

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

RSA No.5104 of 2010 (O&M)

Date of decision: 22.1.2020

Sewa Singh and another

....Appellants

VERSUS

Partap Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Brar, Advocate for the appellants.

Mr. Ranjit Saini, Advocate for the respondents.

REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against decree and judgment dated 29.10.2010 passed by the Additional District Judge, Tarn Taran whereby appeal against judgment and decree dated 21.09.2007 passed by the trial Court dismissing suit for possession by way of specific performance filed by the respondent/plaintiff was accepted, impugned decree and judgment was set aside and suit of respondent/plaintiff for specific performance of agreement to sell dated 09.10.1995 was allowed.

Counsel for the parties are ad idem that the Appellate Court has not adverted to the question of readiness and willingness of the plaintiff to perform his part of the contract nor to the question whether the plaintiff is entitle to discretionary relief of specific performance of agreement in the light of materials on record. They would further agree that decree and judgment passed by the Appellate Court may be set aside and the matter be remitted to the Appellate Court for decision of the appeal afresh.

In view of the above, the appeal is allowed. Decree and judgment passed by the Appellate Court is set aside and the matter is remitted to the Appellate Court for decision of the appeal afresh, in accordance with law.

The parties through their counsel are directed to appear before the successor Court of Ms. Asha Condal, Additional District Judge, Tarn Taran on 13.02.2020. The Appellate Court shall dispose of the appeal within a period of three months of parties putting in appearance. The Appellate Court may secure presence of defendants No.1 and 2 as they did not put in appearance before this Court.

JANUARY 22, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No