

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1117-2023 (O&M)

Decided on:-12.10.2023

Tarlok Singh and another

....Petitioners.

vs.

Nishan Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.APS Sandhu, Advocate with
Mr. Ashish Kaushik, Advocate and
Mr. G.S. Saggi, Advocate,
for the appellants.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 08.03.2019 and 06.03.2023, passed by the Courts below, whereby, suit for possession by way of specific performance filed at the instance of respondent-plaintiff based on an agreement to sell dated 24.07.2002, besides seeking relief of permanent injunction, stands decreed.

2. Briefly stating, based on an agreement to sell dated 24.07.2002, the respondent-plaintiff filed a suit for possession by way of specific performance qua 07 marlas of land/house situated at Abadi Baggewali, Verka, Amritsar, while stating that though the entire sale consideration of Rs.1,70,000/- was paid to the appellants-defendants against delivery of possession, yet, sale deed could not be executed and now, the appellants were trying to interfere in his peaceful possession, hence, compelling the

respondent-plaintiff to file the suit.

3. On the other hand, the suit was contested by filing a written statement while denying the execution of the alleged agreement and stating that the respondent-plaintiff was inducted as tenant over the property in question in the year 1999 and thus, was having no right to seek specific performance. It was also pleaded that on the previous occasion, the respondent-plaintiff filed civil suit for possession by way of specific performance based on this very agreement, which was dismissed in default vide order dated 22.08.2017, hence, the second suit was not maintainable. In addition, the plea of suit being barred by limitation was also raised.

4. The Trial Court vide judgment and decree dated 08.03.2019, decreed the suit in favour of the respondent-plaintiff. Aggrieved thereof, the appellants-defendants filed first appeal, however, the same was dismissed by the learned Additional District Judge, Amritsar, vide judgement and decree dated 06.03.2023.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellants submits that the Courts below went wrong while decreeing the suit, solely on the basis of admission made by Tarlok Singh (DW-1) in his cross-examination, regarding execution of the agreement (Ex.P-1). He further submits that the said witness could not understand the legal terminology and thus, one line admission would not have been taken against him as proof of the agreement in question, particularly, when the witnesses to the said agreement, besides its scribe were not examined by respondent-plaintiff. Learned counsel also submits that no evidence about the proof of payment of earnest money was produced on record. In support,

learned counsel places reliance upon the judgment of Hon'ble the Supreme Court in ***“Chikkam Koteswara Rao vs. Chikkam Subbarao and others”, 1971 AIR (Supreme Court) 1542.***

He further points out that the suit filed at the instance of respondent-plaintiff was barred by limitation. As per him, even if the execution of agreement to sell dated 24.07.2002 was taken to be valid, the suit was beyond limitation, having been filed on 20.09.2017. While relying upon judgments passed by the Hon'ble Apex Court in ***“Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel”, 2006(2) Civil Court Cases 139*** and ***“Ahmmadsahab Abdul Milla (dead) by proposed LRs. vs. Bibijan and others”, 2009(2) RCR-788***, he submits that once no specific date of denial was mentioned in the plaint for the purpose of filing suit for specific performance, the suit could not have been decreed since the respondent-plaintiff was supposed to mention specific date of refusal by the appellants-defendants to establish cause of action to be within limitation. In support, learned counsel for the appellants further points out that though no specific issue regarding the suit being barred by limitation was specifically framed by the Trial Court, however, an application under Order 41 Rule 25 CPC was moved at the instance of appellants-defendants at the first appellate stage, which remained undecided, thereby causing serious prejudice to their rights.

6. I have heard learned counsel for the appellants and gone through the paper book as well as law cited at the bar. I am unable to find substance in the submissions made on behalf of the appellants.

