

2023:PHHC:143324

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

RSA-3130-2023 (O&M)
Date of decision: 09.11.2023

Asha Rani and others

....Appellants

Versus

Thuru Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.R.S.Randhawa, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

CM-11221-C-2023

1. For the reasons stated in the application, delay of 06 days in filing the appeal is condoned.
2. CM stands allowed.

Main case

3. In this Regular Second Appeal, the defendants assail the correctness of the concurrent findings of fact arrived by the courts below. It is the case of the parties that the Thuru Ram-plaintiff (respondent herein) in the trial court executed the agreement to sell dated 23.10.2015 in favour of Asha Rani and Anil Kumar with respect to land measuring 7 kanals 10 marlas. As per the terms and conditions of the agreement to sell, the sale deed had to be executed within a period of 9 months from the date Thuru Ram got the land demarcated. It has come in evidence that Thuru Ram got the demarcation of the land done on 02.05.2016 (Ex.P-18). Till

date, no suit for specific performance of the agreement to sell has been filed. Thus, the plaintiff-Thuru Ram filed a suit for grant of decree of declaration that the agreement to sell dated 23.10.2015 executed by him, in favour of the appellants, has become infructuous and the earnest money stands forfeited in his favour. Both the courts have decreed the suit, after noticing that the appellants have never taken any steps to get the agreement to sell specifically performed. Thuru Ram led overwhelming evidence to prove that the plaintiffs have not taken any steps to get the agreement to sell specifically performed. Thus the courts decreed the suit.

4. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook. Learned counsel representing the appellant submits that the suit property is joint and undivided share. He submits that the partition proceedings are pending.

5. On a Court question, the learned counsel representing the appellants admits that as per the agreement to sell, the sale deed was to be executed after a period of 9 months from the date Thuru Ram got the land demarcated. Thus, the limitation for filing the suit for specific performance began to run from February, 2017. As already noticed, the appellants have failed to seek specific performance of the agreement to sell. Hence, the agreement to sell has become unenforceable as the limitation to file the suit for

specific performance has elapsed. Consequently, finding no merit, the present appeal is dismissed.

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

09.11.2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No