

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

112

Regular Second Appeal No.4593 of 2013 (O&M)
Date of Decision: August 25, 2015

Rajwati and others

...Appellants

Versus

Shamsher Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manoj Kaushik, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in the present appeal is to the judgments and decree passed by the Courts below, whereby the suit for possession by way of specific performance on the basis of an agreement to sell dated 27.06.2000 entered into between the respondent No.1-plaintiff and Desraj predecessor-in-interest of the appellants, has been decreed qua 13 kanals and 18 marlas by way of paying a proportionate amount of the sale consideration, although the agreement to sell was for 18 kanals and 7 marlas. The suit has been decreed to the extent of 13 kanals and 18 marlas on the ground that the remaining land has been acquired by the Government of Haryana.

2. It is the contention of the counsel for the appellants that the suit for specific performance could not have been decreed, specially when as per the agreement, the sale, if any, could have been with regard to the total land and since some of the land has been acquired leaving only 13 kanals and 18 marlas as balance land at the hands of the appellants-defendants, the contract stands frustrated and, therefore, the decree, as has been passed, could not have been so done.

3. This contention of the counsel for the appellants-defendants cannot be accepted in the light of the fact that the agreement to sell was qua the total land admittedly, however, some of the land has been acquired i.e. 4 kanals and 9 marlas out of land measuring 18 kanals 7 marlas, which was the subject of the agreement to sell. The remaining land i.e. 13 kanals and 18 marlas is still at the hands of the appellants-defendants and, therefore, qua the said land, the Courts below have rightly decreed the suit of the respondent-plaintiff.

4. There being no illegality in the judgments passed by the Courts below, the present appeal is devoid of merit, specially when no substantial question of law arises for consideration of this Court.

5. The appeal, therefore, stands dismissed.

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.3706-C of 2015, also stands dismissed.

August 25, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE