

109

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4452-2016 (O&M)
Date of decision : 28.11.2016

Harbans Singh

... Appellant

Versus

Amandeep Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manish Prabhaker, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-11629-C-2016

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 85 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-4452-2016

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit for recovery of ₹ 3,50,000/- inclusive of interest for the period i.e. 28.06.2004 to 06.10.2009 along with future interest @ 12% p.a., has been dismissed, in essence, the judgment and decree of the trial Court has been set aside.

Mr. Manish Prabhakar, learned counsel appearing on behalf of the appellant-plaintiff submits that the respondents-defendants had entered into an agreement to sell dated 12.03.2004 in respect of a land on the premise that the sale deed would be registered and executed within a period of 30 days from the date of seeking inheritance of the property. He further submits that the inheritance of the property was obtained within a period of 30 days. However, during interregnum i.e. on 28.06.2004, two months after the execution of the agreement to sell, sold the property, in dispute, to a third party. An FIR dated 06.02.2006, in this respect, was lodged and the suit seeking recovery was filed 14.10.2009 and therefore, the plaintiff could not have been non-suited on the ground of limitation. The benefit of Section 14 of the Limitation Act should have been granted. The lower Appellate Court has committed illegality and perversity in reversing the well reasoned findings of the trial Court and urges this Court for setting aside the judgment and decree under challenge.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that the suit is hopelessly barred by law of limitation as the breach occurred the day, FIR was lodged on 06.02.2006, whereas the suit had been filed on 14.10.2009, thus, there was a delay of 3 years 8 months. Pursuing of a criminal remedy cannot bring the case within the provisions of Section 14 of the Limitation Act, rightly so, the lower Appellate Court has reversed the findings of the trial Court.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court as the same is based upon correct appreciation of documentary as well as

oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

28.11.2016 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No