

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6290 of 2016 (O&M)

Date of Decision: November 13, 2018

Isham Singh (since deceased) through L.Rs

...Appellant

Versus

Isham Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Kt. Yashwant Singh Rathore, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant (defendant in Civil Suit No.196 of 2012 and plaintiff in Civil Suit No.195 of 2012), which were consolidated, has not been successful in defending the claim for specific performance and challenge to the agreement to sell. Isham Singh son of Harkesh claimed the discretionary relief for specific performance of the agreement to sell dated 03.10.2008 in respect of agricultural land measuring 8K-0M on account of the fact that the entire sale consideration of ₹ 10,00,000/- had already been paid in the presence of the witnesses and possession thereof was also delivered, but the vendor, i.e., appellant Isham Singh alias Mangat Ram son of Matu did not come forward to perform his part of the agreement. The defendant in the first suit also claimed declaration challenging the agreement to sell, on the premise, that he had never entered into the same as he was involved in FIR No.318 dated 24.10.2005, under Sections 148, 149, 323, 324, 326, 307 and 506 IPC and a writing was executed in Panchayat, whereby amount of ₹5,80,000/- was imposed as a compensation.

Both the parties led evidence. The trial Court decreed the suit of the respondent, who was plaintiff in Civil Suit No.196 of 2009 and the appeal laid before the Lower Appellate Court was also dismissed.

Before Mr. Rathore commenced his argument, he drew the attention of this Court to the order dated 16.01.2018, which reads as under:-

“After hearing counsel for the appellants, there is no merit in the present case. However, he shall get instruction with regard to mediation between the parties to settle the payment of Rs.10 lacs.

Adjourned to 08.02.2018.”

Mr. Rathore submitted that he has instructions to argue the matter. His contention is that a simpliciter suit for specific performance in the absence of alternative relief of refund of earnest money in view of the provisions of Section 22 of the Specific Relief Act was not maintainable.

I am afraid, the aforementioned argument of the learned counsel for the appellant is not sustainable in view of Order 7 Rule 7 CPC and proviso to sub-section (2) of Section 22 of the Act, which clearly empowers the Court to grant such relief which has not been claimed at any stage of the proceedings but subject to amendment. The aforementioned provision cannot be overlooked in view of the provisions of Order 7 Rule 7 CPC. It is not the case where the trial Court has not granted the alternative relief but discretionary relief under Section 20 of the Act.

No argument with regard to readiness and willingness has been raised seeking performance of the agreement.

As an upshot of the aforementioned observations, the argument of the learned counsel 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 appeal is dismissed.

November 13, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No