



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3225-2001 (O&M)

Reserved on: 01.04.2025

Pronounced on: 07.04.2025

JAI KARAN AND OTHERS

. . . . Petitioner

Vs.

DALIP SINGH

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Ravi Dutt Sharma, Advocate, for the appellants.

Mr. Amit Jain, Sr. Advocate, with
Mr. Anupam Mathur, Advocate, for the respondent.

DEEPAK GUPTA, J.

Dalip Singh (*respondent herein through his LRs*) brought a suit for possession of the suit property by way of specific performance against defendant Amar Singh (*now appellant through his LRs*), based upon an agreement to sell dated 01.06.1978. The suit was dismissed by trial Court of Id. Additional Civil Judge (Sr. Division), Kaithal vide judgment dated 01.10.1996. However, the appeal preferred by plaintiff - Dalip Singh was accepted by the Appellate Court of Id. Additional District Judge, Kaithal, who decreed the suit vide his judgment dated 16.07.2001. Before the First Appellate Court itself, defendant Amar Singh had expired and his LRs had been brought on record.

2. Against the aforesaid reversal, the LRs of original defendant - Amar Singh have filed the present Regular Second Appeal.

3. Trial Court record was called. The same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

4. On perusal of the entire file including the trial Court record and after hearing learned counsel for both the sides, certain admitted facts emerge, which are as under:

- On **01.06.1978**, agreement to sell (Ex.P2) was executed by owner of the suit property i.e., defendant - Amar Singh in favour of plaintiff - Dalip Singh regarding a plot measuring 200 sq. yards for total sale consideration of ₹10,500/-, out of which ₹5500/- was paid as earnest money.
- **15.06.1978** was the agreed target date for execution and registration of the sale deed, on which date balance sale consideration was also to be paid.
- On **05.06.1978** i.e. prior to the target date, Jai Karan s/o defendant- Amar Singh filed civil suit N: 595 of 1978 seeking permanent injunction against his father Amar Singh, the proposed vendee of this case i.e. plaintiff-Dalip Singh and one Baisakhi, by claiming to be owner in possession of the suit property.
- An **injunction order dated 05.06.1978** was passed in above case, staying the alienation.
- The above suit was dismissed as withdrawn on **24.11.1981**, but prior thereto, on **23.11.1981**, Jai Karan had already filed another Civil Suit N: 882 of 1981 against Amar Singh & Dalip Singh i.e. parties to the present *lis*.
- Above suit was partly decreed on **30.05.1986**, prompting the present plaintiff Dalip Singh to file an appeal, which was accepted by Id. Additional District Judge, Kurukshetra on **10.08.1987**.

- It is after the decision of the appeal that the present suit for specific performance was filed on **29.08.1988** by pleading that cause of action in favour of the plaintiff Dalip Singh had accrued on 10.08.1987 i.e. after the decision in the appeal as referred above.

5. Contesting the suit, defendant pleaded that suit was barred by limitation. Controverting other averments of the plaint, he prayed for dismissal of the suit.

6, Necessary issues were framed. None of the parties produced any oral evidence. Only certain documents were tendered in evidence on behalf of the parties.

7. Trial Court held that in the absence of plaintiff entering the witness box, neither the agreement to sell was proved, nor his readiness and willingness to perform his part of contract was established. It was further held that suit was barred by limitation. With these findings on the material issues, suit was dismissed on 01.10.1996.

8. In the appeal filed by the plaintiff, application for production of additional evidence was allowed. Plaintiff appeared in the witness box so as to prove the agreement to sell as well as his readiness and willingness. As by that time, defendant had expired, so one of his LRs/son Jai Karan (*who had earlier filed two suits referred above*) appeared in the witness box and also examined two other witnesses. The Appellate Court held that since the execution of the agreement was not specifically denied by the defendant, so observation of the trial Court in this regard was incorrect. It was further held that readiness and willingness of the plaintiff to perform his part of contract, was duly established. Appellate Court further held that though the period of limitation to file a suit for specific performance is three years, but as the previous litigation was started by son of the defendant on 05.06.1978 i.e. within four days from the execution of the agreement, which litigation came to an end on 10.08.1987, so the suit filed on 29.08.1988 was well within limitation. As such, the findings of the trial Court on all the material issues

were reversed and the suit was decreed on 16.07.2001, thus allowing the appeal of the plaintiff.

