

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****221****RSA-5925-2014 (O&M)****Date of decision: 03.04.2025****Sohrab Khan****...Appellant(s)****Vs.****Akhtar****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Satish Chaudhary, Advocate for the appellant.
Mr. Devender Kumar, Advocate for the respondent.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff seeking specific performance of Agreement to Sell dated 12.06.1986, has been dismissed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondent is the 'defendant'.

3. Learned counsel for the plaintiff submits that the plaintiff had entered into an Agreement to Sell dated 12.06.1986 with the father of the defendant, namely, Rahim Bux; whereby the suit land measuring 8 Kanal was agreed to be sold to the plaintiff for a sale consideration of Rs.20,000/-; in respect of which Rahim Bux also received Rs.13,000/- from the plaintiff on the very same day as earnest money. In respect of this, Rahim Bux had issued receipt dated 12.06.1986 Ex.P1 in favour of the plaintiff. No target



date was set for execution of Sale Deed. Rahim Bux expired on 20.06.1992. It is submitted that the defendant being collateral of Rahim Bux was bound to perform the contract/Agreement to Sell; and was therefore required to execute the sale deed. Land of the defendant was previously mortgaged with the plaintiff. The suit land was under mortgage and was redeemed by the defendant in 1993. Even possession of the suit land was delivered to the plaintiff by Rahim Bux on 28.08.1981 in respect of which mutation no. 738 was entered and sanctioned in favour of the plaintiff. The appellant had also demonstrated his readiness and willingness to perform his part of contract. However, defendant deliberately lingered the matter on one pretext or the other. It is submitted that appellant had duly proved the Agreement to Sell in accordance with law. It is submitted that the plaintiff had duly proved the payment receipts by producing the original as primary evidence; and also proved contents by calling attesting witnesses. As such, there was no ground for not granting decree of specific performance to the plaintiff. It is submitted that the suit of the plaintiff could not have been dismissed even on ground of limitation as there is no time limit prescribed to execute the Sale Deed. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

4. Learned counsel for the respondent/defendant opposes prayed made on behalf the plaintiff and submits that the suit is barred by limitation. The alleged Agreement to Sell was categorically denied by the defendant in his written statement. It was also denied that any earnest



money amount of Rs.13,000/- was received from the plaintiff. It was admitted that Rahim Bux had mortgaged with possession of the suit land with the plaintiff; however as admitted by the plaintiff, the same was redeemed by the defendant in 1993. It was stated that the alleged Agreement to Sell remained unproved and was in fact not even produced by the plaintiff before the learned Courts below. It is accordingly prayed that the present appeal be dismissed.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. I find no merit whatsoever in the submissions advanced on behalf of the plaintiff. Perusal of the record reveals that first and foremost the alleged Agreement to Sell dated 12.06.1986 was never produced by the plaintiff before the learned Courts below. Only a receipt dated 12.06.1986 Ex.P-1 has been produced. The said receipt was alleged to have been signed by Rahim Bux however the plaintiff has failed to prove even the signatures of Rahim Bux on the said receipt.

8. Further, PW1 the alleged Scribe of the Agreement in question has deposed that Agreement was drafted by his Munshi; whereas, PW3 Juhar Khan, alleged witness to the Agreement to Sell, had deposed that the same was drafted by Reader of PW1; whereas it was the case of the defendant that no such Agreement to Sell was executed by Rahim Bux; and the same was never signed and thumb marked even no handwriting or finger print expert was examined by the plaintiff to prove the alleged



receipt. In further contradiction, Juhar Khan PW3 tendered into evidence his affidavit Ex.PW3/A wherein he has sworn that the Agreement to Sell was scribed by PW1 Shiv Singh Rawat. However, in his cross-examination PW1 has admitted that he has not done the writing and receipt Ex.P1 but the same was scribed on his instructions by his Munshi Ram Pal who had died. Thus, all the witnesses PW1, PW2 and PW3 have given contradictory and varying depositions at different points in time. It is also to be noted that PW1/the alleged Scribe has failed to depose in his evidence the name of Tehsildar/SDM etc. before whom the Agreement was executed. Accordingly, the document Ex.P1 was not proven in accordance with law.

9. Furthermore, no interference is called for in the impugned judgments and decrees also on the ground that admittedly, the alleged Agreement/receipt was executed on 12.06.1986; Rahim Bux expired on 20.06.1992; whereafter mutation No. 843 Ex.D5 was sanctioned in the name of the defendant on 31.07.1993. Even at the stage of sanctioning of mutation, the plaintiff did not file Civil Suit. The present suit was instituted only on 06.10.2008 i.e. about 16 years from the death of Rahim Bux, which is to be taken as date of last refusal by Rahim Bux. Limitation of filing suit is 3 years from the date of refusal. Accordingly, it has been correctly held by Id. Courts below that the suit of the plaintiff was barred by the limitation and the same could have been at best, filed within 3 years from sanctioning of mutation.



10. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.
11. Pending applications, if any, stand disposed of.

03.04.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No