

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

**RSA No.5836 of 2017 (O&M)
Date of Decision.11.01.2019**

Om Parkash and others
Vs
Premwati and others

...Appellants
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surender Saini, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.15418-C of 2017

For the reasons stated in the application, delay of 15 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.5836 of 2017

The appellants-plaintiffs have not been successful in
obtaining the discretionary relief under Section 20 of the Specific
Relief Act in respect of agreement to sell dated 28.02.1997 in suit filed
in the year 2016.

The plaintiffs alleged that the defendants had entered into
agreement to sell aforementioned in respect of the suit property. Time
was not the essence of the agreement. However, a sum of ₹1,25,000/-
against total sale consideration of ₹4,25,000/- was paid. The terms and
conditions of the agreement also revealed that there were certain civil
suits pending in respect of the land and the defendant No.1 would
inform the decision to the plaintiffs within three months. Defendant
No.1 never informed the decision and therefore, cause of action arose
qua execution of the sale deed but the defendants clandestinely sold

the property to defendants No.2 and 3 vide sale deed dated 5.5.2005 for a consideration of ₹8,50,000/- and therefore, cause of action accrued to file the suit.

Defendants No.2 and 3 i.e. subsequent vendees opposed the suit and denied the agreement to sell and claimed themselves to be the bona fide purchasers for valuable consideration. The alleged understanding between plaintiffs and defendant No.1 to defer the alleged execution of the sale deed was stated to be a figment of imagination.

Learned counsel appearing on behalf of the appellants submitted that once time was not essence of agreement to sell, provisions of Article 54 of the Limitation Act would come into play and the limitation would be three years and if no such date, three years from the date when plaintiff had noticed that performance was breached. The sale deed is of the year 2005 and therefore, suit filed in the year 2006 could not have been said to be wanting the readiness and willingness.

I am afraid the aforementioned argument is not sustainable as no sane person would remain idle nor pendency of the litigation has been proved, much less, notice served by the plaintiffs calling upon the defendants to apprise. There is no whisper of handing over the possession.

In view of the aforementioned situation, the concurrent finding of fact and law arrived at by the Courts below in confining to alternative relief with interest cannot be said to be suffering from illegality and perversity, much less, no substantial question of law

arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

January 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No