

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

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**RSA-1220-2020 (O&M)
Date of decision:12.01.2024**

Gian Kaur

... Appellant

Vs.

Harbans Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. M.S. Sachdev, Advocate for the appellant.

...

SUKHVINDER KAUR, J.

1. This is a regular second appeal filed by the plaintiff/appellant against the concurrent finding recorded by both the Courts below vide which suit of the plaintiffs was ex-parte dismissed.

2. Brief facts as per plaint are that the defendants approached the plaintiff and offered to sell the suit property as detailed in the head note of the plaint. Defendant No.1 through his attorney defendant No.2 – Ujagar Singh entered into an agreement to sell dated 06.05.1982 in the presence of Sohan Singh, Nardeep Singh and other respectables. Husband of the plaintiff – Gurdev Singh signed the said agreement to sell on behalf of plaintiff Gian Kaur being authorized by the plaintiff. Defendant No.2 also duly signed the said agreement dated 06.05.1982 being attorney of defendant No.1. Suit property as detailed in the head note of the plaint measuring 20 marlas was agreed to be sold to the plaintiffs for a sum of Rs.90,000/- and Rs.15,000/- were received as earnest money. Possession of the suit property was delivered to the plaintiff at the time of execution of the agreement dated 06.05.1982. No date was fixed for execution of the registration of the sale

deed. It was also agreed between the parties that the seller would get the 'urban sealing certificate' from the concerned department and would inform accordingly within two months for performing the part of the agreement. Thereafter plaintiff raised construction over the said property by spending huge amount and also got electricity connection and is using the suit property. Plaintiff requested the defendants many times to execute the sale deed in terms of the agreement to sell dated 06.05.1982 but to no effect. Thereafter a legal notice dated 10.08.2015 was got served to execute the sale deed on 29.09.2015 but defendants never turned up to perform their part of the contract.

Vide judgment and decree dated 08.10.2018, suit of the plaintiff was dismissed by the trial Court and appeal preferred before the First Appellate Court was also dismissed vide judgment and decree dated 07.11.2019. Hence, the present second appeal.

3. Learned counsel for the appellant while relying upon the decision of the Apex Court in **Mst. Sugani Vs. Rameshwar Dass & another, 2006(4) RCR (Civil) 319** and **Panchanan Dhara & others Vs. Monmatha Nath Maity through his L.Rs. & another, 2006(3) RCR (Civil) 212** has contended that the Courts below have totally ignored the fact that the time was not essence of the contract in question. So finding given by the trial Court that the suit was barred by limitation, was patently wrong. He has further contended that the respondents were to obtain the 'urban sealing certificate' and thereafter the sale deed was to be executed but the respondents neither obtained the said certificate nor they executed the sale deed despite repeated requests made by the appellant in this regard. He has

submitted that there is ample evidence on record regarding readiness and willingness of the appellant to perform her part of the contract and it was the respondents who did not honour the agreement.

4. I have heard learned counsel for the appellant and perused the record thoroughly.

5. This fact is not disputed that the agreement in question was executed on 06.05.1982. It is again not disputed that no date was fixed for execution of the sale deed and it was agreed that the seller would obtain the 'urban sealing certificate' and thereafter would execute the sale deed. The suit was filed before the trial Court in November, 2015 i.e. after a long gap of 33 years from the date of execution of the agreement to sell dated 06.05.1982. It has been rightly observed by both the Courts below that during this pretty long period of 33 years, no effort was ever made by the appellant to get the sale deed executed in her favour. Neither she approached the respondents for pressing them to obtain the requisite certificate to execute the sale deed nor asked them to return the earnest money.

6. Though time is not essence for the agreement in question but at the same time, it is also the settled law that it has to be performed within a reasonable time period, by taking into view all the surrounding circumstances and the nature of the property. In the instant case, the suit property is urban property. Nothing has been produced on record explaining the delay of 33 years in filing of the suit for specific performance. As per Section 16 (C) of the Specific Performance Act, in a suit for specific performance, plaintiff is to prove that he was always willing and ready to perform his part of the contract at all material times, but in the instant case

when the plaintiff slept over the matter for 33 years in filing the suit for specific performance and did not make any effort to get executed the sale deed in question then the readiness and willingness of the plaintiff is not proved. In **Nanjanppan Vs. Ramasamy & another, 2015 (2) RCR (Civil) 224**, when the agreement to sell regarding property was executed 27 years prior to institution of the suit, then relief of specific performance of the agreement was declined by the Apex Court by observing that in view of passage of time and escalation of value of the property, grant of specific performance would give an unfair advantage to purchaser whereas the performance of the contract would involve greater hardship to seller.

7. So in the instant case also, when the plaintiff failed to file the suit for specific performance within the reasonable time from the date of execution of the agreement and filed the same after a delay of more than 33 years, then readiness and willingness on the part of the plaintiff to perform her part of the contract is not proved and the suit has been rightly dismissed. As such, the case law cited by learned counsel for appellant is of no help to him.

8. No question of law much less substantial question of law arises for determination in the present second appeal. The appeal being without merits stands dismissed.

9. All pending applications, if any, also stand disposed of accordingly.

12.01.2024

harjeet

1. Whether speaking/reasoned?

2. Whether reportable?

(SUKHVINDER KAUR)

JUDGE

Yes/No

Yes/No