

255

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

RSA-23-2016 (O&M)

Date of decision : 01.02.2018

Sukhdev Singh

... Appellant(s)

Versus

Surinder Prabhakar

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Takhi, Advocate
for the appellant.

Mr. Akash Yadav, Advocate for
Mr. Abhinav Gupta, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit of the respondent-plaintiff seeking specific performance of agreement to sell dated 10.11.1999 in respect of land measuring 48 kanals 12 marals described in the plaint, agreed to be sold for a total sale consideration of ₹2,43,000/- against the payment of ₹1,00,000/- as earnest money, has been decreed by both the Courts below.

Mr. Arun Takhi, learned counsel appearing on behalf of the appellant-defendant submits that the target date for the aforementioned agreement to sell earlier was 31.12.2000. However, the same was extended upto 31.12.2001, but the respondent-plaintiff interpolated the word '2001' as '2004' and instituted the suit on 03.02.2005 and therefore, the suit was barred by law of limitation. The alleged agreement though was signed only

by vendor & vendee and there was no witness, but the fact of the matter is that no sane person would extend the stipulated date for registration for a period of 3 years, particularly when the balance amount was to be paid and the possession yet to be delivered. In the legal notice (Ex.P-7), the respondent-plaintiff claimed that the possession was handed over, but no evidence has been led because the relief sought in the suit was not only specific performance, but possession as well. All these factors have not been examined by the Courts below and therefore, there is a grave illegality and perversity. In other words, he submits that in such circumstances, discretionary relief under Section 20 of the Specific Relief Act was not required to be granted, at the best, alternative relief could have been pressed into service.

Per contra, learned counsel appearing on behalf of the respondent-plaintiff submits that the concurrent findings of fact cannot be tinkered with as the appellant-defendant failed to prove alleged interpolation in extension date, which though bears the signatures of both the parties, thus, urges this Court for dismissal of the present appeal.

I have heard the learned counsel for the parties and appraised the paper book, much less, record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Takhi, as, the alleged endorsement granting extension of time has been signed by both the parties. No reasonable and cogent explanation has been come forth that there was an interpolation in the extension of date from 2001 to 2004 having been signed by the vendor and vendee, but the signatures have not been disputed. If at all, it was so, nothing prevented the appellant-defendant to lodge appropriate criminal proceedings against the respondent-plaintiff, but no

steps have been taken. This is what has been noticed by both the Courts below while decreeing the suit. Since the extended date was 31.12.2004, the appellant-defendant failed to perform his part, necessitating the plaintiff to file the suit within a period of two months, therefore, the readiness and willingness cannot be said to be wanting. It is, in this backdrop of the matter, the Courts below had granted the discretionary relief under Section 20 of the Act .

As regards the argument of Mr. Takhi, qua possession, I am of the view that the Courts below has passed the decree on the basis of the preponderance of the evidence as no contrary evidence has been brought on record to establish that the possession was parted with or not.

For the foregoing reason, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as he same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the present appeal is dismissed.

01.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No