



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2519-2024 (O&M)

Date of decision: 12.05.2025

Jagvinder Singh Brar

...Appellant(s)

Vs.

B.S.Brar and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jatinder K. Kamboj, Advocate for the appellant.

NIDHI GUPTA, J.

CM-10389-C-2024

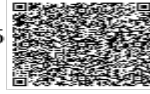
Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 7 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and delay of 7 days in filing the accompanying appeal is condoned.

RSA-2519-2024 (O&M)

The present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the plaintiff for declaration that Sale Deed No. 10918 dated 19.12.2008 is illegal, null and void; **and** for permanent injunction restraining the defendants from interfering in peaceful and un-



interrupted continued possession of the plaintiff on the house/plot No.126 Adarsh Colony behind Thapar College, Bhadson Road, Patiala; **and** specific performance of the Agreement to Sell dated 11.11.1985 executed by defendant No.1 in favour of the plaintiff in respect of land bearing khata No. 1/74 and Khasra No. 870/7(0-6) Biswas, now Khewat No.1/137, Khasra No.2196/870, measuring (0-6) Biswas i.e. 300 Sq. Yards situated at Adarsh Colony behind Thapar College, Bhadson Road, Patiala; **and** for possession of portion of above said suit land, if found in possession of the defendants; **and** for permanent injunction restraining defendant No.2 from alienating the house/land as detailed above in any manner, has been dismissed by both the Courts below.

2. It is *inter alia* submitted by learned counsel for the appellant that vide Agreement to Sell dated 11.11.1985 Ex.P14, defendant No.1 had sold the suit land to the appellant. In the said Agreement to Sell, no target date was fixed for execution of Sale Deed. It is submitted that it is only when defendant No.2 came to take possession of the suit property from the appellant on 17.01.2009 that the appellant discovered that the defendant No.1 had got executed impugned Sale Deed dated 19.12.2008 Ex.DY1 in favour of defendant No.2. Learned counsel contends that immediately thereafter the appellant filed the present suit on 22.01.2009. As such, the suit of the plaintiff could not have been held to be barred by limitation.

3. It is further submitted that in any event, the question of limitation already stood decided by the learned trial Court in favour of the



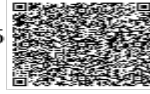
appellant at the time of allowing appellant's application for amendment of plaint to include relief of specific performance of Agreement dated 11.11.1985. In this view of the matter, plaintiff could not have been non-suited only on the ground of limitation. Learned counsel further submits that plaintiff had cited sufficient case law to demonstrate that the suit was not barred by limitation. Learned Courts below also failed to appreciate that the defendants constitute a land mafia and are seeking to dispossess the plaintiff by illegal means. 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. No other argument is raised on behalf of the appellant.

5. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail. I find no merit whatsoever in the present appeal.

6. Plaintiff is seeking specific performance of Agreement dated 11.11.1985 Ex.P14, whereby the suit land was allegedly sold to the plaintiff by the defendant no.1 for a sale consideration of Rs.9,000/-. For specific performance of the said Agreement to Sell, plaintiff has instituted the instant Civil Suit on 22.01.2009 i.e. after a period of 24 years. Needless to say, the suit of the plaintiff was barred by limitation.

7. It has been contended by the appellant that it was only on 17.01.2009 that he discovered that suit property had been sold by defendant no.1 to defendant no.2. However, except for the bald



statement, no evidence to prove the said assertion has been produced by the appellant.

8. At this stage, reference is made to the judgment passed by Hon'ble Supreme Court in "***K.S.Vidyanandam vs. Vairavan***" ***Law Finder Doc Id # 36382***; and relied upon by the learned trial court while non-suiting the appellant. In the said judgment it is held that "*Specific performance - Agreement to sell immovable property - Time is not of essence of the contract of sale of immovable property unless specifically provided - However, it does not follow that any and every suit for specific performance of the agreement should be decreed if filed within limitation without having any regard to the time prescribed in the agreement and silence of the vendee for a long time - Vendee woke up after 2 years to claim specific performance attracted by increase of prices of the property in the area - Held, it was a case of total inaction for two and a half years - It will be inequitable to give relief of specific performance in such a case - The true principle is that even where time is not of an essence of the contract, the plaintiff must perform his part of the contract within a reasonable time - Reasonable time has to be determined from all the surrounding circumstances, express terms of the contract and nature of property - Plaintiff entitled to only refund of earnest money.*"

9. The above said judgment has been followed by the Gauhati High Court in "***Md. Mohar Ali vs. Md. Mamud Ali and others***", ***Law Finder Doc Id # 162990***; the relevant portion of which is reproduced herein below:-

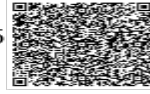


“14. In the latest decision it has been stated that the court in decreeing the suit for specific performance of contract must take into account that the suit must be filed within reasonable time and if the suit is filed beyond the reasonable time, it should be dismissed on that ground alone inasmuch as it cannot be expected that the party will sit tight for all these years and in the meantime the character of the property is changed, value of the property will go up. All these factors must be taken into account as pointed out by the apex Court.”

