

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1427 of 2014(O&M)

Date of Order:12.12.2023

Dev Raj and another

.Appellants

Versus

Rattan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate
for the applicants-appellants.

Mr. Vikas Mohan Gupta, Advocate
for the respondents.

ANIL KSHETARPAL, JC.M.No.11162-C-2023

1. For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed and the regular second appeal is restored to its original number.

MAIN

2. This regular second appeal has been filed by the plaintiffs to assail the correctness of the concurrent findings of fact arrived at by the courts below while dismissing their suit for mandatory injunction directing the defendants to hand over possession of the plot.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

4. Sh. Mehanga Ram, predecessor-in-interest of the plaintiffs was the owner of the property. He is alleged to have entered into an agreement to sell on 19.09.1980 in the favour of Sh. Rattan Singh and Chhinda.

However, no sale deed was executed. It is alleged by the plaintiffs that Sh. Mehanga Ram vide notice dated 16.02.1981, revoked the agreement to sell and forfeited the earnest money.

5. The defendants while contesting the suit claimed that the defendant no.1 filed the previous civil suit for the grant of permanent injunction which was decreed on 05.11.1997. It is also claimed that defendant no.1 was ready and willing to perform his part of the contract and despite notice being given to the plaintiffs no reply was received from their side. During the pendency of the civil suit, the plaintiffs filed an application for permission to amend the plaint in order to seek the relief of possession of the property. However, the aforesaid application was dismissed by the trial court on 21.09.2011. Ultimately, the trial court held that the suit for mandatory injunction is not maintainable. The First Appellate Court has also upheld the judgment and decree passed by the trial court.

6. The learned counsel representing the parties have been heard at some length.

7. From the perusal of the record, it is evident that the court of first instance has erred in dismissing the application because substantially the plaintiffs had prayed for permission to deposit the court fee on the relief of possession because the possession has already been sought by filing the suit.

8. After arguing at substantive length, they have come to a consensus.

1) It is agreed that the plaintiffs' application for permission to amend the plaint should be allowed while setting aside order dated 21.09.2011;

2) It is also agreed that the defendants shall be granted an

opportunity to file a reply to the amended plaint and the parties will be given an additional opportunity to lead their evidence.

3) The evidence which has already been led shall be read in evidence.

4) The court is required to cull out the new issue with regard to entitlement of the defendants to continue in possession in part performance of the agreement to sell in terms of Section 53-A of the Transfer of Property Act which shall be decided by the court along with main suit.

9. Keeping in view of the aforesaid agreement between the parties, the impugned judgments and decrees passed by the courts below are set aside.

10. Disposed of accordingly.

11. The parties through their counsel are directed to appear before the trial Court, on 05.01.2024.

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

December 12, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO