

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

**RSA No. 3273 of 2019 (O&M)
Date of Decision: 12.02.2020**

Hardeep Singh

.... Appellant

Versus

Joginder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Sanjay Jain, Advocate and
Mr. Gaurav Antwal, Advocate
for the appellant.

Mr. Hardip Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant has filed the present regular second appeal challenging the correctness of judgments passed by the Courts below. The plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 29.05.2006. Caption of the plaint reads as under:-

“Suit for possession by way of specific performance of agreement to sell dated 29.05.2006 of the land measuring 5 acres (20 Bighas) bearing Kewat/Khatauni No. 106/136, 107/137, 13/16, 179/283, bearing Khasra No. 1348/2, 1349, 1351, 1352, 1353/1, 1347, 1348/1, 1353 and ½ share in Khasra no. 1483/1346 as per jamabandi situated at Sersehani, Tehsil Dera Bassi, District Mohali (Punjab) directing the defendants to execute the sale deed of the land in favour of the plaintiff on payment of the balance sale consideration out of total sale considerations.

AND

for permanent injunction restraining the defendants from alienating, mortgaging, encumbering upon, over the suit property to any other person except the plaintiff and from damaging the land by digging the earth or by raising any sort of construction in any manner whatsoever adverse to the interest of the plaintiff through themselves or through anybody else or by the help of the any other agency under Order 7 Rule 1 CPC.”

Learned trial Court while taking into consideration various facts, granted alternative relief of recovery of Rs. 25,00,000/- along with interest @ 6% per annum. The appeal filed by the defendants was allowed and suit was dismissed in entirety.

On 07.01.2020, respondent No. 2 appeared in Court and suffered a statement that the defendants are ready to execute the sale deed as per the agreement to sell on receipt of balance sale consideration. Since, respondent No. 1 was not present, therefore, the case was adjourned.

Thereafter, the appeal came up for hearing on 10.01.2020, when following order was passed:-

“Affidavit of respondents has been filed in the Court today and the same is taken on record as mark 'C'.

Plaintiff-appellant is in regular second appeal against judgments passed by the Courts below deciding the suit for possession by way of specific performance of agreement to sell dated 29.05.2006.

Learned trial Court granted decree for recovery of earnest money along with interest at the rate of 6% whereas learned First Appellate Court has set aside the aforesaid decree passed by the trial Court resulting in dismissal of the suit filed by the plaintiff.

Notice of motion was issued. Sh. Hardip Singh, Advocate has put in appearance on behalf of the respondents.

On 07.01.2020, following order was passed on the statement of learned counsel for the respondents, in the presence of respondent No. 2:-

“Respondent No. 2 along with his counsel is present in the Court. They have jointly stated that they are ready to execute the sale deed as prayed for in the suit for possession by way of specific performance of agreement to sell dated 29.05.2006 on receipt of balance sale consideration.

Learned counsel for the appellant has no objection.

Since respondent No. 1 is not present, let both the respondents file affidavit to the aforesaid effect on the next date of hearing.

Adjourned to 10.01.2020.

List in urgent.”

Affidavit of both the respondents has been filed and respondents are duly identified by the counsel representing them. Respondent No. 2 is also present in Court. The affidavit is to the following effect:-

“1. That the appellant-plaintiff filed a suit for possession by way of specific performance of Agreement of Sell dated 29.05.2006 of land measuring 5 Acres (20 Bighas) against the deponents-respondents-defendants which was decreed by learned trial Court for alternate relief of recovery of Rs. 25,00,000/- along with interest @ 6% per annum vide judgment and decree dated 09.10.2015 and appeal against the

said judgment and decree filed by the deponents-respondents-defendants was allowed by the learned Lower Appellate Court, SAS Nagar allowed the appeal and set aside the impugned judgment and decree vide judgment and decree dated 26.02.2019 and the above titled appeal has been filed by the appellant-plaintiff which is now fixed for hearing on 10.01.2020 before this Hon'ble Court.

2. That the deponents-respondents -defendants are ready to execute the sale deed as prayed for in the suit for possession by way of specific performance of Agreement to Sell dated 29.05.2006 on receipt of balance sale consideration to be paid by the appellant-plaintiff to the deponents within a specific time period to be fixed by this Hon'ble Court.”

Learned counsel for the appellant has submitted that in the agreement to sell Khewat, Khatauni, rectangle and khasra numbers of the land were not specified and land in dispute was described as 5 acres of land, out of which 1 acre is situated on the road whereas remaining 4 acres is on the backside. He points out that while filing the suit, the plaintiff has specifically given description of the land in the suit which reads as under:-

“5 acres (20 Bighas) bearing Khewat/Khatauni No. 106/136, 107/137, 13/16, 179/283, bearing Khasra No. 1348/2, 1349, 1351, 1352, 1353/1, 1347, 1348/1, 1353 and ½ share in Khasra no. 1483/1346 as per jamabandi situated at Sersehani, Tehsil Dera Bassi, District Mohali (Punjab).”

He submits that lest there is any dispute, let this fact be clarified.

On the other hand, learned counsel for the respondents has submitted that in the affidavit, defendants have already specified that they have no objection to passing of the decree as prayed for by the plaintiffs in the suit.

In view of the consensus arrived at, the decree passed by the Courts below is substituted by the decree for specific performance of agreement to sell as prayed for. The plaintiff shall be liable to deposit the balance sale consideration of Rs. 5 crores 35 lakhs within four months.

At this stage, learned counsel for the respondents prays for time on the ground that some part of the land, according to his information, has been acquired by the National Highway Authority of India and he wants to get complete information.

Adjourned to 14.01.2020.

List in urgent.”

There was some dispute with regard to compulsory acquisition of small piece of land by measuring 7 biswas by a public authority. There was also error in the Jamabandi. Learned counsel for the parties now jointly state that even if the acquired land which is measuring 7 biswas, is excluded, still the defendants are in position to execute the sale deed with regard to the agreed land i.e. 5 acres (20 Bighas). The respondent No. 2 along with his counsel is present and submits that let a decree be passed in favour of the plaintiff-appellant. Learned counsel for the plaintiff-appellant has no objection thereto.

Keeping in view the aforesaid fact and the consensus arrived at, the present appeal is allowed.

Learned counsel for the defendants have submitted that from the khasra numbers as noted in the order dated 10.01.2020, the land measuring 5 acres shall be completed.

There shall be conditional decree for specific performance of the agreement to sell with regard to 20 Bighas (5 acres) of land comprised in khasra numbers as mentioned in the caption noted above, subject to adjustment of 7 biswas of land, as undertaken by learned counsel for the defendants.

The plaintiff shall deposit the balance sale consideration before the trial Court within 4 months as agreed by learned counsel for the plaintiff. On deposit of the amount, defendants shall remain bound to execute and register the sale deed in favour of the plaintiff. If the defendants do not come forward, the plaintiff shall be entitled to get the sale deed executed through the Court, provided the amount as required is deposited within the time prescribed.

Parties through their counsel are directed to appear before the learned trial Court on 01.07.2020.

Appeal allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

(ANIL KSHETARPAL)
JUDGE

12.02.2020
Maninder

Whether speaking/reasoned : Yes
Whether reportable : No