

RSA-2136-1994 (O&M) &
RSA-2137-1994 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. RSA-2136-1994 (O&M)
Date of decision: 14.05.2024

NIRANJAN SINGH AND ANR.

..Appellants

Versus

ZORA SINGH AND ORS.

..Respondents

2. RSA-2137-1994 (O&M)

NIRANJAN SINGH AND ANR.

..Appellants

Versus

GURMEL KAUR AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Daljeet Singh Virk, Advocate
for the appellants.

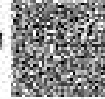
Mr. J.S. Brar, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. Two connected regular second appeals, which are pending for the last 30 years have come up for final disposal.

2. On 10.05.2024, after hearing the learned counsel representing the parties, the following order was passed:-

“These two connected Regular Second Appeals have come up for disposal. The facts, as disclosed by the learned counsel representing the parties are that Sh. Gurdev Singh executed an agreement to sell on 27.12.1985 in favour of the plaintiffs Sh. Niranjan Singh and Sh.Amar Singh with respect to the land measuring 12 bighas 18 biswas for a total sale consideration of Rs. 78,000/-. He received Rs.20,000/-as earnest money.



Subsequently, on 20.06.1986, Sh. Gurdev Singh executed a sale deed in favour of Sh. Niranjana Singh and Sh. Amar Singh with respect to 7 bighas land. The plaintiffs filed a suit for the remaining land measuring 5 bighas 18 biswas. Both the courts below did not grant the relief of specific performance of the agreement to sell but granted an alternative relief of refund of the earnest money. RSA-2137-1994 was admitted for regular hearing. During the pendency of the suit, legal representatives of Sh. Gurdev Singh have transferred 2 bighas 18 biswas land in favour of heirs of the plaintiffs vide sale deed dated 15.10.1996 whereas 3 bighas land has been sold in favour of Sh. Amrik Singh, Sh. Dharam Singh, Sh. Avtar Singh and Sh. Dharminder Singh. Heirs of Sh. Gurdev Singh filed a suit for possession pursuant to the decree passed by the trial court which was decreed. In compliance with the aforesaid decree, the possession of 5 bighas 18 biswas land was taken over by them. Subsequently, possession of 12 bighas 18 biswas land has been transferred to the heirs of the plaintiffs whereas 3 bighas land has been transferred in favour of Sh. Amrik Singh, Sh. Dharam Singh, Sh. Avtar Singh and Sh. Dharminder Singh.

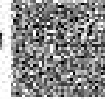
In view of the aforesaid developments, the question which would arise for consideration is "whether the plaintiffs can still claim the specific performance of the remaining 3 bighas land or not, particularly in the context of Section 62 of the Indian Contract Act, 1872 and the fact that the plaintiffs have waived their right with respect to remaining part of the property?"

List on 14.05.2024, in the urgent list, for final disposal.

A photocopy of this order be placed on the file of the other connected case."

3. Once again, the learned counsel representing the parties have been heard.

4. The learned counsel representing the appellants while drawing the attention of the Court to CM-4885-C-1996, filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), prays for disposal of the appeal in terms of the settlement, which has been arrived at between the heirs of Sh. Gurdev Singh on the one hand and the plaintiffs on the other hand. It may be noticed that heirs of Sh. Gurdev Singh



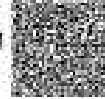
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transferred land measuring 3 bighas out of total suit land measuring 5 bighas and 18 biswas vide sale deed dated 07.08.1996, in favour of Sh. Amrik Singh, Sh. Avtar Singh, Sh. Dharam Singh and Sh. Dharminder Singh. Moreover, heirs of Sh. Gurdev Singh are not represented.

5. The learned counsel representing the appellants admits that heirs of Sh. Gurdev Singh have already shifted from the village. Application under Order XXIII Rule 3 of the CPC can be allowed only if the Court is satisfied that there is a settlement between the parties. Once, heirs of Sh. Gurdev Singh have transferred some part of the suit land in favour of Sh. Amrik Singh, Sh. Avtar Singh, Sh. Dharam Singh and Sh. Dharminder Singh, they are left with no right, title or interest in the land, which has already been sold. Hence, they cannot enter into a settlement qua the portion, which has already been sold. The learned counsel representing the appellants while relying upon the judgment passed by the Supreme Court in **Lata Constructions and others Vs. Dr. Rameshchandra Ramniklal Shah and another, 2000 AIR (SC) 380**, contends that Section 62 of the Indian Contract Act, 1872 (hereinafter referred to as the '1872 Act') would not be applicable because there is no complete substitution of a new contract in place of old. He submits that the sale deed of 7 bighas land before the filing of the suit and 2 bighas and 18 biswas of land during the pendency of the suit does not completely substitute the agreement to sell. Hence, the plaintiffs have right to specifically enforce the contract.

6. This Court has considered the submissions of the learned counsel representing the parties.



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7. In this case, the total agreement to sell was with respect to the land measuring 12 bighas and 18 biswas. In the year 1986, Sh. Gurdev Singh transferred 7 bighas land in favour of the plaintiffs. Subsequently, the plaintiffs filed the suit. During the pendency of suit, heirs of Sh. Gurdev Singh transferred 2 bighas and 18 biswas of land in favour of the heirs of the plaintiff. The plaintiffs have not drawn the attention of the Court to any subsequent contract, which enables them to enforce remaining part of the contract.

8. The learned counsel representing the appellant does not dispute that in the sale deed dated 15.10.1996, there is no recital that with respect to remaining parcel of land, the suit would continue or the agreement to sell with respect to remaining land continue to be enforceable. Hence, in this case, Section 62 of the 1872 Act would be applicable.

10. Moreover, the plaintiffs have already accepted the partial performance of the contract with respect to the part of the suit land without reserving their rights for seeking performance of remaining part of the contract. Furthermore, the agreement to sell was entered into on 27.12.1985, and nearly 39 years have elapsed, hence, it would not be appropriate to grant a decree for specific performance.

11. Hence, both the appeals are dismissed.

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

May 14th, 2024

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**(ANIL KSHETARPAL)
JUDGE**

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