

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

CR No. 3803 of 2017

Date of Decision: 06.10.2017

OM PARKASH

-PETITIONER

VS

RAGHBIR SINGH AND ANR

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Kumar Garg, Advocate,
for the petitioner.

Mr. Virender Singh Punia, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

Plaintiff-petitioner is aggrieved of order dated 08.02.2017 passed by Additional Civil Judge (Senior Division), Tohana whereby the issue of maintainability was framed as a preliminary issue.

A suit for specific performance was filed by the plaintiff-petitioner against the defendants. Defendant No.2 adopted the written statement of defendant No.1 who happens to be her husband. The suit was filed on the basis of agreement to sell dated 03.08.2015 wherein a specific recital was made by the vendor that at the time of registration of sale deed, possession of Khasra No.208/23/2 (2-8), 211/2 (5-12), 3(8-0), 4

(8-0), 5(8-0) Kitte 5 total 32 Kanals 0 Marlas would be given.

Defendants appeared in the suit and stated that they are ready to execute the sale deed in terms of agreement to sell dated 03.08.2015. However, plaintiff objected to the same on the ground that the situation has changed in the context of a suit subsequently filed by the brothers of defendant No.1 against defendant No.1 and others wherein a restraint order was sought for selling a specific Khasra number by defendant No.1. The suit was decreed and was never assailed thereafter.

During course of arguments, respondent No.1 who is present in person made a categorical statement that he is in possession of aforesaid Khasra numbers at the spot and would deliver the same in execution of sale deed based on agreement to sell dated 03.08.2015.

In view of above, parties were not at issue, therefore, framing of issue of maintainability to be a preliminary issue is totally unwarranted.

Both the parties are agreed that a sale deed may be ordered to be executed on 15.05.2018. Both the parties shall appear before the concerned Sub Registrar for execution of the sale deed.

Plaintiff shall pay the remaining sale consideration to the satisfaction of the defendants and thereafter, consequent

sale deed shall be registered as per law.

Disposed of.

06.10.2017
 jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No