

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

1. RSA No.1573 of 1991 (O&M)
Date of decision : 27.02.2018

Mohinder Singh

...Appellant

Versus

Jeet Singh and others

...Respondents

2. RSA No.1591 of 1991 (O&M)
Date of decision : 27.02.2018

Jeet Singh

...Appellant

Versus

Smt. Harnam Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.C. Chhabra, Advocate for the appellant
(In RSA No.1591 of 1991)
for respondent No.1 (In RSA No.1573 of 1991)

ANIL KSHETARPAL, J. (ORAL)

The plaintiff as well as the defendants have filed cross-appeal which are being disposed of by this judgment.

The plaintiff-appellant filed a suit for possession by way of specific performance of the agreement to sell dated 09.02.1983. It was asserted that land measuring 14 kanals and 12 marlas was agreed to be sold

at the rate of ₹7,600/- per acre and earnest money of ₹5,000/- was paid. It was agreed that the sale deed would be executed within a period of two months from the date of sanction of the mutation. The agreement to sell was executed in favour of the plaintiff by Smt. Harnam Kaur, Palla Singh and Bakhsish Singh. The mutation of the land was sanctioned only in favour of Harnam Kaur. Remaining two persons i.e. Palla Singh and Bakhsish Singh never became owner of the property. Mutation of the land was sanctioned on 21.04.1986. The suit was filed on 15.10.1986.

Learned trial Court after noticing the facts recorded that the agreement to sell is proved, however, the specific performance of the agreement to sell is declined while ordering refund of the earnest money alongwith interest at the rate of 12% p.a.

During the pendency of the suit, Mohinder Singh-appellant in RSA No.1573 of 1991 purchased the property. The plaintiff-appellant filed an appeal but the defendants did not file any appeal. Learned First Appellate Court after re-appreciating the evidence available on the file decreed the suit filed by the plaintiff to the extent of share of Harnam Kaur i.e. 1/3rd.

These two appeals have been preferred by the plaintiff and the defendant-Mohinder Singh who is a subsequent purchaser.

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

Learned counsel for the appellant has submitted that once Harnam Kaur became owner of the entire property, therefore, the First Appellate Court committed an error in decreeing the suit only to the extent

of 1/3rd share. He submitted that Smt. Harnam Kaur, Palla Singh and Bakhsish Singh jointly agreed to sell the property. Such being the position, he submits that the suit in entirety should have been decreed.

It is not in dispute that the agreement to sell was executed by three persons i.e. Smt. Harnam Kaur, Palla Singh and Bakhsish Singh. Remaining two persons except Harnam Kaur never became owners of the property, therefore, the suit could not be decreed against them. Hence, the First Appellate Court has rightly concluded that the agreement to sell with respect to the share of Harnam Kaur in the agreement to sell be specifically enforced. Such being the position, this Court does not find any ground to interfere with the judgment passed by the learned First Appellate Court.

In view of the above, both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No