**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**
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RSA-3133-1998 (O&M)
Reserved on: 17.07.2024
Pronounced on: 25.07.2024

Ranjit Singh and Others

. . . . Appellants

Vs.

Mohan Singh and Others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Anupam Mathur, Advocate
for the appellants.

Mr. K.S. Dadwal, Advocate
for the respondents.

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<u>DEEPAK GUPTA, J.</u>

Against the judgment and decree dated 04.11.1995 passed in Civil Suit No.266 of 1991 titled *"Mohan Singh & ors. v. Ranjit Singh & ors."* filed by plaintiffs Mohan Singh etc. (*respondents herein*), decreeing the suit for specific performance, defendants of the case i.e. Ranjit etc. (*appellants herein*) filed Civil Appeal No.151 of 1995 before District Court, Hoshiarpur. The first Appellate Court of learned Additional District Judge, Hoshiarpur dismissed the said appeal of the defendants on 23.07.1998. Against this concurrent finding of the Courts below, defendants have approached this Court by way of present Regular Second Appeal.

2.1 The case of the plaintiffs is that vide agreement to sell dated 21.08.1986 (Ex.P1), Baldev Chand, the predecessor in interest of the defendants had agreed to sell 4 Kanal 9 Marla of land forming 1/3rd share of 13 Kanal 6 Marla situated in Village Salwara to the plaintiffs for consideration of ₹20,000/- and received an amount of ₹7,000/- as earnest money at that time. He received another amount of ₹3,000/- on 29.08.1986. The target date for execution of the sale deed was agreed to be 15.06.1988. The possession of land was to be delivered, as and when it became vacant. It was pleaded by the plaintiffs that they have always been ready and willing to perform their part of contract. However, sale deed could not be executed on the due date, as Baldev Chand had expired in the meantime and so, they (plaintiffs) approached the legal heirs of Baldev Chand i.e. defendants, who had inherited the suit land, asking them to execute the sale deed, but they put off the matter on one or the other pretext. On target date of 15.6.1988, plaintiff N: 1 for self and on behalf of other plaintiffs appeared before Sub-registrar, Hoshiarpur, alongwith balance sale consideration for getting the sale deed executed in their favour but defendants did not turn up. With these submissions, plaintiffs prayed for decree of specific performance and in the alternative, for refund of earnest money besides damages.

2.2 Though defendants, in their written statement, admitted to have inherited the suit land from Baldev Chand, but denied execution of the agreement by Baldev Chand for an amount of ₹20,000/-. They alleged the agreement relied by the plaintiffs to be forged and fabricated document and even otherwise unconscionable, as the value of the suit land was not less than ₹1,00,000/-. The receipt of any money by Baldev Chand was also denied. Controverting all other averments of the plaint, defendants prayed for dismissal of the suit.

2.3 In re-joinder, plaintiffs reiterated their case and controverted the stand of defendants. Following issues were framed by learned trial Court:

1. Whether Baldev Chand deceased executed an agreement dated 21.8.86? OPP.
2. Whether the plaintiff is entitled for specific performance of agreement

or in the alternative for the recovery of Rs.20,000/-?OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Relief.

2.4 The trial Court, after taking evidence produced by both the parties, decided all the three issues in favour of the plaintiffs and decreed the suit. In the appeal filed by the defendants, the first Appellate Court affirmed the findings as returned by the trial Court and dismissed the appeal.

3. Before this Court, it is contended by learned counsel for the appellants- defendants that as per plaintiffs-respondents, the target date for execution of the sale deed was 15.06.1988 and as per the own case of the plaintiffs, prior to this date, Baldev Chand, the predecessor of the defendants had already expired and when the defendants were approached for execution of sale deed, they had put off the matter on one or the other pretext and even on 15.06.1988, none of the defendants came to the office of Sub-Registrar, where the plaintiffs were allegedly present for getting the sale deed executed on payment of the balance sale consideration. Learned counsel then drawn attention towards the fact that suit was filed on 14.06.1991 i.e. just one date prior to the date, when the limitation period to file the suit for specific performance was to expire. Learned counsel contends that prior to filing of the suit, no legal notice was ever served upon the defendants asking them to execute the sale deed and this in itself reveals that suit is not only barred by limitation but that plaintiffs were not ready and willing to perform their part of contract and even if they might have been ready and willing initially, they have not been always ready and willing to perform their contract till the filing of the suit. Learned counsel has referred to ***"U.N. Krishnamurthy (since deceased) through LRs v. A.M. Krishnamurthy" 2022 (3) R.C.R. (Civil)***

479 and ***"Rajesh Kumar v. Anand Kumar and ors." Civil Appeal No.7840 of 2023*** recently decided by Hon'ble Supreme Court on 18.05.2024 and reported as ***2024 INSC 444***. With these submissions prayer is made for accepting the appeal and to dismiss the suit of the plaintiffs.

4.1 Refuting the aforesaid contentions, it is argued by learned counsel for the respondents- plaintiffs that limitation is a mixed question of fact and law and that in this case, no issue relating to the limitation was either framed by the trial Court nor the said issue was raised before any of the Courts below and so, this issue cannot be allowed to be raised for the first time in this regular second appeal. Ld. Counsel, to support this contention, relied on

- ***i. Lalit v. Colonel Sudhier Kumar Sardana 2021(3) PLR 30;***
- ***ii. Ved Parkash V. Mahender, (P&H) 2018(2) R.C.R.(Civil) 641;***
- ***iii. Ramji Singh Patel V. Gyan Chandra Jaiswal (SC) 2018(3) JT 90 &***
- ***iv. Punjab State Electricity Board v. Daljit Singh, (P&H), 1993(2) S.C.T. 50.***

4.2 Learned counsel contends further that time in this case was not of essence of the contract and that suit was filed within limitation, as even after the target date of 15.06.1988, when defendants were asked to execute the sale deed time and again, they had refused to perform their part of contract. Learned counsel has referred to the following authorities:

(i) D.S. Thimmappa v. Siddaramakka (SC) 1998(1) R.C.R.(Civil) 550;

(ii) Bibi Jaibunisha v. Jagdish Pandit (SC) 1997(2) R.C.R.(Civil) 437;

(iii) Govind Prasad Chaturvedi v. Hari Dutt Shastri 1977 AIR (SC) 1005;

(iv) Rathnavthi v. Kavita Ganashamdas (SC) 2015(2) W.L.N. 147

The ratio of above cited authorities is that in the matter of enforcement of the agreement to sell, time is not always the essence of the contract, unless the agreement specifically stipulates and there are special facts and circumstances in support thereof. It must be specifically pleaded and issue raised so that the other party has a right to lead evidence.

4.3 Learned counsel contends that in these facts and circumstances, there is no reason to disturb the concurrent findings returned by the Courts below and so, appeal be dismissed.

5. I have considered submissions of both the sides and have perused the record.

6. As far as the execution of the agreement dated 21.08.1986 (Ex.P-1) is concerned, there is concurrent finding of fact of the Courts below, based upon proper appreciation of evidence, inasmuch as deed writer Kuldeep Kumar duly proved the same. Besides, Vinod Kumar, one of attesting witness having expired, his signature on the agreement has been proved by one of his relative Shri V.K. Sharma, who was produced in the witness box by the plaintiffs. It has also been found that another marginal witness of the agreement namely Mohinder Singh, was the relative of the defendants and for this reason, he did not support the case of the plaintiffs. His testimony has been rightly ignored by the Courts below. This Court does not find any reason to disturb the concurrent findings of fact as recorded by the Courts below in this regard. It is also proved on record that apart from receiving an amount of ₹7,000/- as earnest money on the date of execution of agreement, Baldev Chand - the predecessor in interest of the defendants had also received an amount of ₹3,000/- on 29.08.1986.

7. The only issue to be considered by this Court is as to whether the

suit is barred by limitation and whether the plaintiffs have always been ready and willing to perform their part of contract.

8. Since the target date for execution of the sale deed was 15.06.1988 and suit has been filed on 14.06.1991 i.e. within a period of 03 years, though just one day prior to the date of expiry of limitation period, still technically suit is within limitation. However the question to be considered is that whether in the facts and circumstances of the case, it can be said that plaintiffs have always been ready and willing to perform their part of contract and whether they are entitled to a decree for specific performance. In this regard certain case law can be referred:

9. It is no doubt true that in the case of sale of immovable property, it is now well settled legal position that in the matter of enforcement of the agreement to sell, time is not always the essence of the contract unless the agreement specifically stipulates and there are special facts and circumstances in support thereof. It is required to be specifically pleaded and issue is to be framed, so that the other party has a right to lead evidence. Besides, there is no presumption as to time being the essence of the contract. However, even if time is not the essence of contract, still it is required to be performed within reasonable time.

10. In **K.S. Vidyanadam & Ors. v. Vairavan [1997 (3) SCC 1]** Hon'ble Supreme Court held:

> *"Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."*

11. As held by a Constitution Bench of Hon'ble Supreme Court in ***Chand Rani v. Kamal Rani [1993] 1 S.C.C. 519,***

"it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are (evident)? : (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract".

