

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

Date of decision: 13.11.2018

1. RSA No.1137 of 2018 (O&M)

Paramjit Singh

..... Appellant

Versus

Jarnail Singh Rangi and others

..... Respondents

2. RSA No.2803 of 2018 (O&M)

Surinder Kaur through Special POA

..... Appellant

Versus

Jarnail Singh Rangi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.S. Malwai, Advocate
for the appellant (in both cases).

Mr. Arjun Shukla, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two regular second appeals bearing RSA No.1137 of 2018 and RSA No.2803 of 2018 which are connected.

These two appeals have been separately filed by defendants No.2 and 3 against the concurrent finding of fact arrived at by the Courts below decreeing the suit for possession by way of specific performance of the agreement to sell qua defendants No.1 to 3. Defendants No.1 to 5 were owners of 68 kanals and 18 marlas of land. Initially, defendants No.1 and

2 executed the agreement to sell on 29.07.2004 for agreeing to sell the entire land including the share of a brother and two sisters and received Rs.2,00,000/- as earnest money. Thereafter, defendant No.3 namely Surinder Kaur-appellant in RSA No.2803 of 2018 received another amount of Rs.1,00,000/- on 03.08.2004. In the agreement dated 29.07.2004, it was written that the final agreement to sell will be reduced into writing later on. On 13.08.2004, final agreement to sell was executed with reference to the previous agreement to sell dated 29.07.2004 and it was signed by defendants No.1 and 3. Since on the target date i.e. 31.01.2006, the defendants did not come forward and the plaintiff remained present in the office of the Sub-Registrar, ready to perform their part of the contract, hence, the suit was filed.

Defendant No.2 did not choose to contest the suit further after having filed written statement as noted by the trial Court, although, learned counsel for the parties are not in a position to confirm this fact. Learned trial Court after appreciating the evidence available on the file decreed the suit. Two separate appeals were filed. One by defendant No.2 who did not choose to contest the suit after filing the written statement and second by defendant No.1 through his LRs and defendant No.3. Learned First Appellate Court after re-appreciating the evidence upheld the judgment of the trial Court.

A common counsel is appearing for defendants No.2 and 3, although, filed separate appeals. Learned counsel has submitted that defendants No.1 and 3 had sent a notice after the institution of the suit on 08.06.2007 calling upon the plaintiffs to come and execute the sale deed. He further submitted that this notice sent by defendants No.1 and 3 was

replied by the plaintiffs wherein they sought two months time to execute the sale deed. He submitted that thereafter the plaintiffs never came forward to execute the sale deed and therefore, the findings of the Courts below that the plaintiffs were always ready and willing were incorrect.

On the other hand, learned counsel for the respondent has pointed out that defendant No.2 never got served a notice. The land was joint between defendants No.1 to 5. Only defendants No.1 and 3 had served a notice. In reply, the plaintiffs had stated that they have already filed a suit and all the brother and sisters should come forward to execute the sale deed and the plaintiffs would honour the agreement to sell within two months because one of the plaintiff has gone abroad. However, even thereafter, the defendants never came forward to execute the sale deed.

Learned counsel for the appellant while drawing attention of the Court to the written statement as well as to the replication filed by defendants No.1 and 3, has submitted that the plaintiffs never came forward to honour the agreement to sell. There could not be any occasion for the plaintiffs to come forward to honour the agreement to sell particularly when all the co-owners jointly never came forward to execute the sale deed. Defendant No.2 should have appeared in the witness-box and stated its case. Once defendant No.2 has not chosen to appear, defendant No.2 now cannot be permitted to raise an argument which was never pressed before the Courts below. As regards defendant No.3, she while filing the written statement admitted execution of the agreement to sell and receipt of Rs.1,00,000/- on 03.08.2004 and additional amount of Rs.7,00,000/- on 13.08.2004. In these circumstances, Courts below have rightly appreciated the evidence and decreed the suit.

Learned counsel further contended that defendant No.2 never intended to sell the property to Jarnail Singh, one of the plaintiff. However, since this submission has been raised before this Court for the first time without laying foundation before the Courts below, this Court declines to go into the aforesaid argument because it is not going to affect the rights of defendant No.2 any way.

Both the Courts have decreed the suit only against defendants No.1, 2 and 3 and not against defendants No.4 and 5.

Hence, there is no ground to interfere.

The pending miscellaneous applications, if any, shall stand disposed of accordingly.

Appeal is dismissed.

13.11.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No