IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2617 of 2025 (O&M)
Reserved on : 30.09.2025
Date of Pronouncement :- 13.10.2025

Dalbara Singh @ Darbara Singh (Now deceased) through his Legal Representatives ...Appellant

Versus

Satbir Singh (Now deceased) through his Legal Representatives ...Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. S.S. Salar, Advocate for the appellants.

Mr. Sapan Dhir, Advocate for respondents/caveators.

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VIRINDER AGGARWAL, J.

1. Appellant-plaintiffs filed this Regular Second Appeal against against the judgment and decrees dated 11.05.2018 and 22.04.2025 passed by learned Civil Judge and learned First Appellate Court.

2. Briefly stated, appellant plaintiffs filed suit for specific performance of agreement to sell dated 15.05.1972 on the grounds that defendants sold 1/10th share of 323 Kanal 17 Marla land to plaintiff for sale consideration of Rs.80,000/- and received the entire sale consideration from the plaintiffs and others. Plaintiff was already in possession as tenant. The dispute was going on between defendants and State of Punjab so sale deed could not be executed and registered. Mutation of the land was sanctioned in favour of provincial government in the revenue record. The matter has been decided by this Court in RSA No. 2877 of 1996 which was dismissed by this

Court on 23.09.2009 and mutation has been sanctioned in favour of defendant. The persons in whose favour document dated 15.05.1972 was executed by defendant has already purchased specific Khasra numbers of land measuring 260 kanal 3 marlas out of total land leaving behind 64 kanal 12 marlas equivalent to 1/5th share of the land detailed in the agreement and the same is required to be transferred by way of sale deed in favour of plaintiff as plaintiff is entitled to get the sale deed executed from defendant qua his own share and shares of Kashmir Singh and Hakam Singh from whom he has purchased the rights. Defendant never informed the plaintiff about the final decision and sanctioning of the mutation in his name so a written notice was sent through Telegram on 13.08.2010 calling upon defendant to execute the sale deed in favour of plaintiff but to no avail. Plaintiff appointed Bhupinder Singh and Sukhwinder Singh his general attorneys vide power of attorney dated 13.08.2009. Attorneys contacted defendant to execute the sale deed but he refused. Plaintiff has always been ready and willing to perform his part of the agreement, hence the suit.

3. Upon notice, defendant did not turn up and was proceeded against ex-parte vide order dated 25.11.2010. Later on ex-parte proceedings were set aside and the case was fixed for filing of written statement. Defendant filed written statement admitting the claim of the plaintiff. File was taken up on 16.03.2011. Magh Singh attorney of the defendant and attorney of the plaintiff Bhupinder Singh made statements with regard to compromise between the parties and case was fixed for consideration. On 31.03.2012 another counsel appeared on behalf of defendants and moved application for ignoring the compromise dated 14.03.2011. The application was withdrawn later on and another application was moved. Defendant

moved application for amendment of the written statement. Defendant was called in person to appear in the Court. Defendant appeared and made statement withdrawing his earlier statement on the ground that he could not understand the same. On 21.01.2014 appellant plaintiff filed application for passing the decree on the basis of compromise Ex.C1 and statement dated 16.03.2011. The application was disposed of vide order dated 24.07.2017 and the following issue was framed ;-

> "1. Whether the compromise was legal and valid and with free will of the defendant or not?OPP
> 2. Relief."

4. The parties were granted opportunities to lead evidence and thereafter the learned Civil Judge dismissed the suit being barred by limitation.

5. Aggrieved by the judgment and decree so passed appeal was preferred. The learned Additional District Judge, Sangrur dismissed the appeal vide judgment and decree dated 22.04.2025. Aggrieved by the judgment and decree so passed, the present appeal has been filed.

6. During the course of preliminary hearing respondent defendant put up appearance as a Caveat was filed by respondent defendant. Record was requisitioned.

7. I have heard arguments and gone through the record carefully.

8. Learned counsel for the appellants submitted that both the Courts below have committed illegality by not granting decree on the basis of compromise dated 14.03.2011 Ex.C1 and statement made by the defendant on 16.03.2011 and has wrongly allowed respondent defendant to withdraw the statement. Further more the only issue which was framed by the learned Civil Judge was with regard to legality and validity of the

compromise dated 14.01.2011 but the learned Civil Judge while deciding that issue against the appellant plaintiff has non-suited the appellant plaintiff on the grounds that suit of the plaintiff is hopelessly time barred whereas appellant plaintiff was not granted any opportunity by the Court to prove that suit is within limitation. The learned Courts were required to record findings with regard to the legality or validity of the compromise dated 14.01.2011 only and if the Courts came to the conclusion that the compromise is not valid and legal and cannot be acted upon then the issues were required to be framed with regard to the merits of the case and parties were required to afford an opportunity to lead evidence to prove the contentions but without affording any opportunity the learned Courts below has dismissed the suit being barred by limitation, so the impugned judgment and decrees be set aside and the matter be remanded to the learned Civil Judge for fresh decision whereas counsel for the respondent contended that on the face of it the suit is hopelessly time barred as agreement in question is of dated 15.05.1972 and the suit was filed in the year 2010. So the Court was right in dismissing the suit being barred by limitation and that appeal be dismissed.

9. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of Punjab Courts Act, 1918 and not under Section 100 of CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '***Pankajakshi (Dead) through LRs and others V/s Chandrika and others', (2016)6 SCC 157***, followed by the judgments in the case of ***'Kirodi (since deceased) through his LR V/s Ram Parkash and others' (2019) 11 SCC 317*** and ***'Satender and others V/s Saroj and others', 2022(12) Scale 92***.

Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

10. The learned First Appellate Court has recorded finding that the compromise has not been proved on record as appellant-plaintiff has not examined the person who was present in the Court on his behalf i.e. Bhupinder Singh and made statement in the Court and that Magh Singh the alleged attorney of respondent defendant is closely related to appellant plaintiff and that he has no relation with the defendant respondent and that aspect was considered by the court to be a clinching factor that the compromise between the parties is not a valid compromise and with regard to the statement of Satbir Singh respondent defendant, the learned First Appellate Court recorded the finding that the statement was allowed to be withdrawn by the Court with a warning that he should append his signatures on any application or statement so made in the Court after understanding and admitting the same to be correct and no plea shall be entertained in future on the grounds that he cannot understand the language and he could not decipher the script which was written and further that respondent defendant shall be responsible in that regard. As regards the compromise between the parties is concerned, the same has been rightly held to be not legally proved on record and that Magh Singh the alleged attorney of respondent defendant is closely related to appellant plaintiff and it is proved on record that at the time of making statement dated 13.04.2011 the respondent defendant was not assisted by his counsel and he is not much conversant with Punjabi language so he was allowed to withdraw his statement with a warning by the Court. So when he was allowed to withdraw the statement by making a subsequent statement his earlier statement cannot be acted upon and the same has rightly been rejected by the Courts below.

11. As far as these findings are concerned the Courts below were well

within their jurisdiction and power to decide this question but while deciding this question, the Courts below also dismissed the suit being barred by limitation. The question of limitation is a mixed question of law and fact. In the present case, the writing dated 15.05.1972 is being sought to be specifically performed and on the face of it the same appears to be hopelessly time barred as suit was filed in the year 2010 but appellant plaintiff has pleaded that the ownership of respondent defendant was in dispute and the Punjab Government was claiming ownership of the suit land and a litigation was going on which was finally decided by this Court vide RSA No. 2877 of 1996 on 23.09.2009. So the limitation to file the suit for specific performance wound commence only after decision of RSA and appellant plaintiff intended to lead evidence to prove all these assertions made in the plaint. In para No. 35, the learned First Appellate Court has recorded a finding that Hon'ble Apex Court has consistently held that if the suit appears to be barred by any law including the law of limitation, the Court should reject the plaint at the very threshold and the Court should not be hesitant in rejecting the plaint under Order VII Rule 11(d) CPC when it is glaringly apparent from the plaint that suit is hopelessly barred by limitation to smoke out frivolous and legally dead claims and if the suit is exfacie barred by limitation, it should be dismissed and there is no need for detailed merit enquiry.

12. From the above findings, it is clear that the First Appellate Court got swayed by the fact that agreement which is sought to be specifically performed is of the year 1972 and the suit has been filed in the year 2010. The learned First Appellate Court has not taken into consideration that the cause of action consists of bundle of facts and in the present case in the plaint, plaintiff has specifically pleaded in para No. 19 that cause of action has accrued to the plaintiff from the

above mentioned bundle of facts and also from the refusal of the defendant as mentioned above.

13. The Hon'ble Apex Court in the case of ***'T. Arivandandam v. T.V. Satyapal' (1977) 4SCC 467*** has held as under :-

> *"22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7, Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2- 2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents ."*

14. The Hon'ble Apex Court in the case of ***'Gunwantbhai Mulchand Shah & Ors. versus Anton Elis Farel & Ors.' 2006 (2) SCC 634'*** has held that limitation would commence only from the date of refusal of the defendant where no time is fixed for performance of the agreement and has held as under :-

> *"7.We may straightaway say that the manner in which the question of limitation has been dealt with by the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should*

have been, first. whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in R.K. Parvatharaj Gupta v. K.C. Jayadeva Reddy, 2006(1) RCR (Civil) 779: (2006(2) SCALE 1561. In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they do not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence, on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial."

15. In the present case from the plaint it is clear that the plaintiffs are claiming that cause of action accrued only after the mutation has been sanctioned in favour of defendant after decision of litigation pending between defendant and State of Punjab and thereafter on refusal of defendant to perform his part of the contract as such the question of limitation in this case is a mixed question of law and facts and evidence is required to adjudicate the same. The Court deciding this question of limitation without affording parties to the suit any opportunity of leading evidence has certainly committed an illegality. Thus the judgment and

decree passed by the Courts below on sole question of suit being barred by limitation without affording an opportunity to the parties to lead evidence on the question of limitation and on other factual and legal questions which arise in the present litigation are liable to be set aside. Accordingly, the appeal filed by the appellant is allowed. The judgment and decrees passed by both the Courts below are set aside. The suit of the appellant plaintiff is restored at its original position and the matter is remanded to the Court of Civil Judge for decision afresh on merits after framing of relevant issues on the basis of pleadings of parties and affording parties adequate opportunities to lead evidence.

16. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

13.10.2025
P.Singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No