

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1868-2018(O&M)

Date of decision: 15.07.2022

Rajinder Kumar Sharma

...Petitioner

Versus

Kamal Singh and others

...Respondents

CR-1869-2018(O&M)

Banwari Lal Sharma

...Petitioner

Versus

Kamal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

Mr. Sanjay Vij, Advocate
for respondent no.1

Mr. Anand Kumar Bishnoi, Advocate
for respondent no.3.

Mr. Nikhil Vashisht, Advocate, for
Mr. Manu Rattan, Advocate
for respondent no.4 and 5.

ANIL KSHETARPAL, J (Oral)

Two connected suits filed against a common defendant are pending before the courts below. In both the suits, the plaintiffs pray for grant of decree of specific performance of the agreement to sell. The facts as well as the description of the land covered in the agreement to sell, are identical. Hence, the facts are being noticed from Civil Revision No.1868 of 2018.

The plaintiffs, while filing the suit, sought specific performance

of the agreement to sell dated 23.03.2004. Para 1 of the plaint reads as under:-

“1. That vide agreement dated 23.03.2004 the defendnat agreed to sell $\frac{1}{2}$ share in 23 kanals 8 marlas out of the land comprising in khewat/khatoni No.304/383, Rect. No.33, Killa No.1/2(6-4), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 14(4-7), 17(7-8) and khewat/khatoni no.66/69, Rect. No.33, killa No.18/1(1-8), situated in the revenue estate of village Kadarapur, Tehsil Sohna, District Gurgaon.”

The Court fee was paid on the entire sale consideration agreed between the parties i.e. Rs.7,50,000/-. Fortunately, the agreement to sell is in English language. The relevant portion thereof, reads as under:-

“Whereas the First Party is the owner of $\frac{1}{2}$ share in my land (23 kanals 8 Marla) out of khewat/khata No.304/383, Killa No.33/1/2(6-4), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 14(7-8), 17(7-8) and khewat/khata no.66-69, Killa No.33/18/1, situated at village Kadarapur, Tehsil Sohna, Haryana (hereinafter called and referred to as 'the said property')”

The respective applications, filed by the plaintiffs, for amendment of the plaint have been rejected by the trial court. The only amendment prayed is to the effect that the specific performance is with respect to 23 kanals and 8 marlas in each suit and not $\frac{1}{2}$ share of 23 kanals and 8 marlas in each suit.

After having heard the learned counsels for the parties at length,

this court is of the view that the aforesaid issue can only be decided after the parties are permitted to lead evidence. The agreement to sell is before the Court. The Court shall ultimately interpret it keeping in view the evidence led by the parties. It is not in dispute that the defendant is owner of 46 kanals and 16 marlas. Hence, the question is whether he entered into an agreement to sell with each of the plaintiffs with respect to land measuring 23 kanals and 08 marlas or $\frac{1}{2}$ share of 23 kanals and 8 marlas.

Order VI Rule 2 CPC provides that the pleadings are required to be confined to the material facts which are required to be stated in a concise form. In other words, the pleadings are required to be concise as well as precise. It is specifically provided in Order VI Rule 2 that evidence should not be a part of the pleadings.

Keeping in view the aforesaid facts, both the revision petitions are disposed of by directing the trial court to proceed with the suit and decide the same in accordance with law after appreciating the evidence. If the court comes to a conclusion that the agreement to sell was with respect to 23 kanals and 8 marlas of land, with regard to each plaintiff in their respective suit, then, the court shall proceed to pass the decree accordingly. However, if the court comes to a different conclusion, the court shall accordingly decide the matter.

All the pending miscellaneous applications, if any, are also disposed of.

July 15, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No