

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

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2023:PHHC:145538

CR-2943-2021(O&M)
Date of decision: 16.11.2023

DHARMENDER

..Petitioner

Versus

RONAK AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Rathee, Advocate
for the petitioner.

Mr. Manmohan Saroop, Advocate
for Mr. Himanshu Sharma, Advocate
for respondent No.1.

Mr. Ramesh Hooda, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. In a suit for possession by way of specific performance of the agreement to sell filed by Sh. Ronak (respondent No.1), the petitioner herein is a proforma defendant. During the pendency of the aforesaid suit, defendant No.1 (Smt. Prakash Devi) stated that she is prepared to execute the sale deed in accordance with the agreement to sell.

2. On the other hand, the petitioner (proforma defendant No.2) filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the plaint. The Court has permitted defendant No.1 (Smt. Prakash Devi) to execute the sale deed in favour of the plaintiff with respect to the half share i.e. 4 kanal.

3. The petitioner challenges the correctness of the aforesaid order.

4. The learned counsel representing the petitioner contends that defendant No.1 cannot execute the sale deed in favour of the plaintiff unless and until

his application under Order VII Rule 11 Code of Civil Procedure, 1908, is

decided. He submits that the trial Court has erred in permitting the defendant No.1 to execute the sale deed.

5. On the other hand, the learned counsel representing the respondent has drawn the attention of the Court to the agreement to sell executed on 11.06.2018. It is evident that Smt. Prakash Devi was the owner to the extent of 8 kanal land i.e. half share of joint land measuring 16 kanal comprised in Khewat No.19, Khata No.19, Rectangle No.9, Khasra No.1(8-0), 10(8-0). She agreed to sell 8 kanal land for Rs.1,77,00,000/- in favour Sh. Dharmender son of Sh. Moola ram and Sh. Ronak son of Sh. Rajender. In para 8, it was provided that within the period prescribed for execution of the sale deed i.e. 25.12.2018, she would get the property partitioned and execute the sale deed of land comprised in Rectangle No.9, Killa No.1(8-0), within the prescribed period for execution of the sale deed. There is no formal partition, however, defendant No.1 is prepared to execute the sale deed of 4 kanal land (undivided share) in favour of the plaintiff. The plaintiff also has no objection. The petitioner (proforma defendant) has not filed any suit to seek specific performance of the agreement to sell.

6. In such circumstances, he cannot object to the sale deed proposed to be executed by defendant No.1 in favour of the plaintiff representing the share of the plaintiff in the agreement to sell.

7. As far as the decision on the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, this Court has no doubt that the Court will decide the same in accordance with law.

8. With these observations, the present petition is disposed of.

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

November 16th, 2023
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(ANIL KSHETARPAL)
JUDGE

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