

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

1.RSA-1145-2021 (O&M)

Sh.Kulwant Singh (since deceased) through LRs

....Appellant

Versus

Sh.Darshan Singh and another

..Respondents

2.RSA-1169-2019 (O&M)

Sh.Kulwant Singh and another

....Appellant

Versus

Sh.Darshan Singh

..Respondent

3.RSA-308-2022 (O&M)

Sh.Jagtar Singh (since deceased) through LRs

....Appellant

Versus

Sh.Darshan Singh and others

..Respondents

Reserved on:12.03.2024

Date of decision: 20.03.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aakash Singla, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

1. With the consent of the learned counsel representing the appellant, three connected Regular Second Appeals bearing nos. 1169 of 2019, 1145 of 2021 and 308 of 2022 shall stand disposed of by this common order.

2. At the outset, it is important to note that two appeals filed by the appellants, who are father and son i.e RSA 1919 of 2015 and 1918 of 2015, have already been dismissed by a detailed order passed on 02.09.2015.

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

4. Sh.Kulwant Singh and his son Sh.Jagtar Singh entered into four separate agreements to sell in favour of Sh.Darshan Singh (respondent herein) on 28.11.2005 with respect to the following parcels of land:-

i) 54 kanals 5 marlas, which consist of two sub-parcels namely 41 kanal 10 marlas and 12 kanals 15 marlas.

ii) 7 kanals 6 marlas

iii) 73 kanals 10 marlas, which consists of two sub-parcels with respect to land measuring 42 kanals 9 marlas and 31 kanals 1 marla

iv) 7 kanals 7 marlas

5. RSA no.1919 of 2015 and 1918 of 2015 with respect to the agreements to sell of two parcels of lands i.e 7 kanals 6 marlas and 7 kanals 7 marlas have already been dismissed by the High Court.

6. RSA no.1145 of 2021 and RSA-308 of 2022 have been filed by the defendants against the concurrent findings of fact arrived at by

the courts below, while decreeing the plaintiff's suit for the specific performance of the agreement to sell. RSA-1169 of 2019 has been filed by the plaintiffs-Sh.Kulwant Singh and his son Sh.Jagtar Singh against the judgments passed by the courts below, while dismissing their suit for possession of land measuring 142 kanals 8 marlas, which is sum total of all the land involved in all four agreements to sell.

7. Heard the learned counsel representing the appellants at length and with their able assistance perused the paperbook.

8. The learned counsel representing the appellants has made the following submissions:-

1)The plaintiff was not ready and willing to perform his part of the contract on the date agreed to for the execution and the registration of the sale deed, as specified in the agreement to sell.

2) Plaints in both the suits for the specific performance were amended to include land measuring 41 kanals 10 marlas and 31 kanals 1 marla. The aforesaid amendment was beyond the prescribed period of limitation.

3) The suit land is not involved in previous litigation, which was decided in 2011

4)The plaintiff has not led any evidence to prove their financial preparedness on the date fixed for the execution of the sale deed in the agreement to sell.

5) The agreement to sells are not sufficiently stamped.

6)It will cause hardship to the appellants if the suits are decreed.

9. This Court has considered the submissions made by the learned counsel representing the appellants.

10. At the outset, it must be noticed that both the courts have come to a conclusion that in both the suits for specific performance of the agreement to sell, major parcel of the land was under litigation, which was allowed by the High Court in RSA no.804 of 2007 on 11.03.2011. The plaintiffs, in both the cases, filed the suit within the prescribed period of limitation, while reserving their right to pray for the specific performance of the agreement to sell, with respect to the parcels of land, which were involved in the litigation. Once the High Court on 11.03.2011 decided the matter, the applications for the permission to amend the plaints, so as to include the remaining land was allowed by the High Court in the revision petition. Hence, the argument of the learned counsel representing the appellants that the plaintiff was not ready on the date the sale deed was to be executed as per the agreement to sell does not have substance because at that time major part of the suit land, in both the suits, was involved in the litigation and the cloud of dust over the title settled only on 11.3.2011. Consequently, the plaintiff-Sh.Darshan Singh was ready and willing to perform his part of the contract.

11. The second argument of the learned counsel representing the appellants has no substance because as already noticed, the litigation

qua major part of the land was pending qua both the suits and subsequently, the litigation was decided on 11.03.2011 facilitating the court to allow amendment and permit Sh.Darshan Singh to seek the specific performance of the agreement to sell with respect to the entire land. Hence, there is no substance in his second submission.

12. It may be noted here that the next argument of the learned counsel representing the appellants is being taken up for the first time in this Court. This Court has carefully read the judgment passed by the courts below. This argument was never taken up before the courts below. Hence, it would not be appropriate for this Court to permit the appellant to take a plea for the first time, particularly when this is not even the stand of the appellants in the written statements.

13. Submission no.4 of the learned counsel has no basis because the plaintiff was not required to prove cash. Section 16 of the Specific Relief Act, 1963 (hereinafter referred to as '196 Act') specifically provides that the plaintiff was required to prove that he was always ready and willing to perform his part of the contract. Explanation (i) to clause 6 of Section 16 of the 1963 Act itself provides that the plaintiff is not required to tender to the defendant or deposit the amount in the Court. Moreover, both the courts below have held that the plaintiff-Sh.Darshan Singh was always ready and willing to perform his part of the contract.

14. Submission no.5 of the learned counsel representing the appellant is required to be rejected because the objection with regard to the deficiency in stamping the agreement to sell cannot be taken at this

stage, particularly when the agreements to sell has been exhibited and admitted in evidence. Section 36 of the Indian Stamp Act,1899 specifically bars the court from subsequently permitting the party from objecting to the admissibility.

15. The last argument of the learned counsel also lacks substance because no evidence has been led by the appellants to prove how and in what manner they will suffer hardship though before the First Appellate Court, the appellants have submitted this argument, however, no evidence in support thereof has been produced. As already noticed, two Regular Second Appeals, with respect to two agreements to sell, entered on the same date, have already been dismissed vide order dated 02.09.2015. Hence, the submission has no substance

16. Keeping in view the aforesaid facts and discussion, the result is inevitable. Hence, all the three appeals are dismissed.

17. The appeals filed by the appellants have been dismissed on merits. Hence, no order on the application for condonation of delay of 475 days in filing the appeal in RSA no. 308-2022 and 478 days in RSA-1145-2021 is required to be passed.

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

20 .03.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**