

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**RSA-250 of 2017 (O&M)
Date of Decision : 26.10.2017**

Baljit Kaur

....Appellant

versus

Amrik Singh (since deceased) thr LRs & Anr.Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Gurcharan Dass, Advocate
for the appellant.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is the second appeal filed by the plaintiff challenging the concurrent judgments and decrees passed by the Courts below; whereby the suit of the plaintiff qua specific performance qua execution of the sale deed has been declined and the alternate relief of return of earnest money has been granted.

The brief facts of the case are that the plaintiff had filed a suit for possession by way of specific performance claiming that Amrik Singh since deceased, predecessor-in-interest of the defendants had entered into an agreement to sell dated 05.02.2004 for sale of the suit land, which is mentioned in the agreement by khasra numbers. The price was fixed at Rs.5,30,000/- per acre and he had received Rs.10,00,000/- as earnest money. The target date for execution of the sale deed was fixed 30.08.2004. Since the total property agreed to be sold was 115 kanals, therefore the sale consideration for the total transaction comes to be Rs.74,20,000/- and the defendants received total consideration of Rs.74,20,000/- at different times and endorsements on the back of agreement were made. However, the plaintiff requested the defendants several times to execute and got registered the sale deed in favour of the plaintiff. However, the plaintiff did not

defendants showed their inability to execute and get registered the sale deed on the pretext that Charanjit Singh Benipal has filed a suit against the defendants and the Court has passed order of status quo. The said case was decided as the defendants compromised with Charanjit Singh Benipal. Hence, the defendants did not get the sale deed executed registered in favour of the plaintiff. So the suit was filed.

Upon notice, defendants put in appearance and filed written statement taking routine preliminary objections. On merits it was claimed that the alleged agreement to sell was never executed by the defendants in favour of the plaintiff. It was further claimed that no endorsements were ever made by the defendants and no money was received by them.

Parties led their evidence.

After hearing the parties and appreciating the record, the trial Court recorded a finding that the agreement in question has been proved. However, the trial Court recorded that the relief of specific performance qua sale deed cannot be granted because the agreement to sell is a vague and uncertain document and the same is not capable of being specifically performed. It was recorded by the trial Court that in the agreement there is no mention of share of the defendants. The land was also situated in different villages. Still further, it was held that the plaintiff in the plaint itself had alleged that defendant No.1 was having Will in his favour and has become the owner of the estate left by his father on the basis of said Will. However, the same could not be proved. Therefore, the plaintiff herself is not sure as to whether her vendors had title qua the property mentioned in the agreement or not. Accordingly, the alternate relief of return of money

was granted by the trial Court.

Aggrieved of this judgement and decree passed by the trial Court, the plaintiff filed the appeal before the lower Appellate Court.

However, the lower Appellate Court also dismissed the appeal on the same ground that the agreement in question was not clear enough to be specifically enforced. The vague terms of the agreement did not specify the share of the vendor of the plaintiff. Still further it was held by the lower Appellate Court that the properties were situated in four different villages.

Still further it was recorded by the lower Appellate Court that the plaintiff claimed title of her vendor Amrik Singh on the basis of Will. However, the same has not been proved on record. Thus, it can be easily inferred that the plaintiff was not clear about the extent of the ownership of the vendor and hence no specific performance can be granted. Therefore, it was said that the trial Court has rightly resorted to the provision of Section 20 of the Specific Relief Act to grant the alternate relief to the appellant.

While arguing the case, learned counsel for the appellant submits that the khasra numbers are duly mentioned in the agreement to sell. Therefore, the specificity required for the suit of specific performance is duly present in the agreement. Therefore, the agreement could have been specifically performed and hence the decree should have been passed qua the relief of execution of the sale deed.

Having considered the argument of the learned counsel for the appellant and perusing the record, this Court is of the considered opinion that the argument of the learned counsel for the appellant is not sustainable.

A bare perusal of the agreement itself shows that it only mention the khasra

numbers of certain lands situated in four different villages. However, it does not mention the share of the vendor of the plaintiff. Therefore, the agreement is vague qua the extent of the land to be sold to the plaintiff. Such a vague agreement cannot be specifically enforced by Courts of law. Still further this Court is in agreement with the Courts below that the plaintiff claimed the title of her vendor on the basis of Will in favour of Amrik Singh. However, she failed to prove the same before the Court by leading any evidence. Hence this also shows that the extent of the land agreed to be sold to the plaintiff was not specified. Since the quantity of the land itself was not specified, therefore, even the consideration to be paid in view thereof was not specified by the agreement. Such an agreement; which is so vague in terms of the property being sold or the consideration to be paid in lieu thereof, and where even the title of the vendor is in question, has rightly been denied by the Courts below to be executed specifically.

No further argument was raised.

In view of the above, this Court finds no merits in the appeal.

The present appeal is dismissed.

26th October, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

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