10. The Calcutta High Court in **“Sri Chhaya Dey and another vs. K.I.C.Resources Ltd.”, Law Finder Doc Id # 192678**, has held that: -

“44. It is settled law that in case of agreement for sale relating to immovable property time is not of the essence of the contract unless specifically provided to that effect and even where time is not of the essence of the contract, the plaintiff must perform his part of contract within a reasonable time and such reasonable time should be determined by looking at all surrounding circumstances including the express terms of the contract and nature of the property.”

11. Clearly, therefore, as per law, suit of the plaintiff was barred by limitation. It may also be pointed out that no doubt, execution of Agreement to Sell dated 11.11.1985 Ex.P14 was proved as per the evidence on record. No doubt also that time was not of the essence in the contract *in-as-much* as no date was fixed for execution of Sale Deed. However, the appellant cannot escape the bar of limitation for the following reasons as well. It is not disputed that the suit property



measuring 6 biswas falling in khasra No. 870/7 was mortgaged by defendant No.1 with Housefed, Punjab; and only upon clearance of loan by defendant No.1, he would have got Sale Deed registered in favour of the plaintiff. However, it has come on record that the plaintiff in his affidavit Ex.PW15/A has admitted that on 08.06.2004, he had received refund of security amount in the name of defendant No.1 vide cheque dated 08.06.2004 Ex.P-144, whereby loan on the mortgaged property was cleared. It is further stated in the said affidavit Ex.PW15/A that the plaintiff had duly obtained 'No Dues Certificate' from Housefed, Punjab, which was conveyed to the concerned Patwari Halqa and the disputed plot was got released from Housefed through NOC dated 27.02.2004 (Mark A-48). Despite these facts, and despite this knowledge, plaintiff did not seek specific performance or execution of Sale Deed. Thus, Learned Courts below have correctly held that, merely upon execution of Agreement to Sell, plaintiff appeared to have been put in possession of the suit property by defendant No.1, would not in any manner affect his plea for condonation of limitation.

12. It may also be pointed out that from the record, it is clear that defendant No.1 is not the adoptive father of the plaintiff. It was the clear case of the defendant No. 1 that the Agreement dated 11.11.1985 was a forged and fabricated document and had been prepared by the plaintiff to grab the property of defendant No.1. It was stated by defendant No.1 that Plaintiff is owner in possession of the property adjoining the suit property. As such, plaintiff only wanted to grab the suit



property by illegal means. In his cross-examination, plaintiff/PW15 has admitted that the 2 plots, although different plots are adjacent to each other.

13. It was further established on record that defendant No.1 was the owner of property measuring 6 biswas/300 Sq. Yds. falling in khasra No. 2196/870 and, therefore, he was well within his rights to sell the same to defendant No.2 vide registered Sale Deed dated 19.12.2008. This fact has been admitted by the plaintiff that possession of suit plot measuring 6 biswas was given to the defendant No.1 by Shakuntla Devi vide registered Sale Deed dated 23.01.1985 Ex.P-50. Even mutation was sanctioned in favour of defendant No.1 on the basis of Ex.P-50. In fact, it was the case of the plaintiff before the Courts below that plaintiff is owner of the suit plot, which was purchased directly from Shakuntla Devi. However, he had obtained the Sale Deed from Shakuntala Devi in the name of his adoptive father i.e. defendant No.1. However, the plaintiff was unable to prove that he is the adoptive son of defendant No.1.

14. Further, the contention of the plaintiff that the impugned Sale Deed dated 19.12.2008 is a sham transaction being without consideration, is also liable to be rejected in the face of oral evidence of defendant No.1 himself. Defendant No.1/DW1 has stated in his cross-examination that before purchasing the suit property, defendant No.2-Iqbal Mohammad had enquired from the Revenue Authorities and had also obtained fard; wherein defendant No.1 was shown to be owner of the suit property. Defendant No.1/DW1 has further categorically stated in



his cross-examination that *“consideration for the sale has been completely received by me. The same has been encashed.”* Thus, defendant No.2 was the bonafide purchaser of the suit property. Execution of the impugned Sale Deed was proved in favour of defendant No.2 even from evidence of attesting witness Raghbir Singh DW2.

15. In this regard, relevant findings of the learned lower appellate Court are contained in para 18 of the judgment dated 14.05.2024, which reads as under:-

“This Court is of the considered opinion that respondent-defendant No.2 is in possession of the suit property on the basis of the registered sale deed executed in his favour by defendant No.1. The recital of the sale deed also shows that possession was delivered to defendant No.2. From the perusal of the entire documents placed on record, it clearly shows that defendant No.1 is deriving his title from Shakuntala Devi, who had executed the sale deed in favour of defendant No.1 in respect of the property in question. From the entire pleadings, as well as, evidence led by the plaintiff, it is clearly shown that plea taken by him is contrary to his earlier plea, wherein the plaintiff has submitted that the entire consideration was paid by him to Shakuntala Devi and because of fiduciary relations with defendant No.1, the sale deed was executed in his name. Had it been so, this Court is of the view that there was no necessity to get the agreement of sale executed in favour of the plaintiff from defendant No.1. From the perusal of the document EX P14 it shows that the same was alleged to have been executed on 11.11.1985 and no reasons have been advanced by the plaintiff that why



he kept slept over the same for almost a period of 24 years, as the suit was filed by him in the year 2009.”

16. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings on record.

17. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

18. Pending applications, if any, stand disposed of.

12.05.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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