

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 19.09.2018

1. RSA No.928 of 2014 (O&M)

Darshan Singh and others

..... Appellants

Versus

Narinder Singh and others

..... Respondents

2. RSA No.1745 of 2014 (O&M)

Manjit Singh and another

..... Appellants

Versus

Narinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Punia, Sr. Advocate with
Mr. P.S. Punia, Advocate
for the appellants (in RSA-928-2014)
for respondents No.7 to 12 (in RSA-1745-2014).

Mr. S.S. Swaich, Advocate
for the appellants (in RSA-1745-2014) and
for respondents No.7 and 8 (in RSA-928-2014).

ANIL KSHETARPAL, J.

CM-2139-C-2014 in RSA No.928 of 2014

Delay condoned.

CM-4258-C-2014 in RSA No.1745 of 2014

Delay condoned.

Main Cases

Vide this judgment, I shall be disposing of two appeals bearing

RSA No.928 of 2014 and RSA No.1745 of 2014 as both the appeals are

arising out of one suit filed for specific performance of the agreement to sell dated 20.10.1992.

In the considered view of this Court, the question which needs determination is:-

“Whether the Court can while deciding a suit for specific performance of the agreement to sell grant relief beyond the property agreed to be sold?”

Plaintiffs and defendants No.1 to 7 are closely related. The father of the plaintiffs Sh. Isher Singh and predecessor of the defendants No.1 to 7 were brothers. The plaintiffs claim that defendant No.1, the widow Pritam Kaur for herself as well as on behalf of defendants No.2 to 7 who were minors at the time of entering into agreement to sell agreed to sell 5 bighas of land for a total sale consideration of Rs.1,00,000/- and received earnest money of Rs.90,000/-. The sale deed was to be executed and registered on 15.06.1993. Defendants No.1 to 7 were not able to get mutation of the land in their favour and therefore, defendant No.1 once again for herself as on behalf of her minor children executed a supplementary agreement to sell on 29.11.1994 on receipt of Rs.5,000/- towards further payment extending the date for execution and registration of the sale deed to 15.06.1995. It was recorded in the supplementary agreement to sell that she could not obtain permission from the Guardian Judge to sell the property on behalf of minors and she promised that she would make an attempt to get the permission. The suit for specific performance was filed on 07.01.2000 alleging that she has not honoured the agreement to sell.

Defendant No.1 did not contest the suit. A guardian was appointed by the Court on behalf of minors and written statement was filed on behalf of defendants No.2 to 6 denying agreement to sell. A separate written statement was filed by defendant No.7. Separately, defendants No.2 to 6 after getting permission from the Court as well as Pritam Kaur, defendant No.1 (widow of Mohinder Singh) sold 10 bighas and 6 biswas of land in favour of defendants No.8 to 13, the appellants in the other appeal. Pritam Kaur also executed a sale deed dated 31.08.2000 with respect to land measuring 2 bighas and 8 biswas. Defendants No.1 to 6 further sold the land measuring 9 biswas vide registered sale deed dated 04.06.2001 out of 9 biswas, 7 biswas belonged to the minors and 2 biswas belonged to Pritam Kaur, defendant No.1, widow.

Learned trial Court after appreciating the evidence found that Mohinder Singh, predecessor-in-interest of defendants No.1 to 7 was owner of 34 bighas and 3 biswas of land out of which he during his life time sold 17 bighas and 19 biswas of land and after death of Mohinder Singh, defendants No.1 to 7 inherited 16 bighas and 4 biswas of land. Learned trial Court further found that since the agreement to sell by defendant No.1- Pritam Kaur dated 26.10.1992 is also as on behalf of defendants No.2 to 7 who were minors and no permission to sell the property from the Guardian Judge was obtained or ever applied, therefore, the learned trial Court decreed the suit only to the extent of 1/7th share out of land agreed to be sold measuring 5 bighas which comes to 14 biswas and 5 biswas.

Two first appeals were filed before the learned First Appellate Court. One was filed by the plaintiff and second was filed by defendants

No.8 to 13. Learned First Appellate Court while upholding the judgment of the learned trial Court decreed the suit by enhancing the scope of the agreement to sell and even included the land owned by Pritam Kaur which was not part of the agreement to sell and thus, granted a decree for specific performance of the land measuring 2 bighas and 9 biswas which fell to the share of defendant No.1 from the land inherited from her deceased husband. That is how these two appeals have come up for hearing before this Court.

Learned counsel for the plaintiffs-respondents submitted that since defendants No.2 to 7 had thereafter sold the property vide different sale deeds in favour of defendants No.8 to 13 as noticed above, therefore, the learned Courts ought to have granted specific performance of the agreement to sell of the entire land i.e. 5 bighas. He further submitted that defendant No.1 had not contested the suit and she has also not challenged the decree passed by the learned First Appellate Court. Therefore, the decree passed against defendant No.1 remains unchallenged, therefore, the Court should not interfere the decree.

This Court has considered the submission of learned counsel for the plaintiff-respondents, however, finds no substance therein. Admittedly, on the day the agreement to sell was entered into, defendants No.2 to 7 were minors. The performance of the agreement to sell on behalf of minors, depended upon the permission of the Guardian Judge. In absence of any permission, Court could not grant decree of specific performance of the agreement to sell with respect to the share of the minors. Defendants No.2 to 7 after having become major did not approve the action of their mother. Still further, sale deeds executed in favour of defendants

No.8 to 13 were after seeking permission of the Guardian Judge. In such circumstances, both the Courts were correct in refusing specific performance of the agreement to sell dated 26.10.1992 with respect to the share of minors in the land.

As regards second submission, it will be noted that once the judgment and decree passed by the learned First Appellate Court are subject matter of challenge not only at the hand of the plaintiffs but also at the hands of defendants No.8 to 13, this Court cannot shut its eyes to the erroneous view of the First Appellate Court merely on the ground that the defendant No.1 has not chosen to file any appeal. The decree passed by the learned First Appellate Court has been challenged by defendants No.8 to 13 on this very ground. Defendants No.8 to 13 who are not related to the family are purchasers of the property through various sale deeds executed for value and consideration. Therefore, defendants No.8 to 13 are entitled to defend their ownership. In any case, under Order 41 Rule 33, CPC while adjudicating the appeal, the Appellate Court is duty bound to pass the decree which is appropriate. The Appellate Court has the power under Order 41 Rule 33 to pass appropriate judgment irrespective of the fact that the appeal has been preferred by a particular defendant or not. Order 41 Rule 33 is extracted as under:-

“Power of Court of Appeal. - The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or make and to pass or made such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents

or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees].

[Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]”

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the records.

Now, the stage is set for considering the question of law.

“Whether the Court can while deciding a suit for specific performance of the agreement to sell grant relief beyond the property agreed to be sold?”

While granting specific performance of the agreement to sell, the Court is only to enforce the agreement to sell specifically. The Courts cannot travel beyond the agreement to sell and grant decree for the land which was not subject matter of the agreement to sell. The scope of suit for specific performance of the agreement to sell is restricted to the enforcement of the agreement to sell. Hence, the learned First Appellate Court clearly erred in granting relief even beyond what was agreed to be sold. Total land which was agreed to be sold was 5 bighas in which defendant No.1-Pritam Kaur, widow of Mahender Singh was only having 1/7th share. Learned trial Court correctly decreed the suit only to the share of Pritam Kaur in the aforesaid land. Learned First Appellate Court, on the other hand, found the action of defendant No.1 wrong in entering into

agreement to sell for herself as well as on behalf of her minor children but did not apply to the Guardian Judge for taking permission to sell the property. Hence, First Appellate Court concluded that at least whatever property was owned by defendant No.1, decree for specific performance of the agreement to sell to that extent ought to be granted. Thus, the Court granted decree with respect to land measuring 2 bighas and 9 biswas out of 16 bighas and 4 biswas inherited by defendant No.1 being 1/7th share.

In the considered opinion of this Court, such conclusion drawn by the First Appellate Court was erroneous. While granting specific performance of the agreement to sell, the Court has to restrict itself to the agreement to sell only and therefore, the learned First Appellate Court ought not to have travelled beyond the agreement to sell to grant relief.

In view of the aforesaid, question of law as framed earlier, is answered in favour of defendants No.8 to 13-appellants.

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

Hence, the judgment passed by the learned First Appellate Court is set aside and the judgment and decree passed by the learned trial Court is upheld. Resultantly, RSA No.928 of 2014 is partly allowed whereas RSA No.1745 of 2014 is dismissed.

19.09.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No