

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

RSA No.3040 of 2017(O&M)

Date of decision: 18.2.2020

Mohinder Kaur and othersAppellants

VERSUS

Harpinder Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jagdish Singh Mahal, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby the appellants/plaintiffs have been denied principal relief of specific performance of agreement to sell dated 29.12.2005 and they have been granted alternative relief of recovery of Rs.2,80,000/- with interest at the rate of 6% per annum from the date of receipt of payment against respondent/defendant No.1.

Counsel for the appellants would argue that as there was dispute inter se defendant No.1 on one hand and defendants No.2 and 3 on the other side regarding mortgage, filing of suit for specific performance on the last day of expiry of limitation cannot be allowed to stand in the way of appellants to be granted principal relief of specific performance of agreement of sale. It is further argued that documents have been produced by defendants No.2 and 3 in respect of dispute with defendant No.1 and the said dispute was settled in the year 2009.

The case set up by the appellants/plaintiffs is that defendant No.1 agreed to sell land measuring 35 kanal 18 marlas being 1/4th share out of land measuring 143 kanal 10 marlas vide agreement dated 29.12.2005, at the rate of Rs.2,50,000/- per acre and received Rs.2,70,000/- towards earnest money. The target date was fixed on 29.09.2003. With mutual consent, target date was extended till 31.12.2004 by executing fresh agreement to sell. On 03.01.2005, stipulated date was again extended till 30 Haar 2005 i.e. 18.07.2005 and a sum of Rs.10,000/- was paid by the plaintiff to defendant No.1. On 18.07.2005, stipulated date was again extended upto 28.12.2005 and 29.12.2005 and endorsement was made at the back of agreement to sell. On 29.12.2005, the target date was again extended till 18.01.2006. It is averred that on 18.01.2006, plaintiffs remained present in the office of Sub Registrar concerned and got their presence marked by filing affidavit dated 18.01.2006.

Indisputably, the suit seeking specific performance of the agreement was filed on 17.01.2009 i.e. on the last date before expiry of limitation w.e.f. 18.01.2006. Counsel for the appellants, in response to a query, would fairly inform that there is no plea raised by the appellants as to why they waited for three years to approach the Court for seeking specific performance of agreement even if they were ready and willing to perform their part of the agreement on 18.01.2006. He has conceded that it is never the plea of the appellants that because of dispute inter se the defendants, they did not file the suit or they had knowledge of any such dispute inter se the defendants. That being so, the appellants cannot derive any advantage to their contentions from the evidence brought on record by defendants No.2 and 3 for the purpose of establishing their defence plea.

The specific performance is a discretionary relief and merely because agreement to sell has been proved, the Court may not allow specific performance thereof. This Court is not oblivious of the fact that discretion exercised by the Court should not be arbitrary, rather based upon sound and established principles in law. Taking into consideration the various extensions coupled with failure of the appellants to approach the Court for a period of three years without any tangible explanation, I find it difficult to accept that discretion exercised by the Courts allowing alternative relief of recovery in place of principal relief of specific performance needs intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

FEBRUARY 18, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no