

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

**RSA No.1406 of 1988  
Date of Decision: 05.08.2015**

Sudesh Kumari .....Appellant

Versus

Ram Parkash & another ....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA**

Present: Ms. Harveen Kaur, Advocate for  
Mr. K.S.Cheema, Advocate for the appellant.

Mr. Ishwal Lal, Advocate for respondent No.2.

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**RAJIVE BHALLA, J (ORAL)**

The appellant challenges judgment and decree dated 13.01.1998 passed by the additional District Judge, Jalandhar, allowing the appeal filed by the respondent and dismissing her suit.

Counsel for the appellant submits that as the appellant did not seek an injunction against the true owner but only against a person, who purchased a part of the land in dispute, the question of law that calls for an answer is whether the injunction has been wrongly denied by holding that injunction cannot be claimed against the true owner.

Counsel for Bakshi Ram-respondent No.2 states that the allotment made in favour of Partap Singh has been cancelled and the cancellation has been affirmed upto this Court in RSA No.1780 of 1987. Bakshi Ram who was

attorney of Partap Singh, even otherwise had no right to enter into an agreement to sell. Counsel for Bakshi Ram also submits that as the appellant alleges an agreement to sell in her favour, she was required in view of the prohibition contained in Section 41 (h) of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") to file a suit for specific performance instead of filing a suit for permanent injunction.

I have heard counsel for the parties and find no reason to grant any relief to the appellant much less to hold that the substantial question of law asserted, arises for adjudication. The appellant filed a suit for a permanent injunction, on the basis of an agreement to sell, dated 27.10.1980, allegedly executed by Bakshi Ram. The suit was decreed by the trial Court but the first appellate Court has reversed the judgment and decree by placing reliance upon Section 41 (h) of the Act and holding that the appellant was required to file a suit for specific performance. I find no reason to hold that the aforesaid finding suffers from any error of law or jurisdiction. Section 41 of the Act provides the circumstances in which an injunction is to be refused. Section 41 (h) clearly postulates that when an equally efficacious relief can be obtained by any other usual mode, an injunction shall be refused. Admittedly, the appellant claims an agreement to sell in her favour. The remedy in case of a subsisting

agreement to sell is to file a suit for specific performance. This apart, Bakshi Ram was a mere attorney of Partap Singh. The allotment made in favour of Partap Singh has been cancelled. Consequently, the findings recorded by the first appellate Court are affirmed and the appeal is dismissed with no order as to costs.

05.08.2015  
Vinay

**[ RAJIVE BHALLA ]**  
**JUDGE**