



2024:PHHC: 009999

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-224-C-2024 in/and
RSA-524-2005 (O&M)
Date of decision: 23.01.2024

Didar Singh (since deceased) through LRs and others

...Appellants

Versus

Kuldip Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Anil Kumar Sharma, Advocate for the appellants.

Mr. Kuljit Singh, Advocate for respondent No.2.

VIKAS SURI, J.

CM-224-C-2024

This is an application under Order 23 Rule 1 read with Section 151 CPC seeking to withdraw the present Regular Second Appeal.

It is pleaded that plaintiff/appellant had filed a suit for specific performance and permanent injunction, which was partly decreed vide judgment dated 10.06.2023 to the effect that plaintiff/appellant is only entitled to recover the amount of Rs.78, 000/- along with interest @ 12% p.a. from 30.05.1991 till its realization. It was further held that plaintiff was not entitled for permanent injunction as prayed for, as the plaintiff had not succeeded on the plea of specific performance. The appeal preferred being aggrieved by the judgment and



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decree passed by the trial Court was dismissed on 24.05.2004. The instant Regular Second Appeal had been filed challenging the aforesaid judgment and decree passed by the Courts below. It is further pleaded that the main appeal was admitted vide order dated 07.02.2005, which reads as thus:-

“Inter-alia, contends that the defendants resisted the suit for specific performance of the agreement that Labh Singh was not competent to enter into such agreement as the land was alleged to be ancestral land. But the Courts below have granted the decree for refund of the earnest money holding that the agreement was executed as collateral security.

In view of the above, the following substantial question of law arises for consideration:-

“Whether the decree for refund of earnest money can be granted when defendants have not alleged that the agreement was executed security as collateral security?”

Admitted.

Notice re: stay for 25.2.2005.

Process dasti as well.”

Vide order dated 13.05.2005, stay of dispossession from the suit property was granted subject to furnishing of security assessed at Rs.20,000/- per year. The order dated 13.05.2005 reads as under:-

“Since the appellant has paid the purchase price, he is granted stay of dispossession of the property, which is stated to have been taken over pursuant to agreement to sell, subject to the condition, per mesne profits that the appellant will furnish security, which is assessed at Rs. 20,000/- per year.

The security will be furnished before the executing Court on or before 31-3-2006, which will be accepted after notice to the defendants. Thereafter, security will be furnished



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each year before 31st January.”

Learned counsel for the appellants states that pursuant to the aforesaid order, the security has been deposited with the executing Court without any exception or default. It is further submitted that the appellant-applicants are in possession of the suit property till date and with the afflux of time, with the intervention of respectable, good sense has prevailed between the parties and they have settled the dispute amongst themselves. It is, thus, stated that the appellants as such do not want to proceed with the present appeal and hence seek withdrawal of the same.

Learned counsel appearing for respondent No.2 does not dispute the aforesaid submissions. He raises no objection to the instant application being allowed and the withdrawal of the main appeal.

Heard learned counsel for the parties.

For the reasons mentioned in the application, supported by affidavit and the submissions noticed above, the present application is allowed.

CM stands disposed of.

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Dismissed as withdrawn.

January 23, 2023
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No