

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.572 of 2017 (O&M)
Date of Order:02.04.2018

Rambir

..Appellant

Versus

Vijay Singh deceased through LR's and others

..Respondents

(2) RSA No.1989 of 2017 (O&M)

Rambir

..Appellant

Versus

Vijay Singh deceased through LR's and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Varun Gupta, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

C.M.No.4343-C-2018 &
C.M.No.4349-C-2018

Allowed as prayed for.

C.M.No.4344-C-2018 &
C.M.No.4350-C-2018

Prayer in these applications is for recalling of order dated
15.01.2018.

For the reasons mentioned in the applications, which are
supported by an affidavits, the applications are allowed and order dated
15.01.2018 is re-called. Both the appeals are restored to its original
number.

MAIN

Plaintiff-appellant has filed these two appeals i.e. Regular Second Appeal No.572 and 1989 of 2017, arising from the same suit.

Plaintiff-appellant filed a suit for specific performance of the agreement to sell dated 04.06.2005, entered into by Late Sh. Vijay Singh, who is no more in the world. 4 kanals of land was agreed to be sold for a sum of Rs.1,20,000/- and it has asserted that the sale deed was to be executed on 04.06.2005.

Both the courts after appreciation of the evidence available on the file, have recorded the concurrent findings of fact that the execution of the agreement to sell is proved, however, both the courts have chosen to grant alternative relief of refund of the earnest money along with interest. The courts have recorded the following reasons to deny the relief of specific performance of the agreement to sell:-

(i) there was already a stay of alienation of the property dated 02.06.2005 against Late Sh. Vijay Singh as the wife had filed an application for grant of maintenance which is the first charge on the property.

(ii) Late Sh. Vijay Singh has died on 21.08.2008 and has left behind only three female members to survive.

With these reasons, the court has exercised discretion under Section 20 of the Specific Relief Act, 1963 and ordered refund of the amount along with interest.

Learned counsel for the appellant has vehemently argued that the defendant had not taken the plea of agreement to sell being harsh and in absence thereof, the court could not record a finding that the specific

performance of the agreement to sell would be harsh on the defendants.

In the considered opinion of this Court, in the present case the court has exercised discretion as available to it under Section 20 of the Specific Relief Act. The discretion exercised is neither shown to be arbitrary nor perverse. The discretion has been exercised by the Court on sound judicial principles after considering the facts of the case. Hence, the discretion exercised is not required to be interfered with by this Court while exercising jurisdiction in the regular second appeal.

Hence, both the regular second appeals are dismissed.

April, 02, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No