9.1 Assailing the aforesaid reversal, learned counsel for the defendant (*though his LRs*) has mainly raised the plea of limitation, contending that as per Section 15 of the Limitation Act, while computing the period of limitation of any suit, only that period is to be excluded during which there was injunction for instituting the suit. Elaborating, *Id.* counsel contends that though Jai Karan, the son of defendant-Amar Singh, had filed a suit on 05.06.1978, but the injunction order in that case was only *qua* alienation. There was no injunction so as to restrain plaintiff of this case Dalip Singh from instituting the suit for specific performance and therefore, the suit filed on 29.08.1988 for specific performance of the agreement to sell dated 01.06.1978 was clearly barred by limitation. It is urged that well-reasoned finding of fact in this regard as returned by the trial Court has been wrongly reversed by the First Appellate Court by excluding the time during which the litigation initiated by Jai Karan was pending.

9.2 Another contention raised by *Id.* counsel is that plaintiff had failed to prove his readiness and willingness to perform his part of contract, inasmuch as, even after the decision of the appeal on 10.08.1987, the suit was filed on 29.08.1988 i.e. after more than a year, during which neither plaintiff approached the defendant nor even served any legal notice asking him/ his legal heirs for executing of the sale deed. It is also the contention that after filing of the suit, plaintiff did not even appear before the trial Court to prove his readiness and willingness to perform his part of contract and it is only after dismissal of his suit on that ground that he moved an application for additional evidence before the First Appellate Court and then appeared there as a witness to show his readiness and willingness.

9.3 With these submissions, prayer is made for setting aside the judgment and decree passed by the First Appellate Court and to dismiss the suit of the respondent-plaintiff, by allowing this appeal and by restoring the judgment of the trial Court.

10.1 Refuting the aforesaid contentions, Id. senior advocate representing the respondent-plaintiff contends that it is own son of the defendant-vendor, who had instituted the suit by impleading not only his father Amar Singh, but also the present plaintiff Dalip Singh and that Court in that case had restrained the alienation of suit property and so, plaintiff could not bring the suit for specific performance.

10.2 Ld. counsel contends further that Section 15 of the Limitation Act is clearly applicable to this case and so, the First Appellate Court rightly held that the time during which the earlier litigation, initiated by Jai Karan, remained pending, was liable to be executed for computing the period of limitation. It is argued that after decision of the appeal on 10.08.1987, the suit was brought very much within limitation on 29.08.1988 and as such, the same was rightly held to be within limitation.

10.3 It is further argued that application for additional evidence was duly allowed by the First Appellate Court and then plaintiff had appeared in the witness box to prove his readiness and willingness.

10.4 With these submissions, prayer is made for dismissal of the appeal.

11. This court has considered submissions of both the parties and have appraised the record carefully.

12. Since the execution of the agreement to sell is not in dispute, this Court is first required to see as to whether the suit for specific performance was filed by the plaintiff within limitation. In case, suit is found to be barred by limitation, the issue of readiness and willingness of the plaintiff to perform his part of contract will lose its significance.

13. It is not in dispute that in the agreement to sell dated 01.06.1978 (Ex.P2), target date of 15.06.1978 was fixed for execution and registration of the sale deed.

14. Limitation under Section 3 of the Limitation Act is one of the defences available to the defendant. Article 54 of the Schedule to the Limitation Act postulates that for specific performance of a contract, the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, from the date the plaintiff has notice that performance is refused. Said Article 54 reads as under: -

Description` of suit		Period of limitation	Time from which period begins to run
54.	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

15. As is evident from aforesaid Article 54 that it is in two parts. The limitation period for bringing a suit for specific performance of contract is three years, when a date is fixed for performance of the contract and in such eventuality, the time will begin to run from the date so fixed for completing the sale. However, in case no specific date is fixed for performance of the contract, then time from which the period of limitation will begin to run is, when the plaintiff has notice that performance has been refused.

16. Reliance in this regard can also be placed on ***Rathnavathi & Anr. Vs. Kavita Ganashamdas 2015(1) CCC 164 (SC)***, wherein it has been held by Hon’ble Supreme Court as under: -

“49. Mere reading of Article 54 of the Limitation Act would show that if the date is fixed for performance of the agreement, then non-compliance of the agreement on the date would give a cause of action to file suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of agreement.”

17. In the present case, since a specific date i.e. 15.06.1978 was fixed for performance of the agreement to sell dated 01.06.1978, so time began to run from the said date of 15.06.1978 and as such, suit for specific was required to be brought within a period of three years from the said date i.e., up to 14.06.1981. However, suit in present case has been filed on 29.08.1988 i.e., much beyond the permissible time limit.

18. Plaintiff has sought to exclude the time from 05.06.1978 to 10.08.1987 for the purpose of computing the period of limitation on the ground that litigation initiating by Jai Karan s/o defendant – vendor Amar Singh was pending before the Court and that there was a restrain order dated 5.6.1978 Ex.PW1/2 in Civil Suit No.595 of 1978.

