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

**RSA-1647-2001 (O&M)
Date of decision: 12.05.2025**

JOGINDER KAUR**..Appellant**

Versus

AMAR SINGH & ORS.**..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Rajbir Singh Wasu, Advocate
for the appellant.

Mr. Atul Jain, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The defendant assails the correctness of First Appellate Court's judgment, which in turn has modified that of the trial Court. The plaintiffs (respondents herein) filed suit for confirmation of possession by way of specific performance of the agreement to sell executed by defendant Smt. Joginder Kaur in favour of Sh. Ajit Singh, the predecessor in interest of the plaintiffs. The plaintiffs claimed that Smt. Joginder Kaur executed an agreement to sell in favour of Sh. Ajit Singh with respect to 15 kanals and 16 marlas land being $\frac{1}{2}$ (half) share of land measuring 31 kanals and 12 marlas on receipt of Rs.13,500/- out of total sale consideration of Rs.27,000/-. It was agreed that the sale deed would be executed one month after receiving intimation from the defendant of having obtained symbolic possession and sanction of mutation in favour of defendant. The suit was filed on 14.06.1997. The defendant contested the suit alleging that she never executed agreement to sell on 12.11.1986 and in fact, she had borrowed a



loan of Rs.10,000/- from Sh. Ajit Singh. In order to prove the agreement to sell, the plaintiff examined PW-1 Sh. Ashok Kumar, scribe, PW-2 Budh Singh, marginal witness and himself as PW-3. The defendant on the other hand appeared as DW-1.

2. The trial Court held that the execution of the agreement to sell is proved and the suit was filed within the period of limitation, however, refused to grant relief of specific performance on the ground that suit was filed after a period of 10 and $\frac{1}{2}$ (half) years. The plaintiffs filed first appeal, which has been allowed and decree for specific performance of agreement to sell has been passed.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with scanned copy of the requisitioned record.

4. Learned counsel for the appellant submits that plaintiffs have failed to prove that they were ready and willing because they did not take steps for getting the sale deed registered nearly for a period of 10 and $\frac{1}{2}$ (half) years. He submits that mutation of the property was sanctioned in favour of Smt. Joginder Kaur in the year 1987 and Sh. Ajit Singh was party to litigation in the previous round, hence, he had knowledge of the mutation. He further submits that the decree for specific performance is a discretionary relief and therefore, the First Appellate Court has erred in interfering in the discretion exercised particularly when there is a delay of 10 and $\frac{1}{2}$ (half) year in filing the suit.

5. Per contra, learned counsel for respondents submits that the suit was filed within the period of limitation and its correctness was never assailed by the defendant. He submits that the agreement to sell has been



proved and the plaintiffs were always ready and willing to perform their part of contract.

6. Article 54 of the Schedule attached to the Limitation Act, 1963 (in short '1963 Act') prescribes the period of limitation for filing suit for specific performance of the agreement to sell, which reads as under:-

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

7. It is evident that the time from which the period to file the suit will begin to run has been divided into two parts. In the first part, the time will begin to run from the date fixed for performance. The second part provided that the period of limitation will begin to run when the plaintiff has noticed that performance is refused. In this case, there was no date fixed for performance. Also, the defendant has led no evidence to prove as to when the plaintiff noticed that performance is refused.

8. Learned counsel for the appellant submits that plaintiffs were never ready and willing to perform their part of the contract.

9. This Court has considered the submissions of learned counsel for the parties.

10. The readiness and willingness of a party is required to be examined in the peculiar facts of each case. In this case, Smt. Joginder Kaur and her husband signed the agreement to sell executed in favour of Sh. Ajit Singh, who died in the year 1989. The property is located in village Sidhwan Dona, Tehsil and District Kapurthala. The plaintiffs are residing in the same



village, whereas, the defendant (appellant) is residing in village Ranipur, Tehsil Phagwara, District Kapurthala. While filing the suit, they have alleged that they were always ready and willing to perform their part of contract. The plaintiff Sh. Amar Singh has appeared in evidence and has deposed in this regard. Smt. Joginder Kaur on the other hand denied the execution of the agreement to sell, which has been proved. In the aforesaid circumstances, there is no material to hold that the plaintiffs were not ready and willing to perform their part of the contract only because they filed the suit after a period of 10 and ½ (half) years from the date of agreement. The period of limitation does not begin from the date the agreement to sell was executed. Hence, the argument of learned counsel for the appellant that there is a delay of 10 and ½ (half) years in filing the suit is not correct.

11. The period of limitation as provided in Column III of Article 54 of the Schedule attached to '1963 Act' will begin to run as provided in the Act. Hence, it was for the defendant to prove that the plaintiffs had notice of the fact that the performance is refused.

12. Hence, no ground to interfere is made out.

13. Dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

May 12th, 2025

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(ANIL KSHETARPAL)
JUDGE

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