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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-8383-C-2022 in/and
RSA-402-2005 (O&M)
Date of Decision:16.11.2022

Vijay Kumar Malhotra **.. Appellant**

Vs.

Bhagwan Singh **..Respondent**

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amit Arora**,** Advocate for applicant-appellant.

Mr. Akash Manocha, Advocate for
Mr. G.B. Girhotra, Advocate
for the respondent.

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Manoj Bajaj, J. (Oral)

CM-8383-C-2022

The instant application is for pre-poning the date of hearing of CM-5239-C-2022, CM-5246-C-2022 and CM-8109-C-2022 to an early date.

Notice in the application.

At this stage, Mr. Amit Arora accepts notice on behalf of the non-applicant/appellant and does not oppose the prayer.

Application is allowed and the date of hearing is pre-poned to today.

CM-5239-C-2022 and
CM-5246-C-2022

These applications have been filed by applicant/appellant, under Section 151 CPC for fixing the main appeal for hearing, and placing on record Mutual Agreement-cum-Memorandum of Understanding dated 24.06.2022 (Annexure A-1) executed between the parties.

Learned counsel for applicant-appellant states that this regular

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second appeal stands admitted by this Court and no actual date for hearing is fixed, but now, the dispute between the parties has been amicably settled and he further prays that the appeal be decided in terms of Mutual Agreement-cum-Memorandum of Understanding dated 24.06.2022. Learned counsel prays that **CM-5246-C-2022** u/s 151 CPC be treated under Order XXIII Rule 3 CPC.

Notice of these applications.

At this stage, Mr. Akash Manocha, Advocate for Mr. G.B. Girhotra, Advocate appears on behalf of respondent/non-applicant, and does not oppose the prayers.

For the reasons mentioned in the applications, the same are allowed and Mutual Agreement-cum-Memorandum of Understanding 24.06.2022 (Annexure A-1) is taken on record and the appeal is also taken up today for hearing.

CM-8109-C-2022

This is an application for bringing on record the legal representatives of respondent-Bhagwan Singh in the present appeal.

Learned counsel for applicant states that respondent-Bhagwan Singh expired on 14.11.2018 and in this regard, he has invited the attention of the court to his death certificate (Annexure A-1). He submits that the application is supported with an affidavit of LR, namely, Taranjeet Kaur. He prays that the LRs. of respondent be impleaded as party in this appeal.

Notice in the application.

Mr. Amit Arora, Advocate accepts notice on behalf of non-applicant/appellant and does not oppose the prayer.

For the reasons mentioned in the application, the same is

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allowed. Legal heirs, namely, Taranjeet Kaur, Ramanpreet Singh, Gaganpreet Singh and Tejpreet Singh are impleaded as parties, subject to just exceptions.

Amended memo of parties, annexed with the application, is taken on record.

Main case

Appellant (plaintiff) has preferred regular second appeal to challenge the judgment and decree dated 27.11.2004 passed in Civil Appeal No.8 dated 08.01.2002 by the first appellate Court, whereby it has affirmed the judgment and decree dated 26.11.2001 passed by Civil Judge (Sr. Divn.), Faridabad, dismissing plaintiff's suit for possession by way of specific performance.

The plaintiff filed a suit for possession and sought specific performance of agreement to sell dated 10.07.1985, whereby the defendant had agreed to sell a plot measuring 333 Sq. yards, which was allotted to him by Faridabad Ex-Sainik and Karamchari Co-operative House Building Society Limited, against a sum of Rs.65,000/- and out of it, defendant had received Rs.20,000/- as earnest money, whereas the balance amount was to be paid in two installments of Rs.25,000/- and Rs.20,000/- respectively. According to the plaintiff, he had been throughout ready and willing to perform his part of the contract, but, the defendant refused to transfer the said plot in the name of the plaintiff.

Today, learned counsel for the parties have stated that a settlement between the parties has been effected and the same is placed on record as Annexure A-1. The terms of settlement arrived at between the parties reads as under:

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"1. That the total market price has been fixed at Rs.2,00,00,000/-(Rupees Two Crores Only) for the above said property.

2. That as agreed between the parties the first party and second party are having following ratio:

I. That the first party will get 35% (Thirty Five Percent) out of total price.

II. That the second party will get 65% (Sixty Five Percent) out of total price.

3. That the second party has paid Rs.2,00,000/ (Rupees Two Lacs Only) to the first party in the following manners:

i Rs.2,00,000/- to the first party through Cheque No.658446 dated 21-06-2022 drawn on HDFC Bank.

4. That now as agreed between the parties, both the parties i.e. first and second party will withdraw the said court case, and at the same time, the second party will pay Rs.13,00,000/- (Rupees Thirteen Lacs Only) by demand draft/pay order to the first party.

5. That from the date of withdrawal of court cases the second party will get the execution of conveyance deed, from the concerned department, in the name of second party, and the same registered in the office of Sub registrar, Badkhal, Faridabad. The second party shall make the balance amount of 35% to the first party within 45 days from the date of withdrawal of court case.

6. That ALL THE EXPENSES OF CONVEYANCE DEED INCLUDING STAMP DUTY, ALL MCF CHARGES, DTP CHARGES, REGISTRATION FEE, PROPERTY ID CHARGES, PROPERTY TAX CHARGES & DOCUMENT CHARGES will be paid & borne by the first party and the second party, in the ratio of their respective share of sale consideration. Thus sixty five percent of total charges will be paid by the second party and thirty five percent of charges will be paid by the first party. That all the parties are agreed to do the same.

7. That at the time of execution of conveyance deed or at the most within 45 days of withdrawal of court case, the second party will pay whole of the balance amount to the first party, after deducting the already paid amount and proportionate expenses of conveyance deed.

8. That in case the said any parties/party backs out from this bargain and fails to complete all the formalities then the other party have the right to get the sale of the said property get effected through court of law under specific performance of this undertaking at the risks and costs of the defaulter party.

9. That if any party infringes the terms and conditions of this agreement then the other party can get the same enforced through the Court of law at the costs and expenses of the defaulting party.

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10. That if any dispute will arise out of this bargain then the same shall be triable by the Faridabad Court."

Learned counsel appearing for respondent states that indeed the settlement has been arrived at between the parties and he has no objection, if the impugned decree is modified in terms of the Mutual Agreement-cum-Memorandum of Understanding deed.

Considering the above, the regular second appeal is disposed of and the impugned judgment and decree dated 27.11.2004 passed by the First Appellate Court is modified and it is ordered that the rights of the parties in respect of the suit property shall be governed as per the terms of the Mutual Agreement-cum-Memorandum of Understanding (Annexure A-1).

The Mutual Agreement-cum-Memorandum of Understanding deed shall form part of the decree.

(MANOJ BAJAJ)
16.11.2022 **JUDGE**
Jasmine Kaur

Whether speaking/reasoned Yes No
Whether reportable Yes No

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