

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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2024:PHHC:039249

RSA-849-1994 (O&M)
Date of decision: 19.03.2024

PASHORA SINGH ..Appellant

Versus

DARSHAN SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Manveen Pheruman, Advocate
for Mr. D.S. Pheruman, Advocate
for the appellant.

Mr. P.S. Thiara, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the Courts below while refusing to grant relief of specific performance of the agreement to sell but granted alternative relief of recovery of earnest money.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Darshan Singh, a member of the Scheduled Caste community purchased the suit property in a restricted auction held on 25.02.1976. There was a restriction for sale of the property for a period of 20 years in favour of the person of non Scheduled Caste. The plaintiff claims that Sh. Darshan Singh entered into an agreement to sell on 26.10.1983 on receipt of Rs.1,600/- out of total sale consideration of Rs.17,000/-. It was agreed that the sale deed would be executed on 08.05.1987 i.e. after a period of nearly three years and seven months from the date of agreement to sell.

The suit for specific performance of the agreement to sell was filed on 09.08.1988.

4. Both the Courts on appreciation of evidence have refused to grant relief of specific performance in exercise of their discretion on the ground that the specific performance, if ordered, would result in violation of rules, which should not be permitted.

5. This appeal was admitted for regular hearing in the year 1994, which has come up for hearing after nearly 30 years.

6. Though, the learned counsel representing the appellant has contended that the Courts below have made out a new case for defendant, however, this Court has examined the judgments of the Courts below. It is evident that defendant has specifically pleaded that he has purchased the property from the government in auction. The overwhelming evidence was brought on record to prove that auction was a restricted auction, which was governed by Punjab Package Deal Properties (Disposal) Act, 1976. The defendants examined Sh. Joginder Singh, official from the office of Tehsildar Welfare, Ajnala and Sh. Kuldeep Singh, Kanungo, to prove that fact. Moreover, both the Courts have exercised their discretion, which is not proved to be arbitrary. Under the unamended Specific Relief Act, 1963, the relief of specific performance was discretionary at the relevant time. Still further, now, a period of 41 years from the date of execution of the agreement to sell has elapsed.

7. Hence, at this stage, it is not considered appropriate to pass a decree for specific performance of the agreement to sell.

8. Dismissed accordingly.

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

March 19th, 2024
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(ANIL KSHETARPAL)
JUDGE

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