

**202**

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

**Date of decision : 08.12.2016**

**1.**

**RSA-4187-2009 (O&M)**

Raj Singh

... Appellant

Versus

Patasho Devi and others

... Respondents

**2.**

**RSA-4188-2009 (O&M)**

Raj Singh

... Appellant

Versus

Jitender Singh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sushil Jain, Advocate  
for the appellant(s) in both the appeals.

Mr. Sandeep Singh Ghangas, Advocate for  
Mr. Sukhdeep Parmar, Advocate  
for respondent No.1 in RSA-4187-2009 and  
for respondent No.5 (in RSA-4188-2009).

Mr. Bhupinder Singh Bairagi, Advocate  
for respondent No.2 in both the appeals.

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**AMIT RAWAL, J. (ORAL)**

This order of mine shall dispose of two appeals,  
aforementioned, arising out of the dismissal of the Civil Suit bearing  
No.264 of 2006 seeking specific performance of the agreements to sell  
dated 23.07.1999 & 15.12.1999, though decreed by the trial Court.

Before the lower Appellate Court, two appeals were filed one by defendant No.4-Jitender and other by defendant No.5-Patasho Devi and it is, background of the matter, two appeals have been filed before this Court.

Mr. Sushil Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that defendant Nos.1 to 3 had entered into agreements to sell, aforementioned, in respect of land on the premise that they had obtained a judgment and decree dated 21.12.1996 in a civil suit seeking specific performance of the agreements to sell with defendant No.5, namely, Patasho Devi. The time was not essence of the agreement to sell. It was mentioned that the cause of action would arise for execution and registration of the sale deed only when defendant Nos.1 to 3 succeed in the execution application. The execution application was pending. However, during the pendency of the same, a compromise was arrived at between defendant Nos.1 to 3 and defendant No.5 and the sale deed was executed on 06.12.2005 in favour of defendant No.4-Jitender i.e. third party. The trial Court decreed the suit on the basis of preponderance of evidence, but the lower Appellate Court declined the relief by erroneously holding that defendant Nos.1 to 3 herein were not be the owners of the property, even, denied alternative relief of refund of the earnest money in respect of the plot measuring 550 sq. yds. All these factors lead to an irresistible conclusion that there is a gross illegality and perversity, thus, urges this Court for setting aside the findings under challenge.

Mr. Sandeep Singh Ghangas, Advocate for Mr. Sukhdeep Parmar, learned counsel appearing on behalf of respondent No.1 in RSA-

4187-2009 and for respondent No.5 in RSA-4188-2009, submits that there is no illegality and perversity in the judgments and decrees as defendant Nos.1 to 3 were not having a title and therefore, the plaintiff could not seek the specific performance.

Mr. B.S. Bairagi, learned counsel appearing on behalf of respondent No.2 in both the appeals, also adopts the arguments of Mr. Sandeep Singh Ghangas and further submits that the plaintiff had also lost the right to recover amount as the suit was filed in the year 2006.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the findings rendered by the lower Appellate Court are perfect, legal and justified in declining the discretionary relief by setting aside the judgment and decree of the trial Court, for, defendant Nos.1 to 3 were not having any right and title in the property and the agreements to sell, they had entered into, in anticipation of succeeding in the execution application seeking execution of the judgment and decree dated 21.12.1996.

However, during the interregnum, the subsequent events, noticed above, had occurred as an outcome, Jitender had acquired the right and interest by virtue of the sale deed dated 06.12.2005. No doubt the aforementioned sale deed was challenged, but the fact remains that the plaintiff could not seek the specific performance in the absence of the ownership of defendant Nos.1 to 4. The cause of action in favour of the plaintiff to file the suit on 15.06.2006 arose only after the execution of the sale deed, aforementioned, but the Courts below have failed to notice the aforementioned facts and even, did not grant the alternative relief as the

agreement to sell was not denied, much less, receipt of the earnest money, thus, the judgment and decree of the lower Appellate Court is liable to be modified to that extent. Instead of discretionary relief as granted by the trial Court, the findings of the lower Appellate Court qua non-granting of the discretionary relief are upheld. However, viz-a-viz the alternative relief is hereby modified. The appellant-plaintiff is held entitled to refund of the earnest money of ₹ 1,50,000/- along with interest @ 6% from the date of the execution of the agreements to sell till date of realization, in essence, defendant Nos.1 to 3 are directed to return the amount of earnest money i.e. ₹ 1,50,000/-, failing which, the appellant-plaintiff shall be at liberty to take appropriate remedy in accordance with law.

Decree sheet is ordered to be prepared.

With the aforesaid observations, the appeals are allowed to the aforementioned extent, resultantly, disposed of.

Original record be also sent back.

08.12.2016  
Yogesh Sharma

( AMIT RAWAL)  
JUDGE

Whether speaking/reasoned      ✓  
Yes/ No

Whether Reportable      ✓  
Yes/ No