



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

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RSA No.4386 of 2018 (O&M)
DATE OF DECISION: 30th AUGUST, 2024

Mello (deceased) through legal representatives

.... Appellants

Versus

Baljit Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vipin Mahajan, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate,
for the appellants.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present appeal has been filed by the appellants challenging the concurrent findings recorded by both the Courts below, whereby the suit for declaration and suit for permanent injunction has been dismissed by the trial Court and the appeal filed by them has been dismissed by the lower Appellate Court.

2. The brief facts, as involved in the present case, are that the plaintiffs claims to be owner of the suit land and had challenged the judgment and decree dated 03.10.2002 passed in a suit for possession by way of specific performance in favour of respondent Nos.1 and 2. In that suit, the agreement involved therein was executed by Sardar Masih on 22.07.1995 and 19.07.1996. However, vide another judgment and decree dated 05.03.2001, the land measuring 30 kanals 5 marlas comprised in Rect. No.8, Killa No.7, 4, Rect. No.4, Killa No.24, 25, had come to the share of the present appellant. Beside this, it was also mentioned in the said decree,



which was based on the compromise, that if any party has already entered into an agreement, then that agreement shall be deemed to have been entered only qua his share, which he got through the decree in that case. Therefore, Sardar Masih had no authority to suffer the decree in the suit for specific performance. Hence, the decree passed qua the land, which had come to the share of the appellant, was bad in law. Both the Courts below have wrongly dismissed the suit.

3. The parties led their respective evidence. After appreciation the evidence led on file by the respective parties, the trial Court dismissed the suit filed by the appellants. Even, the appeal filed by the appellants before the lower Appellate Court has been dismissed. Hence, the present appeal has been preferred by the appellants.

4. Arguing the case, learned counsel for the appellants has submitted that since the land which had been the subject-matter of suit for specific performance had come to the share of the appellant through a court decree, therefore, the executant of the agreement, namely, Sardar Masih had not saleable right qua the said property. He had no authority to enter into an agreement. Even if, he had entered into an agreement prior to passing of the decree in favour of the appellants, the same was to be deemed to be an agreement qua the share of the executant of the agreement in question, i.e. share of Sardar Masih. Therefore, the decree was rightly challenged by the appellants. Both the Courts below have gone wrong in law in not appreciating the aspect that Sardar Masih could not have transferred a better title. Hence, both the judgments and decrees passed by the Courts below deserve to be set aside and the suit filed by the appellants deserves to be decreed. No other argument has been raised.



5. Having heard learned counsel for the appellants and having perused the case file, this Court does not find any substance in the arguments raised by learned counsel for the appellants. Both the Courts below have recorded the concurrent findings that as on the date when the agreement was entered into, there was no embargo upon the right of Sardar Masih to enter into an agreement. All the events are subsequent in time, therefore, the agreement entered into by Sardar Masih could not have been nullified for any subsequent reason. This Court does not find any illegality in the findings recorded by the Courts below. No doubt, vide judgment and decree dated 05.03.2001, the land, which was subject-matter of the earlier suit for specific performance had come to the share of the present appellant; and the decree in his favour also contained a stipulation that if there is a pre-existing agreement to sell, that shall be deemed to be qua the share of the particular executant only, however, such a compromise based stipulation could be binding only against the executant of the agreement and not against the third party, i.e. the purchaser in the agreement, which was subject-matter of the suit for specific performance. The vendee of the said agreement to sell was not bound by either the decree or stipulation contained therein that the agreement shall be considered to be only qua the share of the executant. The agreement was regarding specific khasra number. On the date of entry into agreement, there was no embargo upon the rights of Sardar Masih to enter into an agreement. Therefore, the agreement was fully enforceable between the parties through court proceedings. No fault could be found in the same.



6. If the appellants can raise a grievance qua getting less land on account of decree coming on the basis of the pre-existing agreement, then their claim could lie only against their co-sharer; for being compensated qua the land which the co-sharer had sold through the pre-existing agreement. The appellant may be having any right to sue his co-sharer for getting compensated, however, the rights of vendee of pre-existing agreement cannot be taken away only because of the fact that subsequently the appellants claimed to be the owner of the said land.

7. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, learned counsel for the appellant has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

8. In view of the above, finding no merit in the present appeal, the same is dismissed.

9. The pending miscellaneous application, if any, is also disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

30th AUGUST, 2024
'Sandeep'

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>