

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

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RSA No. 4461 of 2016 (O&M)

Date of Decision: September 17, 2019

Sunaina and others

.....Appellants.

versus

Hari Har Bhandari

.....Respondent.

CORAM: HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr. Vivek Suri, Advocate
for the applicants/appellants.

SUDIP AHLUWALIA, J. (Oral)

CM No. 11366-C of 2019

Allowed as prayed for.

CM No. 11367-C of 2019

For the reasons mentioned in the application, the applicants-appellants are allowed to place on record the documents as Annexures A-1 and A-2, subject to all just exceptions.

CM stands disposed off.

RSA No. 4461 of 2016

The grievance of the appellants in this case is that the suit for specific performance filed by them against the respondent was only partially decreed in their favour. It may be mentioned that the suit was dismissed by the Ld. Trial Court which found that the plaintiffs had failed to prove their case.

2 Judgment of the Trial Court was, however, set aside by the Ld. Lower Appellate Court which granted only partial relief to the appellants by way of

restraining the respondent from alienating the suit property after being satisfied about genuineness of the sale agreement. Nevertheless, the relief of specific performance was declined on the ground that ownership of the respondent-defendant for the purpose of selling the disputed property to the appellants had not been established.

3 It is a matter of record that the respondent-defendant had been proceeded against ex-parte from the very beginning. The appellants' suit for specific performance and grant of the additional relief of permanent injunction was dismissed by the Ld. Trial Court in his absence, and even the appeal was disposed off by the Ld. Lower Appellate Court after having dispensed with the respondent's service on account of his having remained absent in the Trial Court.

4 He has again not appeared to contest the present appeal inspite of having duly been served by way of affixation at an earlier stage.

5 The document (Annexure A-1) led on behalf of the appellants by way of additional evidence today goes to show that a constructed pucca area of 530 sq. feet of a total area of land measuring 0 kanals 5 marlas 10 biswas in village Dharampur No. 152, Tehsil Kalka, situated in the boundary Municipal Corporation, Pinjore, was gifted in favour of respondent by its erstwhile owner Swami Narinder Puri @ Bhandari Baba Chela, vide registered gift deed dated 22.10.1997.

6 Annexure A-2 is the Assessment Register of the Municipal Corporation, Pinjore, which goes to show that the property thus held by the respondent in Dharampur, has been assigned Municipal No. 075/B-2, which corresponds with the suit property. As such the ownership of the respondent-defendant of the aforesaid property is established and this Court, therefore, finds no further impediment in granting the relief of specific performance in favour of the appellants, as sought for by them.

7 The appeal is, therefore, allowed by modifying the impugned judgment passed by the Ld. Lower Appellate Court to the extent that apart from the permanent injunction being granted for restraining the respondent from alienating the suit property in favour of the any third person, the decree of specific performance for the said property is also granted in their favour with a direction upon respondent to execute the requisite Sale Deed latest by 31.10.2019, subject to payment of monetary amount, if any, outstanding against the appellants, failing which the appellants would be at liberty to have the same executed in accordance with law.

September 17, 2019
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[SUDIP AHLUWALIA]
JUDGE

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