

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

RSA No.2208 of 2008
Date of decision : 02.08.2016

Rajinder Singh

...Appellant

Versus

Sawinder Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rajiv Kapila, Advocate for the appellant.

Mr. Kanwal Goyal, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for specific performance of agreement to sell dated 24.09.1990 to the extent of 42 bighas 5 biswas along with ₹1,00,000/-, has been ordered.

It is contended that the aforementioned decree could not have been passed, for, respondent-plaintiff did not honour the commitment by adhering to the agreement to sell-cum-compromise-cum-exchange aforementioned, thus, there is illegality and perversity. Court has only granted the relief to the respondent-plaintiff but overlooked the

performance/role/part of the respondent-plaintiff. The trial Court granted the decree in respect of 6 ½ acres of land and ₹80,000/- which could not have been granted as the appellant-defendant was not having the full ownership being only co-owners. In fact, the respondent-plaintiff was not ready and willing to perform his part and, therefore, the discretion ought not to have been exercised and thus urges this Court for setting aside of the judgment and decree of the lower Appellate Court.

Mr. Kanwal Goyal, learned counsel appearing on behalf of respondent submits that Civil Suit bearing No.396 dated 26.07.1989 seeking possession of the land measuring 42 bighas 5 biswas against the appellant-defendant had been filed. During the pendency of the aforementioned suit, the compromise in the shape of agreement *ibid* was entered into for 42 bighas 5 biswa approximately comes to 5 acres of land, but as per the compromise, defendant had agreed to transfer 6 ½ acres of land along with ₹80,000/- as the land was not cultivable. Having failed to do so, the plaintiff was constrained to file the suit, aforementioned. The trial Court granted the specific performance of 6 ½ acres of land and ₹80,000/-. Aggrieved of the same, both the parties filed the appeal and appeal of the respondent-plaintiff confining the plea of 42 bighas 5 biswas has been accepted, while rejecting the appeal of the appellant-defendant. He submits that appellant-defendant had agreed to get the share determined on a joint ownership in respect of 6 ½ share and failed to perform his role and in fact whole idea of entering into the compromise was to circumvent decree the possession and thus urges this Court for affirmation of the findings rendered by the lower Appellate Court as there is no illegality and perversity, much less, no

substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of learned counsel for the appellant-defendant, for, that vis-a-vis filing of the suit is not disputed. The sole contention of the appellant-defendant is that the respondent-plaintiff did not perform his part/role regarding the transfer of the property mentioned in Clause-I of the agreement. I am of the view that plaintiff had been very fair and genuine with regard to the claiming of the possession of the property owned by him. Even there was no compromise, suit though on the basis of the title could have been decreed. Such an act on the part of the defendant, in my view, is not only of harassment but also to bring hurdles. The decree with regard to the 42 bighas 5 biswas approximately 5 acres of land is basically owned by the respondent-plaintiff for which the possession was sought. The most innocuous decree does not come in the realm of the perversity or fallacy.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial questions of law arises for determination.

Dismissed.

02.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

No