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

RSA No. 4821 of 2017

Decided on 02.05.2018

Rajesh Kumar and another

........ Appellant

Versus

Jagdish Chander and others

...... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT.**

Present : Shri Anupam Gupta, Senior Advocate with

Shri Bhavnik Mehta, Advocate for the appellant.

Shri Vinod S.Bhardwaj Advocate and

Shri Amit Kohar, Advocate for the respondents.

**RAJBIR SEHRAWAT, J.**

Present Regular Second Appeal No.4821 of 2017 and Regular Second Appeal No.3295 of 2008 were ordered to be heard together vide order dated 09-01-2018 passed in RSA No. 4821 of 2017. This is how both these appeals were heard together and are being decided simultaneously. These appeals have arisen from two different suits. Further, although some of the facts are common in both the suits yet the parties, the cause of action, relief sought and the decrees passed in the two suits; from which these appeals have arisen; are different in type, nature and quality. Although some of the documents led in evidence by the parties are also the same, however these documents are numbered differently in the two suits. So these appeals, though heard together, are being decided by two separate judgments of the even date.

**RSA No. 4821 of 2017**

This is a regular second appeal filed by the plaintiff against the judgments and decrees containing concurrent findings in a suit claiming specific performance of an agreement to sell dated 25-09-1989, qua 12K-03M of land owned by Jagdish Chander and Subhash Chander sons of Chandgi Ram, being 1/4$^{th}$ share of the total land measuring 48K-10M comprising in Khewat No. 275, Khasra No. 1782// 13/2/3 (2-0), 14/2 (4-0), 15/2 (4-0), 16 (8-0), 17 (8-0), 18/1 (4-0), 23/2 (4-0), 24 (8-0), 25/1 (6-1), 25/2 (0-9) situated at Bir, Hisar.

It deserves mention here that during the pendency of the suit; the original defendants, Jagdish Chander and Subhash Chander sons of Chandgi Ram, had sold this suit land to the respondents No. 9 and 10 in the present appeal. Hence the respondents No. 9 and 10 herein got themselves impleaded as defendants in the suit; through an application moved for that purpose, which was allowed by the trial court vide order dated 16-11-2009. However, for the purpose of the present appeal, the parties herein shall be referred to as the plaintiffs and the defendants as they were described in the original plaint.

Brief facts of the case, as mentioned in and gathered from the judgment of the lower Appellate Court are that the plaintiffs Rajesh Kumar and Vinod Awasthi filed the instant suit claiming that Chandgi Ram was a tenant on the land measuring 48K-10M comprised in Khewat No. 275, Khasra No. 1782// 13/2/3 (2-0), 14/2 (4-0), 15/2 (4-0), 16 (8-0), 17 (8-0), 18/1 (4-0), 23/2 (4-0), 24 (8-0), 25/1(6-1), 25/2 (0-9) situated at Bir, Hisar. He acquired the ownership over this land from the Govt. being an occupancy tenant. So, the land was allotted to him on 12-01-1982. However, before the sale deed could be executed in his favor by the Govt.; he expired. Hence the sale deed of the above-said land was to be executed by the Government in favour of his wife, daughter and six sons of the said Chandgi Ram. However, the defendant had no money to pay the cost of the land allotted to their father; therefore, they approached the plaintiffs for money. Accordingly, an agreement to sell was recorded into writing between the plaintiffs and the defendants, including the defendant No. 1 and 2, in the presence of witnesses on 25-09-1989. Since, this agreement was entered into by all the legal representatives of above-said Chandgi Ram, therefore, this agreement dated 25-09-1989 was pertaining to the entire land measuring 48K-10 Marla. The sale consideration fixed under this agreement was at the rate of ₹1,32,500/- per acre. On the same day the defendants received ₹70,000/- as earnest money out of the total sale consideration amounting to ₹8,03,281/-. It was agreed that the remaining consideration was to be paid at the time of execution and registration of sale deed, the date which was fixed to be 31-03-1990. Before execution of the sale deed, the defendants were required to collect the Income Tax Clearance Certificate from the Income Tax Department and to intimate the plaintiffs regarding receipt of this certificate; through the registered AD post, and after receiving such intimation by the plaintiffs they had to make themselves available for execution and registration of the sale deed within 15 days from the date of receipt of that intimation. It was further averred that an amount of ₹5 lakh was further paid to the defendants on 24-01-1990 and the actual possession of the land in question was given to the plaintiffs in pursuance to the agreement to sell and the plaintiffs were at liberty to construct road, level the land and to do the pillar work etc over the land in question. It was further averred in the plaint that the remaining consideration amount of 2,83,000/- was paid by the plaintiffs to the defendants on 02-03-1990 and thus they cleared the entire payment as per the agreement to sell up to 02-03-1990. After receipt of the money from the plaintiffs the defendants paid the installments to the Government. So, afterwards the plaintiffs came to know that the Government executed sale deed qua the entire land measuring 48K-10M in favour of all the eight legal representatives of Chandgi Ram, namely, Smt. Sarwan Devi, Saroj, Suresh Chander, Ramesh, Surender, Naresh, Jagdish Chander and Subhash Chander on 30-10-1989. Hence the land came to be owned; on 30-10-1989; by all the above-said eight legal representatives of Chandgi Ram. The plaintiffs have always been and are even now ready and willing to get the sale deed executed and also approached the defendant with all the expenses of the execution of sale deed. But they had been putting off the matter on one pretext or the other. The plaintiffs also served legal notice upon the defendants which was received by the defendants No. 2 to 8 and they obtained the income tax clearance certificate from the Department on behalf of all the defendants regarding the sale of the entire land measuring 48 Kanal 10 Marla in the year 1995. Thereafter, the remaining legal representatives of Chandgi Ram executed the sale deed in favour of the plaintiffs regarding their 3/4$^{th}$ share of the said land measuring 36K-7½ Marla; by way of the sale deed No.1248 dated 15-06-1995.