19. Ex.PW1/2 is the copy of the order dated 05.06.1978 passed by the Id. Sub Judge First Class, Kaithal in Civil Suit No.595 of 1978 titled 'Jai Karan vs Amar Singh & others', which read as under: -

“Present: - Shri Balbir Singh, Advocate, for the plaintiff.

This is a suit for permanent injunction filed by Jai Karan-Plaintiff against Amar Singh others. The plaintiff/applicant has also filed an application for temporary injunction along with an affidavit. The pliff./applicant has contended that the deft. No.1 is threatening to alienate the plot mentioned in para 1 of the plaint for satisfy his bad habits. It has also been contended therein that in case the deft. succeed in their illegal act, the plaintiff would suffer an irreparable loss and injury as he would be deprived of the plot.

In view of the above, I am of the opinion that this is a fit case for issuance of an ad interim injunction. Accordingly, the deft. No.1 is hereby restrained by means of ad interim injunction from alienating the land of plot mentioned in para No.10 of the plaint, by way of sale, mortgage, lease or in any other manner, whatsoever otherwise that in due course of law, in favour of defts. Nos.2 and 3 or in favour of anybody else forcibly and illegally, till further orders, otherwise than in due course of law.

Notice of this application be given to the defendants on filing of P.F. and after compliance of Order 39 Rule 3 of CPC for 18.07.1978.

To come upon 18.07.1978.”

20. It is clear from the language of above order dated 5.6.1978 Ex.PW1/2 that it is alienation of the suit property, which was stayed by the Court and not the institution of any suit on the part of the proposed vendee Dalip Singh.

21. Now let us see the scope of Section 15 of the Limitation Act, which reads as under: -

“15. Exclusion of time in certain other cases—

(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) to (5) xxxxxxxxxxxxxxxxxxxxxxxx [not relevant]”

22. Dissection of the above provision will make it clear that –

- In computing the period of limitation
 - any suit, the institution of which has been stayed by injunction, or
 - application for the execution of a decree, the execution of which has been stayed by order,
- ✓ the time of the continuance of the injunction or order,
- ✓ the day on which it was issued or made, and
- ✓ the day on which it was withdrawn,
- shall be excluded.

23.1 In ***Mahboob Pasha vs Syed Zaheeruddin***, AIR 1988 Karnataka 83, the parties agreed that the agreement was to be performed within six

months from its date. The appellant did not dispute the agreement. The suit property is a residential house with a ground and first floor. The appellant had agreed to deliver vacant possession of the ground floor, which he personally occupied. The first floor was occupied by a tenant, Abdul Sattar. On 28-10-1974, said tenant Abdul Sattar filed a suit in the Court of the First Munsif, Bangalore, seeking a permanent injunction to restrain the appellant from alienating the property in favour of respondent No. 1 or any third party, based on an alleged agreement of sale dated 15-9-1974. He also obtained a temporary injunction on the same day, which remained in force until 25-11-1976, when the suit was dismissed for default. Abdul Sattar filed a miscellaneous application on 3-12-1976 to restore the suit, which was allowed on 17-4-1978. However, the suit was eventually dismissed on merits on 27-8-1980, and the appeal against that decision was also dismissed. Subsequently, respondents 1 to 4 filed the present suit on 3-12-1980 seeking specific performance of the agreement dated 10-8-1974.

23.2 Karnataka High Court took note of two parts of Article 54 of the Limitation Act, as has already been discussed above and then held as under:

“In this regard, it is relevant to bear in mind that in construing the provisions of the Limitation Act, equitable considerations are immaterial and irrelevant. While applying the rules of limitation, effect must be given to the strict grammatical meaning of the words used therein. See **Nagendranath v. Suresh Chandra, AIR 1932 PC 165**. As it is already pointed out that the order of injunction obtained by Abdul Sattar on 28-10-1974 in O.S. No. 2095/74 was to restrain the appellant from alienating the suit property to the 1st respondent or to any other party. It did not restrain the respondents from filing the suit for specific performance nor the respondents were in any way prevented by reason of such an order of temporary injunction from filing the suit. S. 15 (1) of the Act reads thus :

"15 (1): In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it

was issued or made, and the day on which it was withdrawn, shall be excluded."

The facts as found by the trial Court, in our view, did not enable respondents 1 to 4 to exclude the period from 28-10-1974 to 27-8-1980 because they were not prevented from filing the suit. What all S. 15 (1) provides for is that the time intervening between the date on which the institution of the suit was stayed and the date on which the stay- order. was vacated shall be excluded in computing the period of limitation. In this case, as already pointed out, there was no order of injunction in the suit filed by Abdul Sattar restraining respondents 1 to 4 from filing a suit against the appellant for specific performance of the agreement in question. What was obtained by him was an interim order of injunction restraining the appellant from alienating the property in question in favour of respondent 1 or any other party and, therefore, S. 15 (1) of the Limitation Act did not permit the trial Court to exclude the time from 28-10-74 to 27-8-1980. By excluding that period, it held that the suit filed on 3-12-1980 was within time.

15-16. This point had come up for consideration before the Privy Council in **Narayan Jivangouda v. Puttabai, AIR 1945 PC 5**. In that case, an order of injunction was operating against the defendant in the suit restraining him from interfering with the plaintiffs possession. It was held by the Privy Council that the defendant was not restrained from bringing a suit for possession so as to exclude the period during which injunction was issued by trial Court and dissolved by Privy Council. In that suit for declaration and possession, a temporary injunction which was subsequently confirmed by the decree restrained the defendant from interfering with plaintiffs possession and the defendant was also prevented from causing obstruction in any way to the plaintiff in removing the crops grown by him or in accepting or recovering the amount of rent of the said lands from the tenants. It was held by the Privy Council that there was no prohibition, either express or even implied, in the injunction or the decree which restrained the defendant from instituting. a suit for possession; that the institution of a suit could not be said to be futile, if it would thereby

prevent the running of limitation only because the title of the parties was involved in the suit; that the, subsequent suit by defendants after 12 years from the date of dispossession ' was barred by limitation. and that S. 15 did not entitle the defendant to exclude the time between the plaintiff's suit and decision of the Privy Council. This decision was followed by the Supreme Court in **Siraj Ul-Haq Khan v. Sunni Central Board of Waqf U. P., AIR 1959 SC 198** (See para 20 of the Judgment of the Supreme Court). The Supreme Court while considering the effect of S. 15(1) of the Limitation Act referred to the decision of the Privy Council adverted to above and observed as follows:

"For excluding the time under S. 15, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so' in cases falling under S. 15, the party instituting; the suit, would by such institution be in contempt of Court. If an express order, or injunction is produced by a party that clearly meets the requirements of S. 15. Even assuming that S. 15 would apply even to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation, there would be no justification for extending the application of 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that, in construing provisions of limitation, equitable considerations are immaterial and irrelevant and in applying them effect must be given to the strict grammatical meaning of the words used by them."

24. Hon'ble Supreme Court in its subsequent decision in ***Director of Inspection of Income tax (Investigation) New Delhi v. Pooran Mall and Sons, AIR 1975 SC 67***, has also expressed the same view.

25. It is thus clear from the legal position as above that for excluding the time under Section 15 (1) of the Limitation Act, it must be shown that the institution of the suit in question had been stayed by an injunction order. The section requires an order or an injunction, which stays the institution of the suit.

26. In present case, from the order dated 5.6.1978 Ex.PW1/2, passed in the previous suit instituted by Jai Karan, as reproduced earlier, it is clear that it is only the alienation of the suit property, which was stayed by the court restraining vendor – defendant Amar singh from alienating the suit property. There was no stay or an injunction order so as to restrain plaintiff Dalip Singh from instituting the suit for specific performance based on agreement dated 15.6.1978.

27. In the light of the discussion on the legal position as above and the view taken by Hon'ble Supreme Court by following the privy council and also the view taken by Karnataka High Court, it is held that the period when the earlier litigation instituted by Jai Karan remained pending i.e. 05.06.1978 to 10.08.1987, cannot be excluded for the purpose of computing the period of limitation for the institution of present suit. As such, the suit filed on 29.08.1988 is certainly beyond the limitation, inasmuch as the suit for specific performance could have been filed within three years from the target date of 15.06.1978.

28. Although learned trial Court did not elaborate as to how the suit was barred by limitation but it reached to the correct conclusion that the suit was barred by limitation. The First Appellate Court has taken a wrong view by holding the suit to be within limitation. The finding of the Id. Appellate Court in this regard is hereby reversed. It is held that suit as filed

by the plaintiff seeking specific performance of the agreement to sell dated 01.06.1978 is barred by limitation.

29. Once it has been found that suit was barred by limitation, there is no requirement so as to go into the question of the readiness and willingness of the plaintiff to perform his part of contract.

30. Consequent to the entire direction as above, the judgment and decree as passed by the First Appellate Court is hereby set aside. The judgment & decree as passed by the trial Court is hereby restored, whereby the suit of the plaintiff-respondent for seeking specific performance was dismissed.

31. Present appeal is allowed accordingly, and suit of the plaintiff is hereby dismissed.

07.04.2025
Vivek Pahwa

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned

:

Yes

Whether reportable

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Yes