

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

-.-

RSA 613 of 2012 (O&M)

Date of decision: 24.01.2020

Bhag Singh

.....*Appellant*

Versus

Chanan Singh and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Ashok Singla, Advocate
for the appellant

Mr. Sandeep Khunger, Advocate
for respondent No. 1

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 05.12.1998 confirmed by subsequent writing dated 19.02.2001 executed by defendant No. 1 in favour of respondent/plaintiff in respect of land measuring 5 kanal 10 marlas for consideration of Rs.4,00,000/-, out of which Rs.3,00,000/- paid as earnest money was decreed by the trial Court vide judgment and decree dated 04.05.2009 that came to be affirmed in appeal by the Additional District Judge, Moga.

During the course of hearing, counsel for the parties raised rival contentions in respect of possession of suit land.

Counsel for the appellant (defendant No. 2) who has set up sale deed dated 12.07.1999 would state that suit land is in possession of the appellant. On the contrary, counsel for the respondent/plaintiff would argue that the appellant is the nephew of Joginder Singh-defendant No. 1, vendor under agreement to sell dated 05.12.1998 and possession of suit land was delivered to respondent/plaintiff at the time of execution of agreement to sell dated 05.12.1998.

Perusal of the judgments passed by the Courts would reveal that none of the Courts have recorded a specific finding with regard to possession of land in question either with the plaintiff or defendant No. 2.

Counsel for the appellant would inform that an application under Order 14 rule 5 of the Code of Civil Procedure was filed before the first appellate Court for framing a specific issue in respect of possession of suit land but the said application was dismissed by the appellate Court and a grievance in this regard has been expressed in the instant appeal.

Since determination qua possession of suit land has material bearing for adjudication of warring claims of the parties, interest of justice commands that a specific issue is framed in respect of possession of suit land and parties are permitted to adduce evidence in this regard. Accordingly, additional issue No. 1-A is framed to the following effect:-

1-A) whether the plaintiff/respondent is in possession of suit land on the basis of agreement to sell dated 05.12.1998, if so, its effect? OPP

In view of the aforesaid, judgment and decree dated 19.10.2011 passed by the appellate Court is set aside and the matter is remitted to the appellate Court for decision of the appeal afresh. Evidence

on additional issue would be adduced by the parties before the appellate Court. The appellate Court would not remit the matter to the trial Court either for recording of evidence or deciding question of possession. The parties through their counsel are directed to appear before the appellate Court on 18.02.2020. The appellate Court shall decide the appeal within a period of three months of parties putting in appearance. The legal representative(s) of plaintiff/respondent No. 1 would be at liberty to file an appropriate application for their impleadment as plaintiff/respondent No.1 is stated to have passed away.

(Rekha Mittal)
Judge

24.01.2020

Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No