However, the defendant No.1 and 2 are very clever and cunning persons, they had not come present to get the sale deed executed and registered in favour of the plaintiffs regarding their remaining 1/4$^{th}$ share of the suit land in dispute, i.e. 12K-2½M. Again registered notice was sent to the defendants No. 1 and 2; to get the sale deed registered with regard to the remaining 1/4$^{th}$ share of the land in question; in favour of plaintiffs on or before 12-09-1995. It was also informed through notice that the plaintiff would be at liberty to file suit for specific performance of the agreement to sell for remaining 1/4$^{th}$ share of land and in that eventuality the defendants would be responsible for the court fees, cost of litigation, as well as all the consequences. It was also informed that if the defendants No. 1 and 2 wanted to get the sale deed executed before 12-09-1995 then they would intimate the plaintiffs or their counsel by registered letter and if no such intimation was received then defendants No.1 and 2 were to come present on 12-09-1995 in the office of Sub Registrar, Hissar, for the purpose of execution and registration of the sale deed regarding 1/4th share of the land in dispute. Thereafter, plaintiffs remained present in the office of sub-registrar on 12-09-1995. But the defendants No.1 and 2 did not turn up for the said purpose. Even after notice the defendant No.1 and 2 were asked several times to admit the claim of the plaintiffs and to get the sale deed executed. But, the defendants No.1 and 2 flatly refused to get the sale deed executed in favour of the plaintiffs on 13-09-1995. Hence this suit.

Notice of the suit was issued by the trial Court. Having been put to notice the defendants No.1 and 2 appeared and filed written statement taking the objections regarding the suit being barred by limitation, res-judicata and further saying that the plaintiffs have no cause of action and locus-standi to file the present suit. The plaintiffs were stopped from filing the present suit and the present suit being bad for mis-joinder and non-joinder of parties. On merits, execution of the agreement to sell was denied and the defendants No.1 and 2 pleaded that the plaintiff No.1; claiming himself to be the President of the Hissar Geeta Cooperative House Building Society Ltd.; had filed a civil suit in Civil Court at Hissar on 21-02-1990 seeking declaration that the Society forcibly occupied the land in dispute and had become owner by way of adverse possession. By playing fraud upon the Court, the plaintiffs got the collusive decree dated 02-03-1990, on the unauthorized admitting statement of the defendant 3, who claimed to be general power of attorney holder of other defendants. On coming to know about that fraud and feeling aggrieved with the same the defendants No. 1 and 2 had filed appeal against the said collusive decree. The said appeal was accepted by the Court of Additional District Judge Hissar vide judgment/order dated 20-12-1990 and said decree dated 02-03-1990 was set aside and the case was remanded to the trial Court for its decision. But the plaintiffs went in appeal vide SAO No.8 of 1991 before this Court, which was ultimately treated as 'Civil Revision' by this Court. This Court also dismissed that Civil Revision filed by the plaintiffs, upholding the finding that Naresh Kumar, the stated holder of GPA, had no authority to deal with the suit property and that he was acting in collusion with the plaintiffs. So, remand order was upheld by this Court. No further remedy was availed by the plaintiffs. But after remand the suit filed by the plaintiff was not prosecuted further by him and same was dismissed in default on 09-09-1993. Defendants further averred in written statement that after the decision of the Court; plaintiffs had sent a notice dated 16-09-1991; which the defendants No. 1 and 2 had duly replied on 05-10-1991 and in that reply had intimated to the defendants that they did not execute the agreement in question nor had they received any amount from the plaintiffs. The defendants denied execution of agreement and therefore any liability to execute the sale deed in favour of the plaintiffs. Despite that, the plaintiffs have filed suit on the basis of the forged agreement which was not maintainable. It was also pleaded that during the pendency of the above-said suit many litigations started between the parties and in all these cases the answering defendants were held to be owners in possession to the extent of 1/4$^{th}$ share of the land in question. It was further pleaded that defendants No. 3 to 8 were in collusion with the plaintiffs and they were inimical and hostile to the answering defendants. Rests of the averments of the plaint were specifically denied and the prayer for dismissal of suit was made.

Taking into consideration the pleading of the parties, the trial Court framed the following issues:-

1. Whether the plaintiffs are entitled for specific performance in view of the agreement dated 25.9.89 regarding the 1/4th share of agricultural land measuring 48 kanals 10 marlas ?OPP
2. Whether the plaintiffs have been and are still ready and willing to perform their part of contract ?OPP
3. Whether the present suit is within limitation ? OPD
4. Whether the plaintiffs have no locus standi to file the present suit ?OPD
5. Whether the suit is barred under order 2 Rule 2 CPC ? OPD
6. Whether the suit is barred under order 9 and order 23 of CPC ?OPD
7. Whether the plaintiffs are stopped to file the present suit by their own act and conduct ?OPD
8. Whether the present suit has been filed by the plaintiffs in collusion with proforma defendant No.3 to 8 ? OPD
9. Relief.

The parties led their respective oral as well as the documentary evidence. Some more facts came in light during evidence. It came on record that the alleged General Power of Attorney was executed by all the legal representatives of Chandgi Ram on 23-10-1989 and the same was cancelled by the defendants No.1 and 2 vide a registered cancellation deed on 21-03-1990 Ex.P33. Further the plaintiff brought on record a writing dated 12-03-1990, Ex. P29; wherein the date of execution of the sale deed was claimed to have been extended by the defendants through above-said Naresh Kumar and a stipulation was introduced that the defendants would obtain the Income Clearance Certificate and inform the plaintiffs by a Registered AD post and after receipt of that intimation the plaintiffs would get the sale deed executed; within 15 days of receipt of such intimation.

After appreciating the evidence led by the parties and hearing the arguments, the learned trial Court dismissed the suit filed by the plaintiffs. However, even while dismissing the suit the trial Court recorded a finding that the alleged agreement to sell has been proved to have been executed by the defendants No.1 and 2. Their signatures on the agreement to sell were duly proved by the report of Handwriting Expert. Hence the agreement to sell in question was held to be proved against the defendants. However, the trial Court held that since the defendants; in the reply dated 05-10-1991 to the legal notice sent by the plaintiffs; had specifically denied the agreement in question; and hence their liability to execute the sale deed did not arise. Had the plaintiffs been ready and willing to get the sale deed executed; they would have approached the court immediately? However they kept on harping on the excuses and did not file the suit till 1995. It shows that the plaintiffs were not ready and willing to get the sale deed executed. The trial court further held that the plaintiffs had put forward the excuse that the defendants were to get the Income Tax Clearance Certificate and they had not got the same, therefore, the plaintiffs could not approach the court by filing of the civil suit. Even in the end, the suit was filed by the plaintiff despite the defendants No.1 and 2 not getting any Income Tax Clearance. This could have so been done earlier also. Even the Income Tax Clearance Certificate was obtained by the alleged GPA of other defendants on 16-05-1995, despite the fact that the suit was filed by the plaintiffs on 27-10-1995; after about 5 months. This shows that the plaintiffs were not ready and willing to get the sale deed executed.

For the same reason the trial Court also held the suit filed by the plaintiffs to be time-barred. While dealing with the issue of limitation the Trial Court held that pursuant to the notice, Exhibit P34, sent by the plaintiffs on 16-09-1991, the defendants No.1 and 2 had sent a reply to the same on 05-10-1991, which was admittedly received by the plaintiffs on 10-10-1991, vide receipt Exhibit D6. In this reply the defendant No.1 and 2 had clearly denied the agreement and thus refused to execute the sale deed in favour of the plaintiffs. Hence, in any case, the limitation in this case started from 10-10-1991; when the plaintiff received reply of the defendants No.1 and 2 denying the agreement itself. The prescribed limitation to file the suit for specific performance is 3 years, whereas, the present suit was filed by the plaintiffs on 27-10-1995, much after the expiry of limitation. Hence the suit of the plaintiffs was clearly time-barred. Trial court further held that though the plaintiffs have relied upon the writing dated 12-03-1990; stated to be an extension of date of execution of the sale deed upto the 15 days after the income tax clearance is obtained by the defendants and intimated to the plaintiffs, however, such writing does not extend the period of limitation, as has been held by the High Court of Punjab and Haryana. While dealing with the issue No.7 and 8 the Trial Court held that since despite having signed the alleged agreement to sell in favour of the present plaintiffs the said Naresh Kumar, the alleged General Power of Attorney of the defendants, filed conceding statement in the suit filed by the society based upon adverse possession and in negation of the agreement to sell; without even mentioning the agreement to sell therein, therefore, it is proved that Naresh Kumar, the alleged General Power of Attorney of the defendants was acting in collusion with the plaintiffs. Accordingly, these issues were also decided against the plaintiffs. It was also held that the plaintiffs were estopped from filing the suit. It was also held that the plaintiffs had failed to prove by any documentary evidence that the defendants had handed over the possession of the land to the plaintiffs. Aggrieved against this judgment and decree passed by the trial Court the plaintiffs preferred an appeal before the Court of Additional District Judge Hissar.

However, the lower Appellate Court also dismissed the appeal filed by the plaintiffs. While dismissing the appeal filed by the plaintiffs, the lower Appellate Court upheld the findings recorded by the trial Court, regarding the suit being time-barred and also regarding the plaintiffs being not ready and willing to get the sale deed executed. While dealing with the document Exhibit P-29, statedly, extending the period of execution of sale deed up to 15 days after the plaintiffs received and intimation of the Income Tax Clearance Certificate from the defendants, the lower Appellate Court held that question whether this document is valid or not pales into insignificance because the defendants had intimated to the plaintiffs regarding their denial of the agreement itself, through the reply to the legal notice of the plaintiffs on 05-10-1991 itself which was duly received by the plaintiffs on 10-10-1991.

Regarding the scope of Section 230-A of the Income Tax Act and the condition/stipulation contained in the document Exhibit P-29, the alleged extension of the date of execution of the sale deed till the Income Tax Clearance is received by the defendants, the lower Appellate Court held that such a stipulation would not make the agreement to be contingent. The defendants may not obtain the Tax Clearance Certificate. However, that would not extend the time of limitation till indefinite period. Hence, such a stipulation does not extend the time of limitation prescribed for filing the suit by the Limitation Act. Plaintiffs could have filed a suit for specific performance even without waiting for such a certificate. For arriving at this conclusion the lower Appellate Court has relied upon judgments of this court as well as of the Hon'ble Supreme Court. Lower Appellate Court also held that the defendants No.1 and 2 had never applied for ITC certificate. So, ultimately also; the suit filed by the plaintiffs was without income tax clearance having been obtained by the defendants No.1 and 2. If this could be filed without such clearance subsequently, then it could have been so filed earlier as well.

Aggrieved of the judgment and decree passed by the lower Appellate Court, upholding the judgment and decree passed by the trial Court, the plaintiffs Rajesh Kumar and Vinod Awasthi have filed the present appeal through their representatives. One thing more to be noted is that although the trial Court had recorded a finding against the defendant No.1 and 2 holding that the agreement to sell has been proved as having been entered into by the parties, yet the defendants No.1 and 2 have not challenged that finding by filing any appeal either before the lower Appellate Court or before this Court. So, that finding has attained finality against the defendant No.1 and 2. Hence, defendants No.1 and 2 are contesting the appeal on the aspects arising after the stage and the date of the agreement.

Arguing the case the learned counsel for the appellants / plaintiff has submitted that the courts below have committed serious illegality by holding that the suit of the plaintiffs was time-barred. He has submitted that it has come on record by way of document Exhibit P-29 that the defendants had extended the date of execution of the sale deed by agreeing to a term that the defendants would obtain the Income Tax Clearance from the Income Tax Department and intimate the receipt of that Certificate to the plaintiffs through registered A.D. post and further the time for getting the sale deed executed would be within 15 days after the date of such intimation to the plaintiffs. The counsel for the appellant has submitted that this document is duly executed document and is fully valid in the eyes of law. But, the Courts below have not recorded finding on its validity. As an answer to the query the learned counsel submitted that although this extension document was executed after the date when the full and final payment had already been made as per the agreement, yet this document is not invalid for want of consideration. The counsel has relied upon the judgments in **1922 AIR (PC) 178, Muhamad Habidullah Versus Bird and Company**. The counsel has further relied upon **1959 AIR (Cal) 472, Aryan Mining and Trading Corporation Ltd. Versus B. N. Elias and Co. Ltd.** and others to contend that the time was not the essence of the matter and extension of the date fixed for execution of sale deed can be done even after expiry of the original date fixed for that purpose. Counsel further relies upon **1955 AIR (Cal) 65, Juggilal Kamlapat Versus N.V.International Credit-En-Handles Vereeninging Rotterdam** to contend that even if Ex. P-29 is taken to be a subsequent alteration or novation of the contract, still modified contract can very well be enforced. Since, this extension document stipulated that the plaintiff could file suit for specific performance within 15 days of receiving the intimation from the defendants regarding having received the income tax clearance certificate, therefore, the Courts below have wrongly held the suit of the plaintiffs to be time-barred. It is his submission that this condition made the contract a contingent contract; and in the absence of such a certificate from the defendants the plaintiff could not have filed the suit for specific performance against defendants Nos.1 and 2 for mainly two reasons. Firstly, that the other co-sharers in the land and parties to the same agreement to sell had not refused to execute the sale deed in favour of the plaintiffs. But even they had not obtained the Income Tax Clearance Certificate earlier. Hence, it would not have been possible for the plaintiff to fragment the contract/agreement to file a suit for specific performance only against the defendant Nos. 1 and 2. The other defendants executed the sale deed as per the said agreement on 15-06-1995. Thereafter; since the defendants No. 1 and 2 had not executed the sale deed in favour of plaintiffs, therefore the plaintiffs had filed the suit against the defendant No.1 and 2. It is submitted by the counsel that the fragmentation of the contract/agreement is not permissible for the purpose of its performance through the process of the court. Secondly, the counsel for the appellant had submitted that Section 230-A of the Income Tax Act, prescribes that the Registrar shall not register any instrument regarding transfer of property unless the vendor has produced before it an Income Tax Clearance certificate from the Income Tax Department. It is submitted by the learned counsel for the appellant that this section starts with an non-obstante clause and therefore this section is mandatory in nature. The counsel has relied upon **(2005) 2 SCC 14, Iridium India Telcom Ltd. Versus Motorola Ltd.** to contend that the Non-Obstante clause makes the other laws non-operational, so the Registration Act was not to operate qua any sale deed unless the ITC Certificate; as prescribed by Section 230-A of Income Tax Act; was obtained by the defendants No.1 and 2. Unless requirement of this Section is complied with; any sale deed registered by the Sub-Registrar would be void and would be a document not recognizable by law. Therefore the plaintiffs were not supposed to undertake the proceedings which could not result into a legal sale deed and which would have been a futile exercise. The counsel has relied upon the judgments in **2006 (1) PLR 584, Smt. Mohini Kapoor and others Versus Deepak Uppal, 1972 (83) ITR 430, C. S. Longanathan Versus P. L. Kapoor and others and 1973 AIR**

**(Bom) 285 Sadashivrao Raghunathrao Gandekar Versus Anandrao Raghunathrao Gandekar and others** to support his case. To support his argument further on limitation the learned counsel has argued that when a condition is stipulated as a condition precedent for fructifying a contract, then unless that stipulated condition is fulfilled by the vendor, the suit filed by the vendee cannot be held to be time-barred. In this regard the counsel has relied upon the judgment rendered in **(1986) 3 SCC 300, Rojasara Ramjibhai Dahyabhai Versus Jani Narottamdas Lalubhai and other.** The counsel has further submitted that the limitation Act only bars the remedy but it does not extinguish the right as such. But when section 230-A of the Income Tax Act, is mandatory requirement, then even the remedy would not be barred till the requirements of this section are complied with. So, there would be no limitation for filing a suit for specific performance; in case the section 230-A of the Income Tax Act is attracted and the same is not complied with.

The learned counsel for the appellant has further argued that Courts below have wrongly held that the plaintiffs were not ready and willing to get the sale deed executed merely on the ground that the suit was not filed within limitation. It is submitted by the counsel that the question of limitation and the question of readiness and willingness of the vendee; to get the sale deed executed; are not same things.

