

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

**RSA No.4741 of 2015 (O&M)**

**Date of decision:11.01.2018**

Rakesh Kumar

...Appellant

Vs.

Ashok Kumar and others

... Respondents

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

Present:- Mr. Sushil Kumar Verma, Advocate  
for the appellant.

**AMIT RAWAL J. (Oral)**

**C.M.No.433-C of 2016**

Prayer in the application under Section 151 CPC for fulfilling  
the requisite Court fee, i.e., ₹11040/-.

For the reasons stated in the application, which is duly  
supported by an affidavit, the same is allowed, subject to all just exceptions.

**C.M.No.11375-C of 2015**

Allowed as prayed for.

**RSA No.4741 of 2015 (O&M)**

The appellant-defendant is in Regular Second Appeal against  
the concurrent findings of the facts and law, whereby, suit for recovery of  
₹8,90,000/-, i.e., ₹4,45,000/- as earnest money and ₹4,45,000/- as  
compensation as per the terms and conditions of the agreement to sell dated  
08.02.2006 (Ex.P2), has been decreed.

Mr. Sushil Kumar Verma, learned counsel for the appellant-defendant submits that recital in the agreement to sell, Ex.P2, *ibid*, does not indicate that at any point of time, the defendant owned the land, it is the agreement to sell holder, namely, Angrej Singh and others, and therefore, question of vesting the ownership of land in the defendant did not arise. The deal at the instance of the plaintiffs was speculative. He also submits that the suit had been filed on 13.05.2009, whereas, agreement to sell was of 08.02.2006 and the limitation expired on 08.02.2009, in view of the provisions of Article 21 of the Limitation Act. In other words, Article 55 of the Limitation Act is not applicable. Even stamp paper had not been purchased by Rakesh Kumar but the same were purchased by Hardarshan Singh as noticed by the Courts below. All these factors lead to irresistible conclusion that there is no agreement to sell, thus, there is illegality and perversity in decreeing the suit by both the Courts below.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the aforementioned arguments of Mr. Verma, and the reason is not only one but many:-

(i) During the course of hearing, this Court called upon learned counsel for the appellant, to show a copy of the agreement to sell in vernacular, which has been seen and read, wherein, it has clearly been mentioned that the appellant-defendant was agreement to sell holder with the owners, aforementioned, i.e., Angrej and his sons. The agreement to sell was entered into between the appellant and plaintiffs on the premise that the

deal between erstwhile owners shall be struck by execution of the sale deed or direct sale deed which could have been executed. The target date in the aforementioned case was 10.08.2006. The plaintiffs realizing that deal with the defendant and the original owners had not culminated into sale deed or made any headway giving them cause of action to file a suit for recovery instead of specific performance. Article 21 of the Limitation Act, does not deal with the agreements of such nature, where alternative relief of specific performance and compensation of double amount and for that provisions of Article 55 of the Limitation Act, would apply.

For the sake of brevity, Articles 21 and 55 of the Limitation Act, read thus:-

|                                                                                                           |              |                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 21. For money lent under an agreement that it shall be payable on demand.                                 | Three years. | When the loan is made                                                                                                                                                                      |
| 55. For compensation for the breach of any contract express or implied not herein specially provided for. | Three years. | When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases. |

On co-joint reading of the aforementioned provisions, even if Article 21 is to be read, the limitation would commence when the demand is made. No doubt, the suit was not preceded by any legal notice but filing of the suit was itself a demand. The cause of action had accrued to the plaintiff only after expiry of target date i.e., 10.08.2006, therefore, the suit cannot be said to be barred by law of limitation as discretionary relief under Section

20 of the Specific Relief Act was not sought. The execution of the agreement was admitted by the appellant-defendant but attempt was made in the manner and mode which is prohibited under the law as except averment in the written statement and bald statement, no other evidence has been led. In the absence of any corroborative evidence, it was a case of emphatical denial. The agreement to sell also reveals that the appellant-defendant had acknowledged the receipt of payment of ₹4, 45,000/-, therefore, there is no force in the argument of Mr. Verma, *vis-a-vis* mode of payment. Onus lay upon by the defendant to belie as the terms and conditions of the agreement, is sacrosanct. Even no FIR has been lodged against the plaintiffs, in case any fraud had been played upon the defendant. In my view, no interference is warranted in the findings of the Courts below, much less no substantial question of law arises for determination.

Accordingly, the regular second appeal stands dismissed.

(AMIT RAWAL)  
JUDGE

January 11, 2018  
savita

|                           |        |
|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |