

**RA-RS-14-C-2018 in
No.1588 of 2003 (O&M)**

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

**RA-RS-14-C-2018 in
RSA No.1588 of 2003 (O&M)
Date of Order:17.02.2018**

Jagdeep Singh

..Appellant

Versus

Chuhar Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Sharma, Advocate,
for the review applicant-appellant.

ANIL KSHETARPAL, J(Oral)

This review application has been filed against the judgment passed by this Court on 17.01.2018. Although, scope of jurisdiction while dealing with the review is very limited, however, in the interest of justice, this Court permitted the counsel for the review applicant-appellant to address arguments.

Learned counsel for the review applicant-appellant has submitted as under:-

- (i) Since the plaintiff has not appeared in the witness box, hence there is no evidence to the effect that the plaintiff was ready and willing and hence the decree could not be passed;
- (ii) The agreement holder had further entered into an agreement with another and as such the suit was filed on behalf of second agreement holder;
- (iii) In equity only refund should have been ordered since the agreement to sell was entered into on 15.05.1978;

- (iv) The property is ancestral and, therefore, decree for specific performance could not be passed.

Learned first appellate court had held that the plaintiff was ready and willing to perform his part of the contract. This court has noticed that as per the agreement to sell, onus was placed on the predecessor of the appellant to get the land transferred in his favour and inform the plaintiff-respondent. The learned first appellate court as well as this Court has examined this issue in detail and has found that the defendant-appellant did not discharge the onus of informing the plaintiff after getting the land transferred in his favour.

In these circumstances, this Court has held that the moment plaintiff came to know of the transfer in favour of the defendant in the revenue record he immediately swung into action and filed the suit. In such circumstances, it is not possible to hold that the plaintiff was not ready and willing to perform his part of the contract. The Court has noticed that only Rs.4500/- further was payable whereas the plaintiff was having much more amount available with him.

Next argument of learned counsel for the appellant is that the plaintiff has not appeared in the witness box.

In the considered opinion of this court, agreement to sell is in writing. Defendant has failed to show that any prejudice was caused to him on account of non-appearance of the plaintiff. Before an adverse inference is drawn, it is the requirement that the other party must show some prejudice. Since the appellant has failed to show any prejudice, therefore, the learned first appellate court as well as this Court has correctly refused to draw adverse inference.

Next argument of learned counsel for the review applicant-appellant is that since the plaintiff had further entered into an agreement to sell

with Bhajan Singh, therefore, agreement stands violated.

A reading of the agreement to sell entered into on 15.05.1978, does not show that the agreement holder would not be entitled to further sell the property. This issue has been noticed by this Court at page 5 and rejected.

Next argument of learned counsel is that the agreement to sell was executed in the year 1978 and specific performance is being ordered in 2018.

In the present case, it is the appellant who has challenged the judgment passed by the learned first appellate court. Learned first appellate court decided the appeal in the year 2002. The delay is solely on account of appellant. The appellant cannot be now permitted to argue that the specific performance of the decree would be inequitable.

Next argument of learned counsel is that the property is ancestral and, therefore, specific performance could not be ordered.

Learned first appellate court has already noticed this argument and rejected the same. The first appellate court has held that the property is not proved to be coparcenary property. The court has noticed that the property was partitioned and females were also given share. Once the property has been partitioned, neither the property remains ancestral nor coparcenary.

In view thereof, this Court does not find any good ground to review the judgment dated 17.01.2018.

The review application is dismissed.

**February 17, 2018
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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No