

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

**RSA No.1134 of 2022 (O&M)
DATE OF DECISION : 01.02.2023**

Gurjit Singh Mangat and OthersAppellants

versus

Santa SinghRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mrs. Anupam Bhanot, Advocate for the appellants

ALKA SARIN, J. (Oral):

The present appeal has been preferred against the concurrent findings recorded by both the Courts below dismissing the suit of the plaintiff-appellants.

The plaintiff-appellants herein filed a suit for specific performance of agreement to sell dated 06.04.1994 averring in the plaint that the defendant-respondent was the owner of property measuring 47 kanals - 0 marla. It was further averred that on 06.04.1994 the defendant-respondent entered into an agreement to sell with Kirpal Singh, predecessor-in-interest of the plaintiff-appellants, and agreed to sell land

measuring 47 kanals - 0 marla, as fully described in the headnote of the plaint, situated within the revenue estate of Village Mahal Ghumana, Tehsil and District Ludhiana for a sale consideration of Rs.2,20,000/- and that the entire sale consideration of Rs.2,20,000/- was paid in cash by Kirpal Singh, predecessor-in-interest of the plaintiff-appellants, in the presence of the marginal witnesses of the agreement to sell. It was further averred that Kirpal Singh died in the year 2010. It is the further case that the plaintiff-appellants were always ready and willing to perform their part of the contract and hence the suit was filed in May 2012 for specific performance of agreement to sell dated 06.04.1994. The defendant-respondent was proceeded against *ex-parte*. The Trial Court vide judgment and decree dated 04.09.2014 dismissed the suit of the plaintiff-appellants on the ground that till 2010 admittedly Kirpal Singh, predecessor-in-interest of the plaintiff-appellants, was alive but no suit for specific performance was filed by Kirpal Singh. Further still, it was held that the agreement to sell was entered into in the year 1994 and the present suit was filed in the year 2012 and during the interregnum period no legal notice was ever served and hence doubting the readiness and willingness of the plaintiff-appellants to perform their part of the contract, the suit was dismissed. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellants which also met the same fate vide judgment and decree dated 31.05.2019 passed by the lower Appellate Court. Hence, the present regular second appeal.

The learned counsel for the plaintiff-appellants would contend that the agreement to sell (Ex.P7) does not have any target date prescribed

therein and hence the suit cannot be said to have been filed at a delayed stage.

Heard.

In the present case the agreement to sell was executed on 06.04.1994. The case set up by the plaintiff-appellants is that the entire sale consideration of Rs.2,20,000/- stood paid at the time of entering into the agreement to sell. The present suit was filed in the year 2012. It does not sound to reason as to why somebody, who is alleged to have paid the entire sale consideration in the year 1994 at the time of agreement to sell itself, would wait till 2012 to file the suit. Kirpal Singh, the predecessor-in-interest of the plaintiff-appellants, who was admittedly alive till 2010 took no steps whatsoever to get the sale deed executed. Infact, there is no evidence on the record regarding any legal notice having been served upon the defendant-respondent to come and perform his part of the contract. There is no cogent evidence forthcoming for not approaching the Court earlier and filing the present suit after a delay of 8 years, barring an argument that since the entire family had moved abroad hence the suit could not be filed earlier. I do not find any merit in the present appeal.

Even the present appeal is barred by limitation and CM-3617-C-2022 has been filed for condoning the delay of 258 days in filing the appeal. There is no plausible explanation forthcoming in the application for condoning the inordinate delay of 258 days. It is stated that due to the restrictions imposed during the Covid-19 Pandemic the appeal could not be filed. The judgment and decree was passed by the lower Appellate Court on 31.05.2019. There is no explanation for the delay from May 2019 till the

start of 2020 except for a bald statement that the appellants were not informed about the dismissal of the appeal by the lower Appellate Court by their counsel. It is trite that every day's delay has to be explained while asking for condonation of delay in filing the appeal.

No question of law much less a substantial question of law arises in the present case. I do not find any merit in the present appeal, which is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.02.2023
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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