

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

**Regular Second Appeal No.4194 of 2016 (O&M)
Date of Decision: August 23, 2016.**

Tej Kaur (Deceased) Through LRs and others

.....APPELLANT(s).

VERSUS

Harbans Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Bhinder, Advocate
for the appellant (s).

Mr. Manish Kumar Singla, Advocate
for the respondents.

SURINDER GUPTA, J.

CM-10797-C-2016

Heard. There is delay of 59 days in re-filing the appeal.

2. Learned counsel for the appellants has submitted that the appellant had initially filed the appeal on 25.02.2016 but the same was returned by the registry on 26.02.2016 with some objections. Thereafter, the file was got mixed in the files of regular matters in his office, as such, the delay in re-filing the appeal is neither intentional nor deliberate.

3. In view of submission of counsel for the appellants, application is allowed and delay of 59 days in re-filing the appeal is, hereby, condoned.

RSA-4194-2016

4. This is appeal by legal heirs of Tej Kaur (defendant No.1) and

Sukhbir Singh against the concurrent judgments of the Courts below decreeing the suit of the plaintiffs-respondents No.1 and 2 for possession by way of specific performance of the agreement to sell dated 19.01.2006 on deposit of balance sale consideration within three months from the date of judgment and decree passed by Additional Civil Judge (Senior Division), Sangrur.

5. Learned counsel for the appellants has assailed the judgments of the Courts below only on one point that the suit filed by the plaintiffs is pre-mature as vide writing dated 29.11.2006 on the back of the agreement, the period for execution of the sale deed was extended till the vacation of the stay in the litigation between the cosharers which is still operating and the suit filed by cosharer against the appellant is pending in the Court at Sangrur. This point was hotly pressed before the first Appellate Court but was wrongly discarded.

6. Learned counsel for caveators-respondents No.1 and 2 has argued that filing of injunction suit by one of the cosharer was a ploy by the appellant to hold the execution of the sale deed as per the agreement dated 19.01.2006. The injunction was only for restraining defendants no.1 to 4 from alienating land more than their share. The plaintiffs have sought execution of the sale deed of the land within the share of defendants, as such, the injunction order has no application in the matter.

7. This fact has not been disputed that vide agreement dated 19.01.2006, Tej Kaur and Sukhbir Singh agreed to sell 18 bighas (kacha) land @ ₹3,75,000/- per bigha and received ₹20 lacs as earnest money. The date for execution of the sale deed was fixed as 30.11.2006 but on

29.11.2006, time for execution of the sale deed was extended till the vacation of the injunction order passed in a suit filed by one of the cosharers.

8. The point raised by learned counsel for the appellants was dealt with by the first Appellate Court in para 22 and 23 of the judgment, which is reproduced as follows:-

“22. It was also argued that plaintiffs even by their own version got extended their agreement on 29.11.2006 but this extension was for indefinite period as it was fixed after the vacation of the stay between the litigation of other co-sharers. It was argued that plaintiffs failed to prove vacation of that injunction and without that suit is premature as no cause of action had arisen to institute the suit for specific performance. But this argument is liable to be rejected since by denying the true nature of the transaction, defendants have already shown their intentions and plaintiffs need not wait more and suit cannot be termed as premature.

23. Moreover, such extension cannot be termed for indefinite period and plaintiffs have waited reasonably. This Court found considerable wait was made by the plaintiffs. This court agree with contention of plaintiff that further more wait was not possible as plaintiff got idea that suit between other co-sharers is collusive and even in the injunction, rights of the defendants and plaintiffs are not effected. The injunction was only for restraining the defendants from alienating, is not more than their share but since the intended sale was for share within their competency, hence, that litigation have no effect.”

9. Learned counsel for the appellants could not rebut this fact that

the injunction order passed in the litigation between the cosharers is only to the extent that a cosharer has been restrained from alienating the land more than his share. Agreement to sell dated 19.01.2006 pertains to land within the share of Tej Kaur and Sukhbir Singh. The first Appellate Court has rightly observed that by filing of suit and obtaining injunction order which is not effectivequa the sale of land by a cosharer to the extent of his share, the transction cannot be kept in abeyance for a long time. The argument advanced by learned counsel for the appellants has no merits and discarded.

10. No other point has been argued.

11. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

August 23, 2016
Sachin M.

Whether speaking/reasoned: **Yes/No**

Whether Reportable: **Yes/No**