12. In ***Veerayee Ammal vs Seeni Ammal : AIR 2001 SC 2920,*** Hon'ble Supreme Court, explained the meaning of ‚reasonable', in following words:

"The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words, it means as soon as circumstances permit. In Law Lexicon it is defined to mean "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

13. In the present case, as noticed earlier that though the suit is technically within limitation, as it has been filed on the last date prior to expiry of limitation period, but whether in these facts and circumstances, it can be said that plaintiff has always been ready and willing to perform his part of contract.

14. In **U.N. Krishnamurthy vs A.M. Krishnamurthy (supra),** it has been held by Hon'ble Supreme Court that:

33. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-

(i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and

(ii) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963.

34. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. In ***His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar*** *cited by Mr. Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. The same view was taken by this Court in* ***Kalawati v. Rakesh Kumar.***

35. Even in a first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from ***Balraj Taneja v. Sunil Madan****, and* ***H.P. Pyarejan v. Dasappa*** *where this Court approved the views taken by the Privy Council in* ***Ardeshir Mama v. Flora Sassoon****.*

"43. In **Saradamani Kandappan** ***(supra)*** *this Court reiterated that (i) while exercising discretion in suits for Specific Performance, the Courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored; (ii) the Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and (iii)* ***<u>every suit for Specific Performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain Specific Performance</u>****. The three year period is intended to assist the purchaser in special cases, as for example where the major part of the consideration has*

been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

[Bold & underlined portion emphasised by this court]

15. In a recent judgment titled ***Rajesh Kumar v. Anand Kumar and Others*** **(*Civil Appeal No. 7840 of 2023 decided May 17, 2024*)**, Hon'ble Supreme Court considered the effect of filing a suit for specific performance after long delay, may be at the fag end of period of limitation and held as under:

"14. The effect of filing a suit for specific performance after long delay, may be at the fag end of period of limitation fell for consideration before this Court in ***K.S. Vidyanadam v. Vairavan***[5] *wherein this Court held thus in para 10:*

"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. **From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party.** That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20."

15.In ***Azhar Sultana*** **v.** ***B. Rajamani***, this Court held thus in para 28:

"28. ……….The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance."

16. Thus, the ratio, which can be culled out from above cited authorities is that every suit for specific performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The courts will particularly frown upon suits, which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain Specific Performance.

17. In the present case, as noticed by the Courts below and which is otherwise also evident from the record, Baldev Chand, the predecessor in interest of the defendants had expired prior to 15.06.1988 i.e. target date fixed for execution of sale deed. The defendants i.e., successor in interest of vendor Baldev, were approached by the plaintiffs prior to 15.06.1988 for execution of the sale deed but they had put off the matter on one pretext or the other pretext, clearly indicating that they were not interested to execute the sale deed. Their intention not to execute the sale deed became more evident, when none of them appeared in the office of Sub-Registrar, Hoshiarpur on 15.06.1988, where one of the plaintiffs was present along with the balance sale consideration for getting the sale deed executed. Although this evidence reveals that as on 15.06.1988, the plaintiffs were ready and willing to perform their part of contract but evidence is completely lacking to show that even thereafter, plaintiffs have already been ready and willing to perform their part of contract, particularly prior to the filing of the suit. The mere vague assertion in the plaint that even after 15.06.1988, plaintiffs approached the defendants several times to execute the sale deed but they did not come forward, cannot be believed, as no such date is mentioned. There is no

evidence that prior to filing of the civil suit on 14.06.1991, any legal notice was served upon the plaintiffs so as to execute the sale deed.

18. In the aforesaid facts and circumstances, it can be safely held that plaintiffs have not always been ready and willing to perform their part of contract.

19. Consequent to the entire discussion of the factual as well as legal position as above, it is held that judgments of the Courts below, decreeing the suit of the plaintiffs- respondents for grant of specific performance, cannot be sustained in the eyes of law. The said decrees are hereby set aside. The suit of the plaintiffs for grant of decree for specific performance is hereby dismissed by accepting this appeal. However, plaintiffs- respondents are held entitled to refund of the earnest money of ₹10,000/-. Apart from the earnest money of ₹10,000/-, they will also be entitled to additional amount of ₹10,000/- as damages, which was claimed by the plaintiffs in their suit. It is directed that this amount of ₹20,000/- be paid by the defendants to the plaintiffs, along with the interest @ 9% per annum from 15.06.1988 which was target date for execution of the sale deed, till it is actually paid. The suit is partly decreed accordingly with costs.

25.07.2024 **(DEEPAK GUPTA)**
Neetika **JUDGE**

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*