

106

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

**RSA-3443-2015 (O&M)
Date of decision : 28.11.2016**

Janak Singh and another

... Appellants

Versus

Mehar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumit Gupta, Advocate
for the appellant(s).

Mr. Ashish Pannu, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the discretionary relief under Section 20 of the Specific Relief Act, 1963 (for short 'the 1963 Act') for grant of specific performance has been decreed instead of alternative relief as rendered by the trial Court.

Mr. Sumit Gupta, learned counsel appearing on behalf of the appellants-defendants submits that the agreement to sell between the respondent-plaintiff and the appellants-defendants was entered into on 19.05.1998 in respect of Killa No.24 measuring 2 kanals for a total sale consideration of ₹ 1,00,000/- against the payment of earnest money of ₹ 50,000/-. However, during the subsistence of the aforementioned agreement to sell, son of the plaintiff, namely, Krishan Pal, had also entered into an agreement to sell of the same piece of land vide agreement to sell

dated 05.07.1999 for a total sale consideration of ₹ 1,00,000/- against the payment of earnest money of ₹ 70,000/-. In fact, it was a loan transaction as both father and son had been indulging into the extending the private loans. Vide Ex.D-1 and Annexure A-1, agreement to sell dated 05.07.1999 alleged to have been entered into with the son of the plaintiff, was cancelled and all the liabilities i.e. amount taken in pursuance to the aforementioned agreements had been returned/discharged. It is, in this background of the matter, the trial Court did not grant the discretionary relief, but the lower Appellate Court has committed illegality and perversity in granting the discretionary relief as without noticing the fact that the suit was filed in 2004, thus, was *ex facie* barred by law of limitation despite the fact that the time was not essence of the agreement to sell, in fact, there was no averment qua the alleged breach and urges this Court for setting aside the judgment and decree under challenge.

I have heard the learned counsel for the appellants-defendants and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Sumit Gupta, for, the subsequent agreement to sell had become extinct owing to its cancellation on 29.01.2003 (Ex.D1). It is the said date which gave a cause of action to the respondent-plaintiff to seek the vindication of his grievance, therefore, filing of the suit in the year 2004 would not be hit by the law of limitation, thus, the provisions of Article 54 of the Limitation Act would come into play.

As regards the discharge of the loan liability, it was an independent contract between the present vendors and the vendee. It would be immaterial if the vendee was none-else, but the son of the plaintiff. It is the relation which has been presented as defence, whereas the defendants

have failed to prove the signatures on the agreement to sell by leading direct, cogent and corroborative evidence. Even before the trial Court, the defendants had also offered to give the double amount, thus, admitted the agreement to sell.

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.

Record of the Courts below be sent back.

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