Replying to the arguments of the learned Counsel for the appellant the learned counsel for the respondents/defendants No.1 and 2 has submitted that the document Exhibit P-29, the alleged extension of date of execution of the sale deed is totally a sham document. This document has been executed by Naresh Kumar in collusion with the plaintiffs. The fact that Naresh Kumar has been acting in collusion with the plaintiffs is duly established by the findings recorded in previous litigations right upto the this Court in the proceedings which were initiated by The Hissar Geeta Cooperative House Building Society, through plaintiff No.1 only and regarding this very land; claiming adverse possession. Although said Naresh Kumar was allegedly paid the balance and total consideration of the agreement to sell on 02-03-1990 only, however, on the same day, by getting the date already fixed in the suit pre-poned; and without even mentioning the said agreement to sell; Naresh Kumar had filed an admitting written statement in that suit filed by the aforesaid Society; admitting their claim qua their adverse possession over the suit land. This had led the Appellate Court to record a finding that Naresh Kumar was acting in collusion with the plaintiffs. This finding was never challenged by the plaintiffs. Still further, it is argued by the counsel for the respondents that the alleged power of attorney in favour of Naresh Kumar was executed even before the defendants No.1 and 2 had become owner of the property in question. Therefore, this power of attorney could not have conferred any authority upon Naresh Kumar to enter into an agreement or to execute any other document, like ExP-29, regarding the suit property on behalf of defendants No.1 and 2. Counsel has supported his argument by referring to the above-said earlier findings recorded by the Courts; wherein it was held that Naresh Kumar had no authority to act on behalf of defendants No.1 and 2 on the basis of alleged power of attorney. Otherwise also, counsel for the respondents has submitted that; this document Exhibit P-29 is an antedated document signed by Naresh Kumar much later. To support his contentions, the learned counsel for the respondents has submitted that plaintiffs had submitted legal notice Exhibit P4 upon the defendants on 16-09-1991. However, Exhibit P-29 did not find mention in this legal notice; although it referred to all other documents like Ex.P-27 and Ex.P-28. This document Exhibit P-29 is not mentioned even in other proceedings; like the appeal filed on 04-04-1990 before this Court. This aspect is further clarified by the fact that, without referring to any extension of date, in this notice, the plaintiffs had specifically said that they were not ready to wait till the decision of any other suit, which were pending at that point of time and they had impressed upon the defendants to execute the sale deed by 30-09-1991. Even in the legal notice Exhibit P-7 dated 22-08-1995; claimed to have been sent by the plaintiffs; this document Exhibit P-29 is not mentioned. Not only this, even the witnesses examined by the plaintiffs in this suit have not supported the plaintiffs qua this document. The scribe of the document has admitted that there is no entry of this document in his Register. Counsel has further submitted that even in the present plaint this document-Exhibit P-29 is not mentioned by the plaintiffs. In fact, this document has been created by the plaintiffs after filing of the present suit just to fill up the lacuna qua limitation. Obviously; Naresh Kumar; who has already been held to be acting in collusion with plaintiffs and without any authority by the courts in the other proceedings, has colluded with the plaintiffs to create this document. Hence, this document cannot validly create any condition making this agreement/contract to be contingent and conditional one.

Further; it was argued that Ex P-29 can; by no means, extend the period of limitation. It is established case that the defendants had replied to the plaintiffs on 10-10-1991 itself vide their reply dated 05-05-1991 that they were denying any such agreement. As per Article 54 of the Limitation Act, the limitation for filing the suit for specific performance is three years from the date specified for performance or from the date of refusal. The original date fixed for execution of the sale deed was 30-03-1990. Defendants No.1 and 2 had communicated their denial to the agreement and so their refusal to execute the sale deed on 10-10-1991. So, the limitation has rightly been held by the courts below as to have started from 10-10-1991. The plaintiffs cannot avoid limitation on the ground that the defendant had not obtained the ITC Certificate. The Courts have rightly held that even subsequently the defendant No.1 and 2 had not applied for any such certificate. So, if the plaintiffs could subsequently file suit without defendant No.1 and 2 obtaining the ITC Certificate, they could have filed that suit earlier as well. Counsel has further argued that the learned Courts below have rightly held that the plaintiffs were not ready and willing to get the sale deed executed because it is the conduct of the party which is to be assessed by the Court for finding out whether the party was ready and willing to get the sale deed executed or not. The slackness on the part of the plaintiff and attempt to find excuses for not filing the suit in time shows the conduct of the party to establish that the plaintiffs were not ready and willing to get the sale deed executed.

Replying the arguments on applicability of Section 230-A of the Income Tax Act, the counsel for the respondents have submitted that non-obtaining of the ITC Certificate under Section 230-A of Income Tax Act by a vendor is not a bar to file a suit for specific performance by a vendee of the agreement to sell. For this purpose he has relied upon the judgment reported in **2017 (4) RCR (Civil) 977 Punjab Breeder Ltd. Rajpura Versus Prabhu Dutt and others** and further contended that any stipulation qua obtaining the Income Tax Clearance does not make the contract contingent contract nor it extends any limitation by superseding Article 54 of the Limitation Act. Learned counsel has also supported all the other findings recorded by the court below against the appellants.

From the arguments of the learned Counsel, following substantial question of law has arisen for consideration of by this court:-

1 Whether the finding recorded by the courts below qua

the suit filed by the appellants plaintiffs being time barred is perverse?

2 Whether Section 230-A of the Income Tax Act has the effect of extending the period of limitation for filing of a suit for specific performance of an agreement to sell, particularly in the facts and circumstances of the present case?

Having heard the learned counsel for the parties and perusing the record, this court finds that, although the relevance of this document would be considered separately in coming paragraphs by this court, but one of the points of disputes between the parties is the validity of the document Ex. P29, which is heavily relied upon by the plaintiffs and the counsel for the plaintiffs/appellants have vehemently argued that the courts below have not recorded any finding regarding this document. By this document Naresh Kumar; on behalf of the defendants including the defendants No.1 and 2; is claimed by the plaintiffs to have extended the date of execution of the sale deed, by 15 days from the receipt of intimation by the plaintiff from the defendant qua the defendants having received the Income Tax Clearance Certificate from the Income Tax Department. The plaintiffs/appellant claimed that the original date; 30-03-1990; fixed for execution of the sale deed as per the agreement to sell dated 25-09-1989, which was signed by the respondents themselves, was extended to the extent mentioned above by agreeing to this extension subsequently on 12-03-1990, which was signed by the GPA holder of the respondents, namely Naresh Kumar. Taking the original agreement to sell dated 25-09-1989 to be proved against the plaintiff, it can safely be said that it was a concluded and final agreement between the parties. This agreement provided a date, 30-03-1990 for execution of sale deed, with specified consequences for not getting the sale deed executed on that specified date; including the forfeiture of contract and the earnest money on one side and entitling to claim a sale deed through the court on the other side. Hence the date fixed was an essential part of the agreement. The plaintiff claims to have got altered this part of the agreement vide subsequent agreement Ex. P29 dated 12-03-1990, doing away with any specified date for execution of sale deed and; statedly, giving an indefinite time frame to the plaintiffs for claiming execution of sale deed, with a claim that the date fixed in the original contract need not be adhered to in its performance. This kind of alteration; rendering a part of original contract as liable to be not performed; is duly envisaged by the Section 62 of the Indian contract Act and which describes such situation as an alteration of contract. Like original contract the substituted contract in altered form shall; again require all the ingredients of an enforceable agreement, like free consent, capacity to contract as well as the consideration. Admittedly no consideration is paid by the plaintiffs to the defendants or to their alleged GPA holder Naresh Kumar for latter agreeing to the doing away with the fixed date of execution of the sale deed and agreeing to new extended date. The argument of the learned Counsel that since the time was not the essence of the contract therefore no consideration would be required for the substituted contract qua the extension of specified date is not sustainable. The time not being of essence for the purpose of seeking performance with reference to the originally agreed date; and the claiming a substituted contract qua the newly agreed and altered date are altogether two different things. The first is envisaged by the Section 55 of the Indian Contract Act which deals with performance whereas the later is envisaged by Section 62 of the Indian contract Act which is contained in a different chapter and deal with substituted contracts. It is one thing to say that a party could not perform within specified time due to some circumstances and it could perform within further reasonable time and it is altogether different to say that a party need not perform within originally specified time because the other party had agreed to change the date of performance by changing the conditions of the original contract. In the later case, it has something to do with alteration of the contract not with the performance. Even Section 9 of the Specific Relief Act provides that a defendant in suit for specific performance is entitled to take as defense; as to the contract being enforced, any ground which he is entitled to take under Indian Contract Act. Otherwise also, by no means it could be said that date fixed for performance is not of essence in a case where non-performance on that date is stipulated to invite the specified and agreed consequences like forfeiture of earnest money and forfeiture of contract on one side and the entitlement of getting the enforcement of the agreement with compensation on the other side. The start of limitation is also prescribed from this specified date under the Limitation Act. Hence an agreement to alter all these legally enforceable consequences would definitely be a new contract requiring fulfilling all ingredients of a valid contract, including the presence of consideration. So far as the capacity to contract and consent to the change in contract is concerned, admittedly this extension Ex. P29 was not signed by the respondents. The plaintiffs have claimed that the said extension document was signed by Naresh Kumar on behalf of the respondents as their GPA holder. However this argument of the plaintiffs cannot be accepted for three reasons. Firstly, the said GPA was allegedly executed on 23-10-1989; when the granter of this GPA, i.e., Respondents had not even become owners of the suit property. They became owners subsequently on 30-10-1989. Therefore this GPA cannot be held to be conferring any authority on Naresh Kumar qua the suit property. Secondly, although the agreement to sell in question was executed on 25-09-1989 and the GPA was executed about a month after that; yet the said GPA does not contain even mention of the agreement to sell. So this GPA cannot be taken to be any authority qua the said agreement to sell. No special power of attorney of respondents in favour of the said Naresh Kumar is even alleged by the plaintiffs or by the said Naresh Kumar. Hence the said Naresh Kumar did not have any authority to extend the date of execution of the sale deed on behalf of the respondents. This has been so held upto this Court, earlier also, in another litigation; which was initiated by the Society through plaintiff No.1 himself; against the respondents/defendants No.1 and 2 through the same GPA holder Naresh Kumar. Thirdly, even if for the sake of argument, the GPA is taken to have given some kind of authority to Naresh Kumar, he lost this authority because he had acted fraudulently and in collusion with the plaintiff No.1 against the interest of the respondents; when he filed admitting written statement on 02-03-1990, in earlier case filed by the Society through the plaintiff No.1, which was based on adverse possession and in negation of agreement to sell, and in this written statement he had not even made a mention of the agreement to sell; despite the fact that on the same day i.e. 02-03-1990 he is alleged to have received a substantial amount from the plaintiffs under the same agreement to sell. This fraudulent act of the said Naresh Kumar was also held by the courts, in the appeal immediately filed by the respondents/defendant No.1 and 2, to have denuded Naresh Kumar of any authority to act on behalf of the respondents/defendants No.1 and 2. All the above findings regarding the authority of Naresh Kumar on the basis of GPA were not further challenged and attained finality. If on the basis of the said GPA Naresh Kumar was not having any authority to act on behalf of the respondents/defendants No.1 and 2 qua the suit property on 02-03-1990 then on the basis of the same GPA he cannot claim to have any authority on 12-03-1990. Hence it has to be held that that there was no consent of respondents / defendants No.1 and

2 to the extension agreement dated 12-03-1990; Ex.P-29. So, it is not binding as a contract upon the respondents.

Still further, this court finds substance in the argument of the learned Counsel for the respondents that this document was created by the plaintiffs as antedated in collusion with said Naresh Kumar. In the legal notice submitted by the plaintiffs upon the defendants on 16-09-1991, the document Exhibit P-29 does not find mention; although it referred to all other documents like Exhibit P-27 and Exhibit P-28. The mention of this document Exhibit P-29 is also absent in other proceedings between parties. This aspect is further clarified by the fact that, without referring to any extension of date, in the legal notice, the plaintiffs had insisted upon performance of agreement by 30-09-1991. Even in the present plaint, this document-Exhibit P-29 is not specifically mentioned by the plaintiffs. Not only this even the witnesses examined by the plaintiffs in the suit have not supported the case of the plaintiffs qua this document. The scribe of the document has admitted that there is no entry of this document in his Register. All these aspects show that, in all preponderance of probabilities, this document has been created by the plaintiffs subsequently for filling up the lacuna qua limitation. Obviously; since Naresh Kumar was acting in collusion with plaintiffs and against the interest of the respondents on 02-03-1990, so said Naresh Kumar would happily oblige the plaintiffs to create this document on 12-03-1990. Although ld counsel has relied upon certain judgments, however those are distinguishable on the facts of the present case. Hence this court is of the opinion that this document does not bind the defendants in any manner.

Further, this court does not find any illegality or irregularity in the finding recorded by the courts below holding the suit of the plaintiffs / appellants being barred by limitation. So far as the limitation for filing the suit for specific performance is concerned; that is governed by Article 54 in the Limitation Act; which prescribes the limitation to be three years. The same is as reproduced hereinbelow:-

| Sr. No. | DESCRIPTIO OF SUIT | PERIOD OF LIMITATION | TIME FROM WHICH PERIOD BEGINS TO RUN |
|---|---|---|---|
| 54 | For specific performance of a contract | Three years | The date fixed for the performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused. |

The above-said provision prescribes two reference dates. One is the date fixed for performance and other is the date when the plaintiff had the notice that the performance is refused. In the present case, the date fixed for performance was 30-03-1990. However, the suit was filed by the plaintiffs on 27-10-1995. Therefore, this is patently time barred having reference to the date fixed for performance. Although, the appellant claimed that vide document Ex.P-29; the date fixed in the original agreement to sell for performance was subsequently changed; by another agreement dated 12-03-1990; thereby agreeing to the extension of the date for performance; upto the period of 15 days after the plaintiff received notice from the defendants regarding the latter having obtained clearance certificate from the Income Tax Department, however, this subsequent alleged agreement is not enforceable before court as a contract due to the same not fulfilling the requirement of a valid contract; as per the Indian Contract Act, as held above. Hence this document Ex.P-29 cannot be taken as extending the date of performance of contract for the purpose of calculation of Limitation for filing the suit for specific performance. Otherwise also, even if this document Ex.P-29 is taken as a valid document for the sake of argument of the learned counsel for the appellant, still it cannot save the suit of the plaintiffs from being held to be time barred; because it has come on record, as an admitted fact, that the plaintiffs themselves had given a notice to the defendants No.1 and 2 on 16-09-1991. This notice was duly replied by the defendants No. 1 and 2 vide their reply dated 05-05-1991 and in this reply they had denied having executed any agreement in favour of the plaintiff. This reply of the defendants was received by the plaintiffs on 10-10-1991. Therefore, in any case; the limitation would start running from 10-10-1991. Even with reference to this date the suit of the plaintiffs is time barred. So the document Ex. P-29 is; otherwise also; totally irrelevant in view of Article 54 of the Limitation Act; which makes the date of receipt of denial/refusal also as the starting date for calculating the limitation period for filing suit for specific performance.

Argument of the learned Counsel for the appellant that since Section 230A of the Income Tax Act starts with a non-obstante clause and hence the same is mandatory in nature, therefore, in case the vendor is required to obtain the Income Tax Clearance Certificate under Section 230A of Income Tax Act; than the limitation would stand extended till that Certificate is obtained and communicated to the plaintiff, as was required in the present case also, and further argument that, in fact, in such a situation the plaintiff shall have indefinite time period to file a suit for specific performance, though appear to be attractive in the first blush, yet it totally lacks substance. It would be appropriate to have reference to this section of Income Tax Act and the same is as under:-

> 230A. **Restrictions on registration of transfers of immovable property in certain cases.**
>
> (1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit, or extinguish the right, title or interest of any

person to or in any property valued at more than five lakh rupees, no registering officer appointed under that Act shall register any such document, unless the Assessing Officer certifies that

(a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian Income-tax Act, 1922 (11 of 1922), the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1957 (29 of 1957), the Gift-tax Act, 1958 (18 of 1958), the Super Profits Tax Act, 1963 (14 of 1963), and the Companies (Profits) Surtax Act, 1964 (7 of 1964), or

(b) the registration of the document will not prejudicially affect the recovery of any existing liability under any of the aforesaid Acts.

(2) The application for the certificate required under sub-section (1) shall be made by the person referred to in that sub-section and shall be in such form and shall contain such particulars as may be prescribed.

(3) The provisions of sub-section (1) shall not apply in a case where the person referred to in that sub-section is any such institution, association or body, or belongs to any such class of institutions, associations or bodies, as the Board may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

A bare perusal of the above-said section makes it clear that of course, this section, having a non-obstante clause, is mandatory in its nature. However, that mandate of this section is directed against and restricted to the Registrar appointed under the Act and required to register the documents under the Indian Registration Act. There is no mandate in this section qua any other authority much less to speak of any court of law. Secondly, this mandate is restricted to the documents which are required to be registered under clause (a) to clause (e) of sub-section (1) section 17 of the Indian Registration Act. There is no embargo upon registration under any other provision of the Registration Act, like excepted or exempted or the documents presented voluntarily for registration, or if the document is required to be registered under any other Act. Moreover, Section 23 of Registration Act also provides for four months time; from the date of execution of the document or from the date of decree passed by the court; for the presentation of the documents for registration, even qua those documents which are required to be registered under clause (a) to clause (e) of sub-section (1) of Section 17 of the Registration Act.

The above defined scope of embargo created under Section 230A of the Income Tax Act, makes it clear that this embargo has no immediate concern with the filing of the suit for specific performance. No part of Section 230A of Income Tax Act saves or precludes the plaintiff from filing the suit for specific performance as per the date fixed in the agreement or date of refusal; as is required by the Limitation Act. So, the embargo upon the powers of the Registrar; created under Section 230A of Income Tax Act; and the requirement of filing of the suit for specific performance before the Court; are two independent aspects and operate at altogether two different stages of a contract involving the sale of immovable property. In case of a contested performance, the embargo of Section 230A would be operative only after the right of the plaintiff to get the sale deed registered has been granted by the competent Court in a suit for specific performance. However, before that stage is reached, the entire procedure of suit for specific performance, leading to a decree in favour of the plaintiff has to be undergone. Therefore, the suit for specific performance has to be filed as per the agreement within limitation; irrespective of the provision of Section 230A of the Income Tax Act. There is one more reason which makes this aspect more explicit. Section 20 of the Specific Relief Act makes it clear that the court is not bound to grant the relief of specific performance to the plaintiff only because it is lawful to do so. It is the discretion of the Court. So, in a given suit despite everything being legally in favour of the petitioner, there is no certainty that the suit would result in a decree against the defendant for getting the sale deed registered in favour of the plaintiff. So, the stage and situation where the embargo of Section 230A of Income Tax Act is to operate may not even arise in a suit for specific performance. Hence, it is to be held that the provisions of Section 230A of the Income Tax Act do not have the effect of extending the period of limitation for filing a suit for specific performance.

