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

**RSA-565-2012 (O&M)
Date of decision : 02.02.2016**

Tej Singh and others

...Appellants

Versus

Man Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarwinder Goyal, Advocate
for the appellants.

Mr. G.S. Toor, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the concurrent findings of the fact, whereby the suit for possession at the instance of the respondent-plaintiff in respect of the land measuring 7 kanals 15 marlas, has been decreed.

Mr. Sarwinder Goyal, learned counsel appearing on behalf of the appellants-defendants submits that the alleged agreement to sell, on a sale consideration of ₹ 1,60,000/- was entered into on 25.02.1999. However, the sale deed was not registered despite the

entire amount of sale consideration i.e. 1,60,000/- was paid, however, the appellants-defendants alleged that he was given only ₹ 61,000/-. The respondent-plaintiff did not perform the part of the agreement to sell which necessitated appellant-defendant to file a suit for specific performance. The aforementioned suit has been dismissed being barred by law of limitation. He submits that the possession of the appellants-defendants had been handed over, in pursuance to the agreement to sell and thus, protected as per Section 53-A of the Transfer of Property Act. In support of his contentions, he has relied the judgment of this Court in **"Ude Singh and others V/s Ram Chander" 2009(1) RCR (Civil) 41,** and the judgment of Full Bench of Bombay High Court in **"Mahadeo Nathuji Patil V/s Surjabai Khushalchand Lakkad and others" 1994 Mh. LJ 1145.** He submits that the suit for possession could not have been filed before the expiry of three years seeking the specific performance, since, the appellants-defendants have paid the entire amount of sale consideration, the respondent-plaintiff has lost the right of possession, in view of the ratio decidendi culled out by the judgment in **Mahadeo Nathuji Patil's case** (supra) and thus submits the substantial questions of law arises for the determination of this Court.

Mr. G.S. Toor, learned counsel appearing on behalf of the respondent-plaintiff submits that the appellants-defendants have lost the right to seek the specific performance of the agreement to sell and their status is nothing but that of trespasser and rightly so,

the possession has been sought in accordance with law and not forcibly. Both the Courts below have found the evidence in conformity with the averments made in the suit and thereupon, decreed the suit. No substantial questions of law arises for determination of this Court and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

The ratio decidendi culled out in the judgment rendered by this Court in **Ude Singh's case** (supra) deals with the identical position but prevented the vendor to take forcible possession of the property, however, in the instant case, the vendor has sought the possession of the property through process of the Court, therefore, the ratio decidendi culled out by this Court does not apply, viz-a-viz the finding rendered by the Full Bench of Bombay High Court in **Mahadeo Nathuji Patil's case** also deals with the proposition where the vendee has lost the right to seek specific performance of the contract and though it was held he can seek protection under Section 53-A of the Transfer of Property Act, during the pendency of the agreement. However, in the instant case, the appellants-defendants-vendee have lost the right to seek the specific performance of the agreement to sell, having suffered a judgment and decree, the agreement to sell cannot remain active/alive for infinite period thus, rightly so, the respondent-plaintiff invoked the jurisdiction of the Civil Court seeking the possession, viz-a-viz by filing of the suit before the expiry of three years, I am of the view

that the appellants-defendants lost rights in seeking the specific performance of agreement to sell much was not ready and willing to perform the part of the contract. The suit for possession has been filed, even otherwise, the suit for specific performance as noticed above has been dismissed. The limitation to seek the possession of the property is five years.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, as these are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

02.02.2016
yogesh

(AMIT RAWAL)
JUDGE