

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**C.M. Nos. 10486-87-C of 2015 and
RSA No. 2823 of 2014**

Date of decision: 31.08.2015

Krishna Devi

...APPELLANT

VS.

Jai Narain and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pawan Kumar Hooda, Advocate,
for the appellant.

Mr. Rajbir Sehrawat, Advocate,
for the caveator-respondents No. 3 to 5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

RSA No. 2823 of 2014

The appellant-plaintiff has challenged the concurrent findings recorded by the Courts below in the present appeal, on the basis of which, the suit for symbolic possession by way of specific performance of agreement to sell dated 16.05.2007 filed by her as also the appeal preferred by her stand dismissed.

It is the contention of the counsel for the appellant that respondents-defendants No. 1 and 2 were fully aware of the fact that they have already entered into an agreement to sell dated 11.04.1988 Ex. DW1/B. Despite that, they have proceeded to enter into a further agreement to sell dated 16.05.2007 in favour of the appellant-plaintiff. In the said agreement, it was also mentioned that she has been given the possession of the suit property by the respondents-defendants No. 1 and 2. He contends

that the suit for specific performance, as has been prayed, should have been decreed in favour of the appellant-plaintiff and further if the same could not have been so granted, the refund of the amount should have been granted along with interest at a higher rate. His further submission is that the execution of an agreement to sell in favour of the appellant-plaintiff dated 16.05.2007 stands duly proved and, therefore, there was no reason as to why the specific performance suit should not have been decreed by the Courts below. The judgments passed by the Courts below, therefore, deserve to be set aside by allowing the present appeal.

Having considered the submissions made by the counsel for the appellant-plaintiff and having gone through the judgments passed by the Courts below, these contentions cannot be accepted as it has come on record that prior to the execution of the agreement to sell dated 16.05.2007, an agreement to sell dated 11.04.1988 was entered into by the father of defendants No. 1 and 2, namely, Badlu, through whom they have inherited the property on his death. What has come on record is that the appellant-plaintiff was also aware of this fact and in fact, has misled defendants No. 1 and 2 by stating that Jagbir Singh-defendant No. 3 has died and, therefore, there being no issues, who could take over or execute the agreement to sell, the land could be sold to her. There being evidence to the effect with regard to the execution of the earlier agreement to sell dated 11.04.1988, which has been duly proved, the Courts below have rightly declined the prayer of the appellant-plaintiff with regard to the specific performance. The suit has been decreed to the extent that she would be entitled to the refund of the earnest money amounting to ₹ 6,000/- along with interest at the rate of 6% per annum from the date of filing of suit till its realization, which, in the

given facts and circumstances of the case, cannot be said to be unreasonable or unjustified or would require enhancement thereof especially in the light of the peculiar facts and circumstances of the present case when the appellant-plaintiff was aware of the earlier agreement to sell dated 11.04.1988.

Finding no merit in the present appeal especially when there being concurrent findings recorded by the Courts below and there being no substantial question of law involved in the present appeal, the same stands dismissed.

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In the light of the dismissal of the main appeal, no separate orders are required to be passed in these applications, therefore, the same stand dismissed

August 31, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE