



RSA-3643-2023 (O&M)

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

(105)

RSA-3643-2023 (O&M)

Date of decision:- 24.01.2025

Prem Kumar

...Appellant

Versus

Ram Prashad

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sudhir Rana, Advocate, for the appellant.

...

SUVIR SEHGAL, J. (Oral)

1. Aggrieved of concurrent finding recorded by two Courts, appellant-plaintiff is in second appeal before this Court. Along with the appeal, appellant has filed an application for condonation of delay of 1270 days, in its filing.
2. Pleaded case of the plaintiff is that the defendant had entered into an agreement, dated 05.05.2004, with him for sale of the suit plot for a valuable consideration of Rs.48,600/-. The entire sale consideration was paid to the defendant in presence of witnesses and possession of the plot was delivered to the plaintiff, who has constructed a boundary wall, and a shed for cattle on the suit plot. Plaintiff is utilizing the plot for tethering cattle and has opened a door between the plot and his house, adjoining the plot. Claiming that the defendant has refused to get the sale deed executed and is threatening to dispossess the plaintiff, a civil suit for specific performance of agreement to sell along with consequential relief of permanent injunction restraining the defendant from taking forcibly possession of the plot, was filed. Upon notice,

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suit was contested by the defendant, wherein he denied agreement to sell dated 05.05.2004, and averred that it was a forged document. A plea was taken that the suit is barred by res judicata as the plaintiff had filed a similar suit earlier, which was withdrawn on 10.12.2014, without permission to file a fresh one. Defendant claimed that he had purchased the property vide registration Sale Deed No.3716/1, on 27.09.1999, and a mutation was sanctioned in his name. Claiming to be in possession throughout, defendant sought dismissal of the suit. Plaintiff did not file any replication and on the basis of pleadings of the parties, Trial Court framed issues. Parties led evidence in support of their respective claim and after contest, by judgment and decree dated 13.09.2018, Trial Court dismissed the suit. Plaintiff remained unsuccessful in appeal, which was dismissed by the learned District Judge, Karnal, vide judgment dated 17.02.2020, resulting in filing of the present appeal.

3. By referring to the statements of witnesses produced by the plaintiff, counsel for the appellant has argued that agreement to sell dated 05.05.2004, Ex. P-1, stood established on the record and the Courts have erred in holding that the plaintiff was never ready and willing to perform his part of the contract.

4. I have heard counsel for the appellant and considered his submission besides examining the requisitioned record.

5. During the course of hearing of the first appeal, learned District Judge found that as one of the pleas taken by the defendant was that the suit was barred under Order 2 Rule 2, CPC, and Section 11, CPC, issues deserve to be framed on this vital aspect. Accordingly, two additional questions to the effect as to whether suit is barred by Order 2 Rule 2 and by constructive res

judicata, were framed by the first appellate Court. On the basis of the evidence

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on the record, first appellate Court determined both the issues against the appellant.

6. A perusal of the record shows that in the year 2014, plaintiff had filed a suit against the defendant as well his wife, Angrejo Devi, claiming that he had purchased the suit land vide agreement dated 05.05.2004, for a consideration of Rs.48,600/-, and possession stood delivered to him, but the defendant is trying to dispossess him. He also sought permanent injunction restraining the defendant from interfering in his possession over the plot. On 10.12.2014, Ex. DW3/E, plaintiff recorded a statement that he wants to withdraw the suit due to some technical defects and by an order, Ex. DW3/G, passed on the same day, suit was dismissed as withdrawn. Instant suit, out of which, present appeal has arisen, was filed on the same day seeking relief of declaration as well as permanent injunction. As the previous suit was withdrawn without permission to file a fresh suit on the same cause of action, the judgment and decree passed in the previous suit, therefore, operates as a bar under Order 2 Rule 2.

7. Moreover, no date had been specified in the agreement to sell for execution of the sale deed. Plaintiff's case is that after six months of the agreement, he requested the defendant to execute the sale deed, but he refused. Limitation for filing suit for specific performance expired some time in the year 2007. Present suit claiming declaration that plaintiff is the owner of the suit plot was filed in the year 2014. Plaintiff filed an application under Order 6 Rule 17, CPC, which was permitted on 31.03.2016, and sought a decree of specific performance of the agreement. Even though the relief of specific performance will relate back to the filing of the suit, but it is already barred by

res judicata and has been filed beyond the prescribed period of limitation.



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8. This Court does not find any reason to interfere with the concurrent finding recorded by both the Courts, which are affirmed.
9. For the reasons given above, there is no merit in the appeal, which is dismissed with no order as to cost.
10. As the main appeal has been decided, pending applications stand disposed off.

(SUVIR SEHGAL)
JUDGE

24.01.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes