

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: November 12, 2018

1. RSA No.4162 of 2016 (O&M)

Rajinder Kaur (now deceased) through L.Rs

...Appellant

Versus

Amanjeet Kaur & others

...Respondents

2. RSA No.6017 of 2016 (O&M)

Rajinder Kaur (now deceased) through L.Rs

...Appellant

Versus

Amanjeet Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sunny K. Singla, Advocate
for the appellant in both the appeals.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.4162 of 2016 and 6017 of 2016 as the common question of law and fact is involved.

CM No.10686-C of 2016 in RSA No.4162 of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 2 days in refiling the appeal is condoned.

CM stands disposed of.

RSA Nos.4162 and 6017 of 2016

The aforementioned appeals are at the instance of the appellant-plaintiff, whereby her claim for seeking specific performance of

the agreement to sell dated 08.04.2005 executed by defendant No.3- Paramjit Kaur on behalf of defendant Nos.1 and 2 has been confined to alternative relief vis-a-vis defendant No.3.

Plaintiff sought the performance of the agreement to sell dated 08.04.2005 on the premise that defendant Nos.1 and 2 were the owners in possession and vide agreement aforementioned, through their maternal grand mother- defendant No.3- Paramjit Kaur, agreed to sell the land @ ₹65,000/- per bigha. The suit land was 25 kanals and earnest money of ₹2,00,000/- was paid to her. The agreement contained a condition that the sale deed would be executed either by defendant Nos.1 and 2 or after taking permission from the court. The suit aforementioned was filed on 22.09.2008.

Defendant Nos.1 and 2 contested the suit as by that time they had become major. They claimed that defendant No.1 had already sold her share and other landed property vide registered sale deed dated 23.02.2006 to Harpreet Kaur and the possession was also delivered. Their mother, on the date of the alleged agreement to sell, was alive and, therefore, there was no occasion for the maternal grand-mother to enter into agreement on their behalf. Defendant No.3 admitted the fact that mother of defendant No.1 was alive at the time of alleged agreement to sell and died on 30.09.2006, but denied to have entered into agreement to sell dated 08.04.2005 or receipt of the earnest money.

The trial Court, after upholding the agreement to sell, granted the relief of refund of the earnest money of ₹ 2,00,000/- jointly and severally along with interest @ 9% per annum from 08.04.2005 till filing of the suit and 6% per annum till realization, but the Lower Appellate Court in

appeals preferred by both the parties accepted the appeal of defendants in part by confining the refund of the amount vis-a-vis defendant No.3 as maternal grand-mother.

Mr. Sunny K. Singla, learned counsel representing the appellant-plaintiff submitted that the courts below have failed to consider the provisions of Section 20 of the Specific Relief Act as the ingredients of Section 16(c) of the Act for readiness and willingness have been proved to the hilt. Alternative relief can only be granted owing to the fault of the plaintiff or if any hardship is caused. Mere fact that the mother was alive at the time of the agreement to sell would not deny the discretionary relief. The agreement to sell had been proved through the testimony of attesting witness, namely, Harpreet Singh PW-1, much less payment of earnest money of ₹ 2,00,000/-. Against the land measuring 25 kanals to be sold, defendant No.1 had only sold 11 kanals 5-1/3 marals, but the relief could have been confined to balance land.

I am afraid, the aforementioned argument is not sustainable, for, defendant No.1 had already sold the property as indicated above vide registered sale deed dated 23.02.2006 and this fact was in the knowledge of the plaintiff, but despite that the said sale deed had not been challenged, much less vendee had not been impleaded. In such circumstances, specific performance could not have been granted. The finding of the Lower Appellate court confining the relief of earnest money to defendant No.3, in my view, is most justified order, for, a sum of ₹ 2,00,000/- was received by her on behalf of defendant Nos.1 and 2 and no such evidence has been placed on record whether that consideration was ever paid to mother of defendant No.1 or to them.

As an upshot of the aforementioned observations, appellant-plaintiff is not able to bring the case within the realm of perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No