

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

**RSA No.4985 of 2014 (O&M)
Date of Decision: 30.08.2017**

Gurvinder Singh

... Appellant

Versus

Mukhtiar Singh and others

... Respondents

RSA No.5238 of 2014 (O&M)

Harjinder Singh and another

... Appellants

Versus

Gurvinder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Nagra, Advocate,
for the Appellant (In RSA No.4985 of 2014).

Mr. Tarundeep Kumar, Advocate for
Mr. D.S. Pheruman, Advocate
for the appellants (In RSA No.5238 of 2014).

ANIL KSHETARPAL, J. (ORAL)

By this common judgement, RSA Nos. 4985 and 5238 of 2014
are being disposed of as both the appeals arise out of the same suit.

Plaintiff filed a suit for specific performance of agreement to
sell dated 11.05.2007 with respect to the land measuring 6 kanal 9 marla.
Earlier the plaintiff had filed a suit for permanent injunction as the
defendants were wanting to sell the property.

During the pendency of the suit, a settlement was arrived at on

02.09.2008 wherein it was agreed that the land measuring 2 kanal 13 marla would be transferred in favour of the plaintiff. The plaintiff further pleaded that in spite of the aforesaid settlement, the defendants have refused to transfer the land. With these allegations, the plaintiff filed the present suit.

The defendants contested the suit and pleaded that the agreement to sell is not signed by Jasbir Singh, Jaswant Singh, Manjit Kaur, Harbinder Singh, Satbinder Singh and Raminder Kaur. The suit was contested on other grounds also.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff on the ground that the settlement dated 02.09.2008 has not been disclosed. The plaintiff filed the first appeal. Learned first Appellate Court after reappreciating the evidence available on the file and after noticing that the plaintiff has disclosed the filing of the earlier suit, decreed the suit with respect to the land measuring 2 kanal 13 marla in accordance with the settlement dated 02.09.2008. The learned first Appellate Court further noticed that the plaintiff had filed the suit for specific performance with promptitude as the suit was instituted on 06.11.2008. These two appeals have been filed, one by the defendant and the other by the plaintiff.

I have considered the submissions of the learned counsel for the parties and with their able assistance gone through the record of the case.

Learned counsel for the appellant has submitted that since the plaintiff did not disclose about the settlement, therefore, the plaintiff was not entitled to discretionary relief. Learned counsel for the appellant has

further submitted that the suit is for specific performance of agreement to sell dated 11.05.2007, therefore, the Court was wrong in ordering specific performance on the basis of settlement dated 02.09.2008.

On the other hand, learned counsel for the appellant in RSA No.4985 of 2014 filed by the plaintiff has submitted that the plaintiff was entitled to specific performance of the complete agreement to sell and the Courts were wrong in decreeing the suit only with respect to 2 kanal 13 marla of land.

As far as the first argument of the learned counsel for the appellant that the plaintiff has not disclosed the settlement arrived at on 02.09.2008 is concerned, it is suffice to say that the plaintiff did disclose filing of the earlier suit for permanent injunction. The plaintiff further disclosed that there was a compromise and on the basis thereof, previous suit was withdrawn. Merely because the date of compromise has not been disclosed in the plaint, relief of specific performance of agreement to sell can not be denied to the plaintiff. Still further, the settlement is dated 02.09.2008. The suit for specific performance was filed on 06.11.2008 within a period of 02 months from the date of settlement. Hence the plaintiff cannot be denied the discretionary relief of specific performance of agreement to sell.

The next submission of the learned counsel for the appellant that the plaintiff has not filed a suit for specific performance of settlement dated 02.09.2008 but has filed the suit only with regard to specific performance of agreement to sell dated 11.05.2007, is only to be noticed

and rejected. The settlement dated 02.09.2008 is consequent upon the agreement to sell dated 11.05.2007. The settlement dated 02.09.2008 is with respect to the part of the land agreed to be sold by the agreement to sell dated 11.05.2007. In these circumstances, I do not find any force in the argument of the learned counsel.

On the other hand, learned counsel for the appellant/plaintiff in RSA No.4985 of 2014 has submitted that the decree for the specific performance should have been with respect to the land measuring 6 kanal 9 marla and not in respect of 2 kanal 13 marla only.

Both the Courts below have found that the parties had entered into settlement on 02.09.2008. Once the settlement is proved on the file, the parties are bound to enforce the subsequent agreement only. Learned first Appellate Court has taken into consideration various factors and held that the plaintiff is only entitled to specific performance of agreement to sell with respect to the land measuring 2 kanal 13 marla. Learned counsel for the appellant has failed to point out any error in the judgement passed by the first Appellate Court.

For the reasons recorded above, I do not find any good ground to interfere with the judgement passed by the learned first Appellate Court.

Both the appeals are dismissed.

(ANIL KSHETARPAL)
JUDGE

30.08.2017
sk

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No