The next argument of the learned Counsel for the appellant that in the given facts of the present case, agreement to sell could not have been fragmented by the plaintiffs for the purpose of specific performance by filing the suits against the respondents only, because the remaining vendors had also not got the requisite income tax clearance as per the agreement; nor they refused performance – is also not sustainable. There is no provision in the Specific Relief Act, to provide this exemption to the plaintiffs. Rather Section 12 provides for fragmented performance of that part, which can be performed by a party. Even if, some left-out part is rendered not fit for performance the Court can grant compensation for that part as per Section 12. Otherwise also, the trial Court had ample power to require a party to do all the acts necessary for performance. In the present case the plaintiffs themselves have argued that the remaining vendors had not even refused performance of their part. Therefore, there was nothing to stop the plaintiffs from filing suit against the refusing vendors/ respondents qua their share in the suit property which was a defined and specified share. Needless to say; ultimately also the suit was filed by the plaintiffs only against the refusing vendors/defendants No.1 and 2.

The next argument of the learned Counsel that since ultimately the Income Tax Clearance had come qua the entire land, including the share of the respondents and the condition of section 230A was fulfilled, and the remaining vendors/ co-sharers had executed the sale deed qua their share but the respondents had not executed the same, therefore, the suit was rightly filed by the plaintiffs after receipt of the IT clearance – is also not sustainable. The bare perusal of Section 230A of the Income Tax Act shows, that it is intended to get tax clearance regarding the tax liability of the individual intending vendor not regarding the property being sold. Therefore, Section 230A itself has provided that the application for IT clearance shall be made by intending vendor himself. In the present case, admittedly the respondents had not applied for any IT clearance and the alleged clearance certificate was manipulated only by the same Naresh Kumar, from whom the GPA had even been specifically withdrawn by this time. So even ultimately the plaintiffs had filed the suit without there being any valid IT clearance as per the Section 230A. If they could file this case without this certificate from the respondents; they could have filed it earlier as well. Otherwise also the document purported to be the IT clearance Certificate has not been proved on record as per the law of evidence. The Income Tax official who appeared as a witness in the case has deposed that the original of the application moved for getting this certificate was not available in the office, nor any original record of receipt of the same in the office was produced before the Court. Moreover, the dates mentioned on this document and the endorsement on it, does not give a clear picture as to when it was issued, if at all it was issued; by the Income Tax office.

Further argument of the learned counsel that since even the original agreement also had a stipulation as to the Income Tax clearance; though without specifying any time limit for obtaining the same or for filing of the suit, therefore, the contract shall be a contingent contract for the purpose of limitation and the plaintiffs would be entitled to wait till that indefinite period till the defendants obtained the Income Tax clearance Certificate, is also liable to be noticed only to be rejected. The Limitation Act, prescribes the limitation to start from the date fixed for execution of sale deed or from the date of notice of refusal. There can be some ambiguity qua the date fixed for execution of the sale deed because it can be expressed by the parties in various forms and languages. However, the Hon'ble Supreme Court in case of **(2009) 5 SCC 462, Ahmad Sahab Abdul Mulla Versus Bibijan and others** and **(2016) 15 SCC 322, Madina Begum and others Versus Shiv Murti Prasad Pandey and others** has clarified that the period for the limitation to start from the date fixed for execution of sale deed; it has to be a specified 'Calendar Date'. If no 'Calendar Date' is specified in the agreement then the limitation would start running from the date of notice of refusal to the plaintiff. This Court has in **RSA No.1747 of 2017 decided on 16.11.2017 titled as Ved Parkash vs. Mahender and others** further explained that if the stipulation regarding execution of sale deed provides for happening of an event as the date fixed for the execution of sale deed, then it shall be taken as a fixed 'Calendar Date' for the purpose of limitation only if the event is such which is bound to happen on a calendar date and happening of that event is not dependent upon the volition of the parties to the agreement, such as, a stipulation providing that the sale deed would be executed after a specified time after the decision of a pending court case. In that situation, the date of decision would be the determining calendar date. In all other cases where the date fixed for execution of the sale deed is not a specified calendar date, rather, stipulation provides happening of an event as the date; where the event is purely dependent upon the volition of the parties, stipulation would not make the contract a contingent contract for the purpose of limitation and in such a situation the limitation for filing the suit for specific performance cannot be extended for indefinite period. The judgments cited by the counsel for the appellant on this point as well, are distinguishable on the facts. So any stipulation involving obtaining of Income Tax clearance certificate at the volition of the parties would not make the agreement as a contingent contract for the purpose of limitation.

The argument of the learned Counsel that the Courts have gone wrong in law so far as they have made the finding regarding the suit being time barred as the ground for holding that the plaintiffs were not ready and willing to get the sale deed executed, is misconceived, both; in facts and in law. Although mere finding as to the suit being time barred cannot be made a basis to hold that the plaintiff was not ready and willing to get the sale deed executed; because the delay can be due to the reasons other than the readiness and willingness of the plaintiff as well. However, the conduct involving the delay in filing the suit can definitely be made a basis to decipher the readiness and willingness of the plaintiff. Therefore, there can be some common factors contributing to the suit being time barred and also reflecting upon the readiness and willingness of the plaintiff. There is nothing wrong if the court takes into consideration such factors for finding out the readiness and willingness of the plaintiff. In the present case also, the courts have taken into consideration only such factors and conduct of the plaintiffs for recording finding upon readiness and willingness. If incidentally or otherwise some common facts or conduct finds mention; to some extent in finding qua the limitation as well, that would not make the judgments as perverse.

No other argument was raised by the learned Counsel for the parties.

In view of the above, finding no merits in the present appeal, the same is, therefore, dismissed and the judgments and decrees passed by the Courts below are upheld.

**( RAJBIR SEHRAWAT)**
**JUDGE**

**MAY 02 , 2018**
**sv**

1. Whether speaking/reasoned Yes/No.
2. Whether reportable ? Yes/No.