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

**RSA-1218-2013 (O&M)  
Date of decision : 04.03.2016**

Surender Kumar Arya

...Appellant

Versus

Dharambir and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Vinish Singla, Advocate  
for the appellant.

None for respondent No.1.

Mr. Shubham Kaushik, Advocate  
for respondent No.2.

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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 appellant-defendant No.2 is aggrieved of the concurrent findings of fact whereby the suit for specific performance of the agreement to sell dated 11.04.1988 and 25.09.1988, regarding suit land has been decreed.

Mr. Vinish Singla, learned counsel appearing on behalf of the appellant-defendant No.2, submits that the agreement to sell dated 11.04.1988 had been executed on behalf of the Special Power of Attorney Phool Chand Sharma, on behalf of the father of the appellant, namely, Poonam Chand Arya.

The target date in respect of that agreement to sell was 10.08.1988. The

respondents-plaintiffs set up another agreement to sell dated 25.09.1988 allegedly executed by Deshpriya Arya, one of the co-owners of the property. The said agreement to sell has not been proved through the testimony of the witnesses, whereas the first agreement to sell has been proved, but the fact remains that suit filed in the year 2003, viz-a-viz the first agreement to sell was ex facie time barred as there was no readiness and willingness, whereas, in the second agreement, there was no target date and therefore, the respondents-plaintiffs, taking the advantage of the same, invoked the jurisdiction of the Court in the year 2003, but the Courts below have failed to appreciate that the aforementioned agreement to sell dated 25.09.1988 has not been proved and thus urges to this Court to formulate the following substantial questions of law:

1. Whether the suit for specific performance on the basis of the agreement to sell dated 25.09.1988 which is not proved, discretion under Section 20 of the Specific Relief Act can be granted or not?
2. Whether the suit viz-a-viz agreement to sell dated 11.04.1988 was barred by law of limitation, as the suit filed in the year 2003.

The respondent No.1-plaintiff has been served through publication as noticed by this Court, but no body has put in appearance on his behalf.

Mr. Shubham Kaushik, learned counsel appearing on behalf of respondent No.2 submits that there is no illegality and perversity in the judgment and decree of both the Courts below which are based upon the appreciation of oral and documentary evidence, thus, prays for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the appellant-defendant No.2 and appraised the paper book and of the view that there is a substance in the

aforementioned plea, for the reason that even if the agreement to sell dated 11.04.1988, has been proved, but the fact remains that no explanation has come forth in filing the suit on 01.02.2003, whereas the target date for registration and execution of the sale deed was 11.08.1988, viz-a-viz the other agreement to sell dated 25.09.1988, no attesting witness, much less, scribe has been examined, though the said agreement does not contain the stipulated date. Taking the advantage of the same, the suit aforementioned was filed. Both the Courts below have erroneously and perversely not noticed the aforementioned facts, much less, not discussed this aspect and therefore, the judgment and decree of both the Courts below are not sustainable.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of both the Courts below are hereby set aside. Suit stands dismissed. The substantial questions of law as noticed above are answered in favour of the appellant-defendant No.1 and against the respondents-plaintiffs.

With the aforesaid observations, the appeal is allowed.

**04.03.2016**  
yogesh

**( AMIT RAWAL )**  
**JUDGE**