

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

**RSA No.3745 of 2013 (O&M)
Date of Order:28.11.2018**

Nachattar Singh

..Appellant

Versus

Jangir Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Preetwinder Singh Dhaliwal, Advocate,
for the appellant.

Mr. R.P.Daaria, Advocate, for
Mr. K.K.Garg, Advocate,
for respondent nos.1 and 2.

Mr. J.S.Rattu, Advocate,
for respondent no.3.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment and decree passed by the learned first appellate court, dismissing his suit for declaration, possession and permanent injunction.

Some facts would be required to be noticed.

Nachhattar Singh, plaintiff-appellant, was owner of 21 kanals and 1 marla of land. He entered into an agreement to sell with one Nazar Singh son of Sh. Karam Singh but did not honour the agreement to sell resulting into a suit for specific performance by Nazar Singh son of Karam Singh against Nachhattar Singh.

Nachhattar Singh appointed a General Power of Attorney holder, other Nazar Singh i.e. his brother son of Bishan Singh, who transferred the entire property i.e. 21 kanals and 1 marla in favour of Binder

Singh vide sale deed dated 25.09.1996. The agreement to sell was only with respect to land measuring 17 kanals and 9 marlas. Suit for specific performance was decreed on 14.02.2002, which was affirmed in appeal on 03.01.2003. In the aforesaid suit for specific performance of the agreement to sell, Binder Singh was also party. It was declared that rights of Nazar Singh, who was a prior agreement holder, would not be affected by a subsequent sale by Nachhattar Singh through his attorney in favour of Binder Singh.

Nachhattar Singh now claims that since the sale deed in favour of Binder Singh has been set aside while passing a decree for specific performance of the agreement to sell in favour of Nazar Singh, therefore, he is entitled to remaining property i.e. measuring 3 kanals and 12 marlas. In a suit for specific performance of the agreement to sell, the declaration which is granted is only in the context of the rights of the plaintiff in that suit. Any subsequent sale after entering into an agreement to sell becomes subject to the rights to the property under the agreement to sell. Such decree cannot be read in the manner to hold that the entire sale even beyond the land involved in the suit for specific performance, would be deemed to have been set aside.

The suit for specific performance of the contract as the name suggest is only determining whether a contract is liable to be specifically enforced or not? Such suit neither decides question of title nor the court while deciding such suit adjudicate upon anything but for enforceability of the agreement to sell. Hence, the decree passed in a suit for specific performance has to be read in the context it has been passed.

In the present case, Binder Singh had further sold the property

in favour of Jangir Kaur wife of Nazar Singh son of Bishan Singh. Such sale is not shown to be either without authorization or in any way suffering from any illegality.

In view thereof, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed.

C.M.No.10112-C of 2013

Prayer in this application for making good the deficiency in Court fee.

Deficiency in Court fee has already been made good. Delay, if any, is condoned.

November 28, 2018
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(ANIL KSHETARPAL)
JUDGE

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