

2023:PHHC:093938
115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-9620-2018 (O&M)
Date of decision: 24.07.2023

Gulbahar

....Appellant

Versus

Smt. Dayawanti

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Singal, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The plaintiff assails the concurrent findings of fact arrived at by the courts below while dismissing his suit for the grant of decree of possession by way of specific performance of the agreement to sell and in the alternative suit for recovery. In this case, the agreement to sell is stated to have been executed on 05.09.2003, with respect to a residential house measuring 100 square yards. The property was owned by Rakesh Kumar (minor). The agreement to sell was entered by the mother of Rakesh Kumar. As per the agreement to sell, the sale deed was to be executed on or before 15.04.2004. The plaintiff is stated to have visited the office of the Sub-Registrar, however, defendant did not come forward to honour the agreement to sell, which led to the registration of FIR. Another agreement between the parties was executed on 30.09.2004, which was again signed by mother of Rakesh Kumar. It was agreed that she will apply for grant of permission from the

competent court to sell the property and give a 15 days notice to the plaintiff. It has come on record that an application for permission was filed but dismissed for non-prosecution on 04.09.2006. This suit has been filed on 20.04.2013, which, as noticed above, has been dismissed by both the courts below.

2. Learned counsel representing the appellant submits that the findings by the courts below to the effect that the agreement to sell was void, is incorrect as Rakesh Kumar, on attaining the age of majority, died and now the property is owned and possessed by Smt. Dayawanti, the mother of Rakesh Kumar. While referring to, Section 43 of the Transfer of Property Act, 1882, he submits that Smt. Dayawanti is bound by the agreement to sell as the ownership has vested in her.

3. On a Court question as to how the suit filed by the plaintiff is within the period of limitation, the learned counsel representing the appellant submits that he was waiting for notice from Smt. Dayawanti.

4. It has come on record that the plaintiff had the knowledge of the fact that the application filed by Smt. Dayawanti for the permission to transfer the property was dismissed in default in the year 2006. There was no occasion for the appellant to further wait before filing the suit.

5. Moreover, the relief of specific performance, at the relevant time, was a discretionary relief. The dispute is with regard to the residential house. The delay and laches is one of the grounds to deny the relief of specific performance. There must be clear and cogent

explanation of delay. Now after a passage of nearly 20 years from the date of agreement to sell, it will be inequitable to grant the relief of specific performance. Consequently, finding no merit in the appeal, the same is dismissed.

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

24.07.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE