

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5845 of 2018 (O&M)
Date of decision: 12.09.2022

Umed Singh

..Appellant

Versus

Deendayal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Goel, Advocate, for the appellant.

Mr. Parveen Kumar, Advocate, for
Mr. Abhimanyu Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the concurrent findings of fact arrived at by the courts below, the defendant has filed the present appeal.

The suit for specific performance of the agreement to sell filed by the plaintiff (respondent herein) has been decreed by both the courts below.

Some peculiar facts of the case are required to be noticed.

The plaintiff while filing the suit asserted that the defendant (appellant) agreed to sell a plot measuring 1 kanal and 18 marlas on 16.08.1994, on the receipt of Rs.33,000/- out of a total sale consideration of Rs.38,000/-. The sale deed was to be executed upto 15.09.1994, however, the defendant on receipt of the remaining payment of Rs.5,000/- modified the original agreement. Now it was agreed that the sale deed would be executed as and when the plaintiff wishes.

The defendant while contesting the suit claims that the agreement to sell is not admissible in evidence and the agreement to sell is result of fraud. In the trial court, the plaintiff in order to prove his case, examined PW3-Bani Singh, the marginal witness of the agreement to sell, PW2-Parhlad, scribe and PW4-Sh. Shamsher Singh, Handwriting and Finger Print expert.

The defendant has failed to substantiate his plea with regard to agreement to sell being a result of fraud.

This Bench has heard the learned counsels representing the parties at length and with their able assistance has perused the paper book and the record of the Courts below which was requisitioned.

The learned counsel representing the appellant (defendant) submits that the plaintiff has failed to prove his readiness and willingness to perform his part of contract and the suit was filed after a delay of 15 years and 8 months. He submits that the courts below have erred in decreeing the suit.

This court has considered the submissions, however, finds no merit therein.

The agreement to sell dated 16.08.1994 is scribed on a non judicial stamp paper which was purchased for the purpose of the execution of the agreement to sell. It runs into two pages. On the first page, the defendant has thumb marked the agreement to sell twice over. The first thumb impression is partly on the revenue stamp in token of the receipt and partly on the first page. Similarly, Umed Singh (defendant) has again thumb marked on the first page of the left hand margin. On the second page Sh.Umed Singh has thumb marked the agreement to sell below the recital to

the agreement to sell that comes in the end of the said document. The agreement to sell is attested by one witness Sh. Bani Singh, the Lambardar of the village.

On the reverse side of the second page, there is a supplementary agreement between the parties. According to the aforesaid supplementary agreement, the defendant on the receipt of the balance sale consideration of Rs.5000/- agreed to execute the sale deed as and when the purchaser wants. Once there is novation in the contract by the way of a supplementary agreement, the original condition of the execution of the sale deed on 15.09.1994 shall not be applicable.

Article 54 of the scheduled attached to the Limitation Act, 1963, is divided into two parts. The first part provides that the period would begin to run from the date agreed upon between the parties, whereas under the second part, the period of limitation would begin to run from the date, the plaintiff has the notice that the defendant has refused to perform the contract.

In the present case, on receipt of the entire sale consideration, possession of the property was delivered to the proposed purchaser. In such circumstances, the plaintiff was not required to pay anything further to the defendant. In that context, the readiness and willingness of the plaintiff is required to be examined. The plaintiff while filing the suit has claimed that despite his request, the defendant has failed to honour the agreement. Before filing the suit, the plaintiff sent a notice to the defendant with a request to honour the agreement. The plaintiff while appearing in evidence, has asserted that he was always ready and willing to perform his part of the contract. In such circumstances, there is no substance in the argument of the

learned counsel that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract.

As already noticed, the second part of Article 54 of the schedule attached to the Limitation Act would be applicable in this case. Hence, the defendant has to prove while intimating the plaintiff as to when he refused to perform his part of the contract. In the present case, the defendant has failed to prove the same.

The learned counsel representing the appellant relies upon the judgment passed in *Ahmadsahab Abdul Mulla (dead) by proposed LRs vs. Bibijan and others, (2009) 5 SCC 462*, to contend that the date fixed in the agreement to sell is of a definite connotation and the limitation would begin to run from the date fixed in the agreement to sell.

It may be noticed here that the aforesaid judgment is in the context of first part of the schedule attached to Article 54 of the Limitation Act, 1963 and not with respect to second part of Article 54 of the said Act. Hence, with greatest respect, the aforesaid judgment shall have no application to this peculiar case.

Consequently, finding no merit, the appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 12, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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