

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-2032-2010 (O&M)

Date of decision: 22.09.2015

Surjit Singh

..... Appellant

Versus

Bhajan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

PRESENT: Mr. Vipin Mahajan, Advocate for the appellant.

Mr. JS Verka, Advocate for the respondent.

AMIT RAWAL, J. (ORAL)

Challenge in the present appeal is to the judgment and decree dated 12.11.2009 passed by the lower Appellate Court, whereby, the suit for specific performance of agreement to sell dated 28.01.1985 filed by the respondent-plaintiff has been decreed.

Mr. Vipin Mahajan, learned counsel appearing for appellant-defendant submits that an agreement to sell dated 28.01.1985 in respect of land measuring 25 kanals 7 marlas i.e. 1/3rd share of total land measuring 76 kanals 2 marlas was entered into between the appellant-defendant and respondent-plaintiff, who are none else, but brothers. It was contingent agreement, with a presumption, that Teja Singh, their father, would be allotted the aforementioned land. The trial Court while taking into notice the provisions of Section 8 of the Punjab Package Deal Properties (Disposal), Rules, 1976, (for short 'the Rules of 1976') held

that the suit property could not be alienated dismissed the suit. However, the learned lower Appellate Court, reversed the finding, by holding that respondent-plaintiff was ready and willing to perform his part of the agreement and the provisions of Section 8 of the Rules of 1976, would not be a bar to sell the property in case the purchaser is a Scheduled Caste.

Mr. JS Verka, learned counsel appearing for respondent-plaintiff submits that appellant has not challenged findings on issues whereby, it has been found that respondent-plaintiff was ready and willing to perform his part of the agreement. He further submits that the embargo as sought to be projected as per Section 8 of the Rules of 1976 would not be made applicable as both the parties are members of the same family of Scheduled Castes.

I have heard learned counsel for parties and appraised the paper book and record of the Courts below.

The agreement to sell is admitted. It is a matter of record that sale certificate in favour of Teja Singh, after the payment of price of property in question was executed on 30.06.1999. In my view the findings rendered by the lower Appellate Court, are based upon the correct appreciation of oral as well as documentary evidence. Section 8 of the Rules of 1976, would not come in the way of respondent-plaintiff in seeking the discretionary relief under Section 20 of the Specific Relief Act. The aforementioned Rules of 1976, could be pressed into service, had there been some privity between third party. In the instant case, agreement to sell was executed between two brothers, essence of which

was that, one of the brothers has parted with his share which devolve upon him as per share of their father Teja Singh, who died much prior to the execution of the agreement to sell in question.

In view of what has been observed above, I do not find any illegality or infirmity, much less, perversity in the findings rendered by lower Appellate Court, which are based on appreciation of oral and documentary evidence. No substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

September 22, 2015
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(AMIT RAWAL)
JUDGE