

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

**RSA No.2021 of 2017 (O&M)
Date of Order: 24.08.2017**

Angrej Singh and another

..Appellants

Versus

Malkiat Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sarwinder Goyal, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

C.M.No.9668-C of 2017

Allowed as prayed for.

Annexures A-1 to A-4 are taken on record.

C.M.No.4832-C of 2017

Prayer in this application is for condonation of delay of 156 days in filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, delay of 156 days in filing the appeal is condoned.

RSA No.2021 of 2017

Defendants no.2 and 3 have filed this appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs filed a suit for specific performance of agreement to sell, declaration and permanent injunction. Plaintiffs claimed that defendant no.1 Pal Kaur had entered into an agreement to sell dated 09.06.2007, with respect to land measuring 3 kanals 10 marlas @ Rs. 7,00,000/- per acre. It

was further claimed that an earnest money of Rs.50,000/- was paid. As per the agreement to sell, the date for execution of the sale deed was fixed 31.12.2007. Plaintiffs claimed that they remained present in the office of Sub Registrar on 31.12.2007, however, defendants did not turn up to execute and register the sale deed. Plaintiffs filed a suit for specific performance of agreement to sell, on 29.01.2009.

Defendant no.1 during the pendency of the suit, executed two sale deeds in favour of defendants no.2 and 3-the appellants, on 13.04.2009 and 15.04.2009.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs.

Defendants no.2 and 3 claiming themselves to be bonafide purchasers filed the first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, dismissed the appeal and upheld the judgment and decree passed by the learned trial Court.

I have heard counsel for the appellant and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants has submitted that the piece of land purchased by the defendants through sale deeds dated 13.04.2009 and 15.04.2009 is different than what was agreed to be sold. He has further submitted that the Court has directed defendants no.2 and 3 to join defendant no.1 in execution and registration of the sale deed pursuant to a decree for specific performance.

I have considered the submissions of counsel for the appellants.

It is not in dispute that the defendant no.1 was only a co-owner in a khewat having 3 kanals of land. Sale by a co-owner is always a share in

the joint property. Even if specific khasra number is agreed to be sold or sold, it would only be a sale of a share. In this case, defendant no.1 has admitted the execution of the agreement to sell and receipt of Rs.50,000/- i.e. earnest money.

It is also not in dispute that the sale in favour of defendants no.2 and 3, the appellants, is during the pendency of the suit for specific performance.

The submission of learned counsel for the appellants that the land sold to the appellants by defendant no.1 is different from the land agreed to be sold to the plaintiffs.

I have considered the submission of learned counsel for the appellants.

Once the defendant no.1 was only co-owner, therefore, the sale of any specific portion of the land would be deemed to be sale of share in the joint khewat. Merely because different khasra numbers have been mentioned, it would not improve the case of defendants no.2 and 3. If defendant no.1 had share in excess of 3 kanals 10 marlas, the sale in favour of defendants would be saved.

In the present case, the suit is only for specific performance of agreement to sell dated 09.06.2007. The agreement to sell has been proved on record, therefore, the Court has ordered specific performance thereof.

Second submission of learned counsel for the appellants is that the first appellate Court has directed defendants no.2 and 3 to join defendant no.1 for execution and registration of sale deed pursuant to a decree for specific performance. Such directions are necessary as directed by the Hon'ble Supreme Court of India repeatedly. Subsequent purchasers are

required to be directed to join in execution of the sale deed, so that the plaintiffs get clear title in the property.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. Therefore, the appeal is ordered to be dismissed.

August 24, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No