



RSA-2635-1994

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

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RSA-2635-1994

Date of decision: 09.05.2024

RAVINDER KUMAR AND ANOTHER

..Appellants

Versus

KARTAR SINGH AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dheeraj Mahajan, Advocate
for the appellants.

Mr. Tejinderbir Singh, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the Courts below while granting alternative relief of refund of Rs.11,333.66/- along with interest in place of the relief of possession by way of specific performance of the agreement to sell.

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

3. Sh. Kartar Singh was the owner of the land measuring 5 kanal and 5 marlas located near Gandhas Nalah, denoted as Khasra No.1477 in the Estate of Amritsar Urban Outside Bhagtanwala Gate, Amritsar. He entered into an agreement to sell on 08.01.1992 in favour of Sh. Ravinder Kumar, Sh. Sunil Kumar and Sh. Kanwaljit Singh on receipt of Rs.17,000/- out of total sale consideration of Rs.1,28,625/-. As per the agreement to sell, defendant No.1 was required to take permission from the competent



authority under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the '1976 Act'). The sale deed was agreed to be executed on or before 31.12.1982. Defendant No.2 namely Sh. Kanwaljit Singh, one of the intended purchaser surrendered his rights while accepting the amount from defendant Sh. Kartar Singh on 11.12.1985. On 24.12.1985, two plaintiffs namely, Sh. Ravinder Kumar and Sh. Sunil Kumar have filed the suit. The defendants admitted the agreement to sell, however, claims that the agreements was cancelled and plaintiffs were never ready and willing to perform their part of the contract. Defendant No.2 has already been refunded the amount.

4. Upon appreciation of evidence, both the Courts below did not consider it appropriate to grant the relief of specific performance while granting substituted relief of refund of earnest money along with interest.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with requisitioned record.

6. The learned counsel representing the appellants contend that the land was agricultural assessed to land revenue, hence, the permission under the 1976 Act was not required. He further submits that in any case, the relief of specific performance cannot be denied on account of failure on the part of defendant No.1 to take necessary permission. He further submits that even if permission is required that itself is not a bar to grant the relief of specific performance.

7. On the other hand, the learned counsel representing the respondents submits that the plaintiffs were never ready and willing to perform their part of the contract.



8. This Court has considered the submissions of the learned counsel representing the parties and studied the judgments of the Courts below.

9. It is important to note that as per the agreement to sell, the sale deed was required to be executed on 31.12.1982. The suit was filed on 24.12.1985, i.e. three years after the agreed date for execution of the sale deed. This Court has carefully read the plaint. There is absolutely no explanation for the delay of three years. The relief of specific performance of the agreement to sell was discretionary till the amendment in the Specific Relief Act, 1963 (hereinafter referred to as the '1963 Act'). This agreement is of the year 1982. Once, there is a complete silence or inaction on the part of the plaintiffs to take steps for enforcement of the contract particularly when defendant No.2 has already received back his part of the earnest money, the plaintiffs cannot be said to be always ready and willing as required to be under Section 16 of the 1963 Act.

10. Moreover, now the plaintiffs want to prove that the land was an agricultural land. In additional evidence, he sought to produce the copy of jamabandi and khasra '*girdawari*'. The copy of jamabandi only has presumption of correctness, which is rebuttable. The property is located in the urban area. Hence, the contention of the learned counsel representing the appellant that the property is agricultural land cannot be accepted particularly when he has not pleaded in his plaint that no permission under the 1976 Act was required.

11. The plaintiffs have sought specific performance of 2/3rd share of the land measuring 5 kanal and 5 marlas. In substance, they are claiming specific performance of part of the land agreed to be sold.

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12. Now, period of approximately 42 years have elapsed, at this stage, it would not appropriate to grant the relief of specific performance.

13. Keeping in view the aforesaid discussion, no ground to interfere is made out.

14. Dismissed accordingly.

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

May 09th, 2024

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**(ANIL KSHETARPAL)
JUDGE**

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