidence to prove his case when the application was filed by the defendant-appellants for treating Issue No.5 as a preliminary issue. The Trial Court did not discuss or even advert to the

Panchayati Faisla dated 29.06.2014 while dismissing the suit as being time barred. Once an issue was being treated as a preliminary issue, the Trial Court ought to have referred to the evidence led by the parties on that issue before deciding the same, though the defendant-appellants evidence was even yet to begin. A cryptic and non-speaking order was passed by the Trial Court the operative part of which reads as under :

“4. As per Article 54 of Indian Limitation Act, 1963, the suit must have filed within three years from the due date of performance of the agreement. In the present suit the due date was 30.11.2010 and the present suit was filed on 31.10.2014. The suit is time barred and liable to be dismissed.”

In Mongia Realty and Buildwell Private Limited vs. Manik Sethi [2022 SCC OnLine SC 156] the Supreme Court held as under :

“14. Before this Court in Nusli Neville Wadia v. Ivory Properties, the issue was whether the issue of limitation can be determined as a preliminary issue under Order XIV Rule 2. The three-judge bench of this court observed that if the issue of limitation is based on an admitted fact, it can be decided as a preliminary issue under Order XIV Rule(2)(b). However, if the facts surrounding the issue of limitation are disputed, it cannot be decided as a preliminary issue. This Court observed as follows :

51. [...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law

which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.

15. Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order XIV Rule 2 of the CPC. Hence, we allow the appeal and set aside the judgment of the trial Judge dated 16 August 2018 and of the Single Judge of the High Court dated 4 September 2019. The issue of limitation which has been framed by the learned trial Judge may be decided, along with other issues at trial. The appeal shall stand allowed in the above terms.”

In the present case also the fact that it has been averred by the plaintiff-respondent that a Panchayati Faisla dated 29.06.2014 was entered

between the parties whereby the defendant-appellant Nos.1 and 2 agreed to execute the sale deed on or before 29.07.2014 and the parties have gone to trial, the issue of limitation was not just a question of law but also of fact which necessarily requires evidence to be led and considered before determination. Issue No.5 could not have been decided as a preliminary issue in the present case and the lower Appellate Court has rightly ordered that the issue of limitation be decided along with other issues at the end of the trial after giving opportunities to both the parties for leading evidence.

Counsel for the defendant-appellants has raised the same pleas which have not been found to be favourable by the lower Appellate Court. No error of law committed by the lower Appellate Court has been highlighted by counsel for the defendant-appellants. The judgements cited by the counsel for the defendant-appellants are distinguishable and not applicable to the facts and circumstances of the present case. In neither of the two cases cited was limitation treated as a preliminary issue and the suit decided on that issue.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the lower Appellate Court. The present appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

09.12.2022
tripti

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO