

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

RSA No. 4151 of 2010(O&M)

Date of decision: 10.1.2020

Amar Singh

.....Appellant

VERSUS

Swinder Singh Pannu and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rahul Mahajan, Advocate for the appellant.

Mr. Parambir Singh, Advocate for respondents No.1 and 2.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against decree and judgment dated 18.08.2010 passed by the Additional District Judge, Tarn Taran whereby appeal against judgment and decree dated 08.09.2008 passed by the trial Court was accepted, impugned judgment and decree was set aside and suit filed by the respondents/plaintiffs for specific performance of the agreement dated 28.11.2001 was decreed as prayed for.

Counsel for the appellant/defendant No.1 has not disputed that agreement to sell dated 28.11.2001 in respect of land measuring 33 kanal 6 marlas situated in village Kajikot and 6 kanals situated in village Nalagarh at the rate of Rs.5,20,000/- per acre was executed, in favour of plaintiffs/respondents. There is no denial that out of aforesaid land, sale deed dated 03.07.2002 in respect of land measuring 16 kanals was executed by the appellant in favour of Smt. Rajinder Kaur wife of Swinder Singh – plaintiff No.1 and Smt. Gurcharan Kaur wife of Maninderpal

Singh – plaintiff No.2 in equal shares. 11 kanals of land out of the said land was further sold by the appellant in favour of a third party. The respondents/plaintiffs filed suit for possession by way of specific performance of the aforesaid agreement only in respect of land measuring 6 kanal 6 marlas out of land measuring 33 kanal 6 marlas.

The sole submission made by counsel for the appellant is that the trial Court rightly negated plea of the respondents/plaintiffs seeking specific performance of the agreement in respect of land measuring 6 kanal 6 marlas, in view of observations recorded in para 12 of the judgment. It is vehemently argued that as agreement was in respect of two separate pieces of land situated in different villages, the clause in the agreement to execute the sale deeds in parts cannot be interpreted to mean that sale deed in respect of land situated in village Kajikot was to be executed in parts. On the contrary, that clause should be construed that sale deeds in respect of land situated at village Kajikot and Nalagarh are to be executed separately, as has been so held by the trial Court.

Counsel representing the respondents/plaintiffs has supported the impugned judgment by contending that observations made by the trial Court in para 12 of the judgment are the result of misreading of terms and conditions of the agreement and misinterpretation of intention of the parties that can be gathered from recitals in the agreement.

I have heard counsel for the parties, perused the paper-book and records.

A relevant extract from agreement Ex.P1 in Punjabi but translated in English, reads as follows:-

“From the aforesaid land, possession of land measuring 33 kanal 6 marlas of Kajikot will be given on 13.04.2002 and

sale deed will be executed on receipt of balance amount after change of ownership of land in Nalagarh in my name. If I refuse, I shall be bound to pay penalty besides the amount received. I am owner of 1/6th share of land measuring 199 kanals 19 marlas in village Kajikot. The sale deed of land would be executed in parts and the last sale deed would be executed and registered on 28.11.2002. Till the last sale deed is executed and attested, both the parties would be bound by the agreement.”

The stipulation that sale deed of land will be executed in parts has been incorporated subsequent to ownership of 1/6th share of land measuring 199 kanal 19 marlas in village Kajikot. Meaning thereby that sale deed in respect of that land will be executed in parts and last sale deed would be executed on 28.11.2002. In this view of the matter, observations made by the trial Court in para 12 of the judgment are the result of misreading and misinterpretation of the terms and conditions in the agreement. I would hasten to add that the appellant/defendant did not contest the proceedings before the trial Court and as such he did not raise any plea in defence with regard to intention of the parties in view of the aforesaid recitals in the agreement of sale. Once the appellant had not raised a plea that the expression ‘in parts’ contained in the agreement should be interpreted in a manner that two separate sale deeds would be executed in respect of land in village Kajikot and Nalagarh, interpretation made by the trial Court otherwise cannot be allowed to sustain. In this view of the matter, I do not find an error much less perversity in the decree passed by the Appellate Court.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

JANUARY 10, 2020		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no