

RSA-1415-1992

[1]

2025:PHHC:139197



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1415-1992

Reserved on 29.09.2025

Date of decision: 08.10.2025

Sedhu Ram (Deceased)
Thr LRs

...Appellant

Versus

Bihari Lal (Deceased) Thr LRs & another

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. Ajay Jain, Advocate for the appellant.

Mr. Mukesh Yadav, Advocate
for LRs of respondent No.1.

DEEPAK GUPTA, J.

Introduction : The plaintiff has approached this Court challenging the concurrent findings recorded by the Courts below. The suit for possession of 1/3rd share in the suit land, based upon an agreement to sell dated 15.07.1981, was dismissed by the Trial Court on 21.09.1991. The First Appellate Court, vide judgment dated 02.04.1992, upheld the decision of the Trial Court, leading to the present appeal.

2. **Facts of the Case :** The case of the plaintiff is that defendant No.1 Bihari Lal, being owner of 35 kanal 16 marla of land situated in village Khor, Tehsil Narnaul, as per jamabandi for 1982–83, entered into an agreement on 15.07.1981 to sell 1/3rd share each in favour of the plaintiff and proforma defendant Matadin. It was agreed that the plaintiff would pay ₹5,040/- and the proforma defendant would pay ₹4,500/- towards discharge of defendant No.1's debts to his creditors within three years, where after the sale deed would be executed. The plaintiff alleged that he was always ready and willing to perform his part of the contract and even issued repeated notices to the creditors, but defendant No.1 failed to



execute the sale deed.

3. Defendant No.1 denied execution of the agreement and alleged that the document was fabricated out of an earlier compromise. He also pleaded that a previous suit filed by the plaintiff on the basis of the same agreement had been dismissed as withdrawn on 08.12.1986, and therefore, the present suit was barred.

4. ***Trial Court's Findings*** : The Trial Court, after framing issues and recording evidence, held as under:

- The agreement to sell (Ex. P-25) was duly proved by the testimony of the scribe and attesting witnesses. Defendant No.1 failed to prove that the document was forged.
- However, the agreement was not enforceable, as no payment had been made to the creditors within the stipulated three years, nor had any consideration passed to defendant No.1 at the time of execution. The plaintiff, therefore, was not ready and willing to perform his part of the contract.
- The suit was also held barred under Order XXIII Rule 1 CPC, as the earlier suit based on the same agreement had been withdrawn without permission to institute a fresh suit.

On these findings, the suit was dismissed on 21.09.1991.

5. ***First Appellate Court's Findings*** : The First Appellate Court affirmed the above conclusions and, in addition, held that the suit was barred by limitation. Since the condition to make payment to creditors was to be performed within three years of the agreement dated 15.07.1981, the limitation period commenced from that very date, and not from 15.10.1984, as held by the Trial Court. Accordingly, the appeal was dismissed on 02.04.1992.

6. ***Contentions before this Court*** : Learned counsel for the appellant contended that despite best efforts, the plaintiff could not trace the creditors of the defendant - respondent, though notices were sent to



them both by ordinary and registered post. It was argued that the plaintiff was not at fault and should not be denied the relief of specific performance.

7. Heard. Submissions considered.

8. **Analysis by this court:** As far as the *agreement* (Ex. P-25), is concerned, the testimonies of the scribe and attesting witnesses outweigh the mere denial by defendant No.1. Thus, the execution of the agreement cannot be disputed.

9. The enforceability of the agreement depends upon fulfillment of the condition precedent, namely repayment of defendant's debts within three years. Admittedly, no such payment was made. Notices to creditors through registered post were issued only in 1986, much beyond the stipulated time. The plaintiff also did not tender payment directly to the defendant or secure his cooperation. In absence of any consideration passing to defendant No.1, the plaintiff cannot be said to be ready and willing to perform his part.

10. The law is well settled that the plaintiff seeking specific performance must continuously aver and prove readiness and willingness to perform the contract in terms of Section 16(c) of the Specific Relief Act, 1963. Such readiness must exist from the date of the agreement till the hearing of the suit. In ***P. D'Souza v. Shondrilo Naidu, (2004) 6 SCC 649***, it has been reiterated by Hon'ble Supreme Court that failure to prove readiness dis-entitles the plaintiff to relief. Applying this principle, the plaintiff has failed to establish readiness and willingness.

11. Still further, the earlier suit filed by the plaintiff on the basis of the same agreement was withdrawn on 08.12.1986 without seeking liberty to file afresh. At that stage, the relief of specific performance was available



but not claimed. The present suit is, filed on 10.12.1986, therefore, is clearly barred by the principle embodied in Order XXIII Rule 1 CPC.

12. The Supreme Court in ***Sarguja Transport Service v. State Transport Appellate Tribunal, M.P. Gwalior and others, (1987) 1 SCC 5***, held that withdrawal of a writ petition without liberty to file afresh bars a subsequent petition on the same cause. The same principle applies to civil suits under Order XXIII Rule 1 CPC. Hence, the present suit is clearly not maintainable.

13. Further, the agreement stipulated repayment within three years from 15.07.1981. Consequently, the right to sue accrued from that date, and limitation must be reckoned accordingly under Article 54 of the Limitation Act, 1963. In ***K.S. Vidyanadam and others v. Vairavan, (1997) 3 SCC 1***, the Supreme Court emphasized that courts cannot extend limitation in equity when the contract itself fixes a time for performance. The First Appellate Court was, therefore, right in holding the suit barred by limitation.

14. **Conclusion** : In light of the above, this Court finds no infirmity in the concurrent findings of the Courts below. The conclusions are in consonance with binding precedents and based upon correct appreciation of evidence and law.

15. Consequently, the appeal is held to be devoid of merit and is hereby dismissed. No order as to costs.

08.10.2025

Yogesh

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:-Yes/No