

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

RSA No. 3785 of 2013 (O&M)

Date of decision: 13.08.2015

Kulwant Singh and others ... Appellants

versus

Kunan Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S. Virk, Advocate for
Mr. G.S. Nagra, Advocate for the appellants.

K.Kannan, J.

The plaintiff have sought for specific performance of an agreement contained through a compromise on 04.08.1994, the compromise was said to have been recorded in the particular suit in which the plaintiff was a party. The Court, however, did not decree the suit in terms of the compromise but dismissed it. The plaintiffs preferred an appeal. The appeal also was dismissed. Under the terms of the compromise, the plaintiff had undertaken to give up his rights in respect of two in terms of properties and as a consideration thereof the defendants were to execute a sale in respect of the suit property comprising of three items totalling 13 kanals 1 marlas. According to the plaintiff, the plaintiff was already in possession of the property but did not take the sale deed but came to know about the deceit of the defendant only when the property in his possession had been dealt with by the defendants in

defiance of the compromise terms and the purchasers had filed a suit against the plaintiff and had obtained a decree. The plaintiff filed the suit taking the suits filed by the purchasers as constituting the cause of action.

Two Courts below found that the suit was barred by limitation apart from other grounds. It is obvious from the brief narration of facts that a condition under which the plaintiff was giving up right in respect of some items in the property and was securing a right to obtain a sale deed with reference to three other items which were said to be in his possession could not have been sufficient and he ought to have called upon the defendant to execute the sale deed within the time stipulated in the compromise itself. Admittedly, the plaintiff did not obtain the sale deed within the time stipulated and filed a suit only after the purchasers from the parties to the compromise filed their own suit. Here again, the plaintiff lost the right to the purchasers and hence there is nothing available for the plaintiff to seek for enforcement. Whatever right that he had under the alleged compromise must have been set forth against the purchasers. If he was not successful in warding off the claims of the purchasers, then the suit for specific performance could not have been instituted against the original party in the compromise. The decision to which the plaintiff was party in the suit filed by the purchasers will constitute a bar against the fresh suit. The legal position obtaining against the plaintiff was both on issue of limitation of the action having come about more than 3 years after the time stipulated under the compromise and the bar of earlier decree obtained by the purchasers against the defendants. Two Courts have dismissed the plaintiff's claim as not

competent to secure a specific enforcement. There is no error for an intervention. The 2nd appeal is dismissed as involving no fresh substantial questions of law.

13.08.2015

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(K.KANNAN)
JUDGE