

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

**RSA No.4313 of 2002 (O&M)
Date of Decision:17.12.2018**

Bakshish Singh and others

...Appellant(s)

Versus

Anoop Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.D.K.Bhatti, Advocate for the appellants.
Mr.Dhananjay Mittal, Advocate for the respondents.

ANIL KSHETARPAL, J.

CM-9802-C-2002

Applicants seek permission to bring on record the legal representatives of deceased Gobind Singh son of Shri Beer Singh as appellants No.1 to 3.

The application is allowed for the reasons stated therein, however, subject to all just exceptions and for the limited purpose of decision of the present appeal. Amended memo of parties is also permitted to be placed on record.

Miscellaneous application stands disposed of.

Main appeal

The defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court, decreeing the suit filed by the plaintiffs for specific performance of the agreement to sell dated 20.9.1986.

Both the courts have concurrently found that the execution of the agreement to sell, payment of earnest money and the plaintiffs were

ready and willing to perform their part of the contract. However, the learned trial court declined the relief of specific performance on the ground that the plaintiffs have themselves prayed for alternative relief. The learned first appellate court in the appeal filed by the plaintiffs reversed the aforesaid finding of the learned trial court and granted decree for specific performance of the agreement to sell.

Learned counsel for the appellants has submitted that Anoop Singh, i.e. plaintiff No.1, had filed a suit through his attorney and therefore, the suit is not maintainable and the attorney was appointed after institution of the suit. As per learned counsel, deed of attorney was executed on 23.2.1988, whereas the suit was instituted on 16.3.1988. Thus, the attorney is before institution of the suit. In any case, the suit was filed by five plaintiffs. The remaining plaintiffs have filed the suit themselves. Therefore, the institution of the suit cannot be said to be defective.

Learned counsel for the appellants has further submitted that the decree for specific performance should not be ordered after a period of 30 years.

This Court has considered the submissions, however, find no substance therein.

The learned first appellate court had granted a decree for specific performance of the agreement to sell in the year 2002 after the suit having initially been decided. In first appeal the case was remanded back after framing additional issues. Thus, the defendants-appellants cannot be permitted to capitalise on their own actions.

In the last, learned counsel for the appellants drew

attention of the Court to a counter offer made by the learned counsel for the plaintiffs-respondents in the order dated 8.4.2003 when counsel appearing for the respondents had offered to pay additional price of Rs.5,00,000/-.

Keeping in view the aforesaid offer, while upholding the decree passed by the learned first appellate court, the decree for specific performance would be executable subject to payment of balance sale consideration as per agreement dated 20.9.1986 along with a sum of Rs.5,00,000/-. The plaintiffs are directed to deposit the amount along with interest @9% per annum within three months from the certified copy of the decree is made available. The interest shall be payable from the target date, i.e. 30.5.1987.

In view of the above, Regular Second Appeal is disposed of. Pending application(s), if any, shall also stand disposed of, in terms thereof.

17.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No