

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8575 OF 2013
(Arising out of SLP(C) No.19735/2006)

NIDHAN SINGH (D) TH LRS.

Appellant(s)

:VERSUS:

SANTA SINGH (D) TH LRS.

Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. Neeraj Kumar Jain, learned senior counsel in support of this appeal and Ms. Anita Sahani, learned counsel appearing for the respondents. This appeal seeks to challenge the judgment and order dated 5th July, 2006 rendered by Punjab and Haryana High Court at Chandigarh in Regular First Appeal No. 185 of 1980, affirming the judgment and decree passed by the Sub Judge, 1st Class, Moga, in Suit No.314 of 1977 which was filed by the respondent.

3. The respondent Santa Singh (since deceased) had filed a suit for specific performance of the

agreement dated 19.7.1977 by which the respondent had agreed to purchase half share of the land which belonged to one Bhan Singh, brother of the appellant Nidhan Singh (since deceased), in Village Takhanwadh, Tehsil Moga. The agreed amount was Rs.60,500/- out of which a sum of Rs.3000/- was paid immediately. The brother of the appellant-defendant had created a mortgage on the land and a sum of Rs.5,000/- was due to be paid to the Bank. The respondent was to make that payment. Unfortunately, Bhan Singh, who had signed that agreement, died on 2.11.1977 and then the appellant declined to execute the agreement which led the respondent to file the suit on 22.11.1977.

4. Various issues were raised in the suit and after having framed the issues, the Trial Court came to the conclusion that the respondent plaintiff was ready and willing to perform his part of the agreement and had made out a case of specific performance. The suit was therefore decreed. The appeal against the order of the Trial Court was dismissed by the High Court. Hence, this appeal, by special leave, by the heirs and legal

representatives of the defendant Nidhan Singh.

5. We have perused the judgments rendered by the Trial Court as well as the High Court and heard the counsel for the parties. The only issue raised by Mr. Neeraj Jain, learned senior counsel appearing for the appellants is that if the disputed sale was to be permitted, in view of Section 12 of the Punjab Land Reforms Act, 1972, the landholding of the respondent-plaintiff would have gone beyond the permissible limit, and therefore, such an agreement could not have been held to be a valid one. In defence, a decree for partition dated 10.9.1974 between the respondent-plaintiff and his sons in a suit filed by his sons in 1974, which decree was passed in favour of his sons, was relied upon by the respondents. Consequently, the landholding of respondent-plaintiff would not be beyond the permissible limit. It was contended on behalf of the appellants that the said decree was a collusive one. The Trial Court as well as the Appellate Court declined to accept that objection of the appellant. We are in agreement with the Courts below on this aspect inasmuch as the decree was obtained way back in 1974 and the disputed agreement was entered into

much later in 1977.

6. In the circumstances, there is no substance in this appeal. Having noted these facts, we find that now the respondents will have to pay the balance amount of Rs.57,500/-. Inasmuch as this agreement was entered into in the years 1977, if the legal representatives of the respondent are keen on having the transaction completed, it is in the fitness of things that they should pay the remaining amount with interest which we direct to be paid at the rate of 12% per annum. If the respondents are not in a position to pay this amount, the decree will stand altered and the appellants will return the amount of Rs.3,000/- with interest at the rate of 12% per annum.

7. We direct the respondents to make necessary payment to the appellants and the Bank within three months from today. The respondents will clear the amount due to be paid to the Bank at whatever rate of interest the Bank will charge, in case the amount is not paid so far. On making the payment to the Bank, Rs.5,000/- will be debited from the

payable amount. In the event the amount is so paid and the Bank dues are cleared, the sale deed will be executed within four weeks thereafter, and the possession of the concerned land will be handed over to the L.Rs. of the respondent. In case there is no understanding between the parties with respect to the portion of the land to be handed over, it will be for the executing Court to decide as to which portion of the land is to be handed over to the respondents in compliance of the order of this Court. In the event the respondents fail to discharge both these obligations, it will be open to the appellants to return the amount of Rs.3,000/- with interest at 12% per annum within four weeks after the period of three months as provided above.

8. This appeal is disposed of in the above terms.

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
September 17, 2013.