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

**RSA-4035-2012 (O&M)
Date of Decision : 25.01.2018**

Mahabir Singh and others Appellants

Versus

Satish Kumar Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. C.B. Goel, Advocate
for the appellants.

Mr. Kabir Sarin, Advocate
for the respondent.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment of the lower Appellate Court modifying that of the trial court and ordering specific performance (in place of refund of money which was ordered by the trial court).

The respondent had filed a suit claiming that the appellants had agreed to sell certain land to him and had refused to execute the sale deed. He had consequently prayed for specific performance of the agreement to sell. Both the courts below found that the agreement to sell was a valid document. The trial court however denied the relief of specific performance and ordered refund. Against that the respondent went up in appeal and the

lower Appellate Court held that it was a case where specific performance had to be ordered and that is how the defendants-appellants are before this court.

Counsel for the appellants has argued that there is material on record to show that this was actually a loan transaction and, since the appellants were in need of money they had to sign on the dotted line. The evidence in support of his case was that it was established that on prior occasions the respondent had been lending money to the appellants which had been duly returned by the appellants.

Counsel for the respondent has argued that this fact by itself would not be sufficient to prove that the present agreement was actually a loan transaction which was masquerading as an agreement to sell. As per him there was no material before the trial court to deny the relief of specific performance and the appellate court has rightly exercised the discretion.

I find myself in agreement with the counsel for the respondent. The plea of it being a loan transaction was never taken by the appellants in their written statement and is just being sought to be now developed without any plea in support thereof. No question of law in fact arises in the present case.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

January 25, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No