

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8967 OF 2017  
(Arising out of SLP(C)NO. 11369 of 2015)

CHARANJIT KAUR AND ORS. ... Appellant(s)

Versus

GURMEET AINGH AND ORS. ... Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The defendants have come up in appeal aggrieved by reversal of judgment passed by the Trial Court and the First Appellate Court by the High Court. The High Court has decreed the suit for specific performance filed by the plaintiff-respondent.

The suit was filed by the plaintiff with respect to specific performance of Agreement dated 12.07.1978 in respect of 12 Bighas 5 Biswas of agricultural land bearing Khewat No. 139 Khatauni No. 239, Khasri No. 1001(3-5), 1003(6-0), 1004(6-5), 1125(6-5), Khautani No. 242 Khasra No. 1005(6-5), 1399 (6-5) Khewar No. 140 Khatauni No. 247 Khasra No. 1002 (6-0) measuing 40

Bighas 5 Biswas situated in Village Jarg, Sub Tehsil Payal Tehsil and District Ludhiana. The plaintiffs Sukhdev Singh and Balbir Singh (now deceased) and the defendant-Gurdev Singh were real brothers, each having 1/3 share in the joint holding. Gurdev Singh purported to have agreed to sell 1/3rd share in the holding of the joint property for Rs. 30,625/- and agreed to execute the sale deed on or before 2.6.1979. It was claimed that land was already under possessory mortgages for a total sum of Rs. 15,300/-. The remaining amount was paid to Gurdev Singh at the time of execution of the agreement. It was further averred that a further sum of Rs. 600/- was paid to the defendant by the plaintiffs against the promissory note, whereupon a total sum of Rs. 708/- had become due. It was claimed that the entire sale consideration had already been paid by the plaintiffs to the defendant. An alternative prayer was made to refund a sum of Rs. 14,625/-.

The suit was contested by the defendant-Gurdev Singh. He denied the receipt of Rs. 14,625/- on the date of the agreement. It was contended that the parties were governed by Hindu Law and suit property was ancestral coparcenary property belonging to him and his sons. He could not have sold the property and the

interest of his sons. The suit for specific performance could not be decreed as the agreement in question was not for legal necessity or for the benefit of the estate.

The Trial Court decreed the suit in favour of the plaintiffs and ordered the payment for recovery of Rs. 14,625/- It was held that the defendant Gurdev Singh could not have entered into agreement of sale with the plaintiffs in regard to suit property. It was further observed that there was no legal necessity or any benefit of the estate in selling the said property. The First Appellate Court on appeal dismissed the same and affirmed the decree passed by the Trial Court. However, The High Court allowed the second appeal of the respondents vide its judgment dated 12.01.2015. Hence the defendants are in appeal before us.

We have heard learned counsel for the parties at length.

In our opinion, the Trial Court as well as the First Appellate Court in the peculiar facts and circumstances of the case in accordance with the settled principles of law declined to decree the specific performance. The entire property was subject to possessory mortgage, the parties are related with each

other and sons were having their share, there was no legal necessity to sell the share of the sons. There was no substantial question of law which arose before the High Court to make interference as discretion not to decree suit had been properly exercised by the two courts by declining the relief of specific performance. Thus we set-aside the judgment and decree passed by the High Court and at the same time, we feel it appropriate that a sum of Rs. 14,625/- should be refunded along with 10% simple interest from the date on which the agreement had been executed between the parties on 12.07.1978 till the date of payment. Let the interest be paid within three months from today failing which the interest shall become payable @ 12% p.a.

The appeal is allowed to the aforesaid extent. The judgment and decree of the Trial Court as affirmed by the First Appellate Court is modified accordingly.

.....J.  
(ARUN MISHRA)

.....J.  
(AMITAVA ROY)

New Delhi,  
Dated: 6<sup>th</sup> July, 2017.

ITEM NO.13

COURT NO.10

SECTION IV-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11369/2015

(Arising out of impugned final judgment and order dated 12-01-2015 in RSA No. 3164/1985 passed by the High court of punjab & haryana at chandigarh)

CHARANJIT KAUR &amp; ORS.

Petitioner(s)

VERSUS

GURMEET SINGH &amp; ORS.

Respondent(s)

Date : 06-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. V.K.Jhanjhi, Sr. Adv.  
Ms. Jyoti Mendiratta, AOR  
Mr. Ravinder Pal Singh, Adv.

For Respondent(s) Mr. Gaurav Chopra, Adv.  
Mr. Rajeev Gurung, Adv.  
Mr. Dinesh Chandra Pandey, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(SHASHI SAREEN)

AR CUM PS

(TAPAN KUMAR CHAKRABORTY)

BRANCH OFFICER

(Signed order is placed on the file)