7. Once an admission was made regarding the execution of the

agreement in question (Ex.P-1) by appellant No.1-Tarlok Singh, while appearing as DW-1 and that too the same having been explained in the later part of his deposition, the onus shifted upon appellants-defendants to rebut the contents of said document. In the absence of any such evidence having been led from the side of appellants-defendants, no fault can be found with the concurrent findings recorded by the Courts below, as regards, the valid execution of the agreement to sell in question (Ex.P-1) as well as the payment of sale consideration and also the delivery of possession of suit property in favour of respondent-plaintiff.

8. As regards the plea of non-adjudication upon the application filed under Order 41 Rule 25 CPC, moved at the instance of appellants-defendants before the first Appellate Court is concerned, in the humble opinion of this Court, it may not be appropriate to remand the matter to the First Appellate Court, merely for the reasons that the said application seeking framing of issue on limitation remained undecided, especially in view of the fact and circumstances of the present case where both the parties were conscious of their specific pleadings on the point of limitation and the said plea was raised and argued before the Courts below; which was noticed, dealt with then answered noticeably and expressly. In these circumstances, non-framing of issue on limitation caused no prejudice to either of the parties.

9. As regards, the appellants-defendants raising argument about the suit being by limitation, this Court does not find merit in such submissions. In the present case, perusal of agreement in question shows that no specific date of performance was fixed therein and rather, it was

agreed that as and when the respondent-plaintiff would make a request to the owners, the sale deed would be executed. In para 10 of the plaint, although, no specific day/date was mentioned as regards the refusal on the part of appellants-defendants to perform their part of agreement to sell being vendors, yet it was pleaded that the cause of action arose few days back when the appellants-defendants threatened to alienate the property in question in favour of any other person. Mere non-mentioning of specific date of refusal by the respondent-plaintiff can not be termed fatal as the said date can be determined by the Court upon cumulative analysis of the pleadings and the evidence available on record to find out if the suit was within limitation. My aforesaid view can be derived from the decisions rendered by the Hon'ble Apex Court in cases of "**Janardhanam Prasad vs. Ramdas**", 2007 (1) RCR 881 and "**Panchanan Dhara and others vs. Monmatha Nath Maity (dead) thr. LRs. and another**", 2006(3) RCR-212. Relevant para 12 from the judgment passed in case of **Janardhanam Prasad** (supra) is reproduced hereunder:

"12. The Court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter."

Rather the judgment passed in case of **Panchanan Dhara** (supra), cited on behalf of the appellants-defendants lays down the same

proposition.

10. As regards the reliance placed upon by learned counsel for the appellants-defendants on the case titled **“Ahmmadsahab Abdul Milla (dead) by proposed LRs.** (supra), the same even does not come to his rescue. In the said case, the Hon’ble Apex Court was primarily interpreting the two parts of Article 54 of Limitation Act, 1963 while holding that in both the parts i.e. even where no specific date of performance has been mentioned, but the limitation commences when the plaintiff has noticed that performance is refused, it relates to a definite point of time & thus refers to definite date. However, the Hon’ble Apex Court no-where lays down a proposition of law that in case no specific date of refusal to perform has been mentioned in the plaint then the plaintiff has to be non-suited. Relevant portion of para 7 from the case of **“Ahmmadsahab Abdul Milla (dead) by proposed LRs.** (supra) is reproduced hereunder:-

“7. The inevitable conclusion is that the expression ‘date fixed for the performance’ is a crystallized notion. This is clear from the fact that the second part “time from which period begins to run” refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on ‘when the plaintiff has notice that performance is refused’. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression ‘date’ used in [Article 54](#) of the Schedule to the Act definitely is suggestive of a

specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.”

11. Once there was a total denial by the appellants-defendants as regards execution of the agreement in question, they cannot take advantage of non-mentioning of any specific date on which their refusal was pleaded especially when it was pleaded that the cause of action arose few days back and nothing to the contrary was proved or established on record from the side of the appellants defendants.

12. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

13. Pending applications, if any, also stand disposed of.

12.10.2023
sonika

(HARKESH MANUJA)
JUDGE

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