

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

**RSA No.3060 of 2012 (O&M)
Date of decision: 25.02.2015**

Baljeet Singh and another

... Appellants

Vs.

Rajesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. O.P.Goyal, Senior Advocate with
Mr. Randeep Smagh, Advocate
for the appellants.

AMIT RAWAL J. (ORAL)

Appellants and legal representatives of vendee-Chhaju Ram, who entered into agreement to sell dated 5.7.1999 (Ex.PW1/A) in respect of residential property for a sum of ₹ 35,000/-. As per the agreement to sell, target date for execution and registration of the sale deed was fixed as 18.1.2000. During the subsistence of the agreement to sell, Chajju Ram, during his life time, is stated to have sold the same to appellants/defendants No.2 and 3, for a sum of ₹ 37,000/-.

As per the case set up by the respondents-plaintiffs, Chajju Ram refused to execute and register the sale deed on the

target date, which necessitated to avail remedy by filing suit for specific performance, in the year 2000.

On receipt of notice of the suit, Chajju Ram appeared and filed written statement and denied the agreement to sell. The factum of sale deed to defendants No.2 and 3, *ibid*, was admitted, appellants/defendants No.2 and 3 filed separate written statement and came out with the plea that there was collusion between plaintiff and defendant No.1, much less, they did not know about the execution of the agreement to sell and therefore, they are bona fide purchasers, in view of the provisions of Section 41 of the Transfer of Property Act.

The trial Court on the basis of evidence, decreed the suit of the respondents-plaintiffs directing defendant No.1 to execute the sale deed in favour of the plaintiff, as per agreement dated 05.07.1999, within a period of two months, failing which, the plaintiff-respondent No.1 had been given liberty to seek execution and the registration of sale deed through the process of Court. Vendor Chajju Ram, during the pendency of the suit died, but none of his LRs appeared on his behalf nor were brought on record.

Feeling aggrieved from the aforesaid judgment and decree dated 05.05.2009 passed by the trial Court, appellants subsequent vendees-defendants No.2 and 3 assailed the judgment and decree by filing an appeal and the appeal was also dismissed by the lower Appellate Court.

In these circumstances, appellants-defendants No.2 and 3 are against the judgments and decrees of the Courts below in the present regular second appeal.

Mr. O.P.Goyal, learned Senior Advocate assisted by Mr. Randeep Smagh, Advocate, appearing on behalf of appellants-defendants No.2 and 3, in support of his grounds of appeal, raised following submissions:-

- i) That agreement to sell was specifically denied by vendor- Chajju Ram, who during his life time filed written statement.
- ii) Both the Courts below have committed illegality and perversity in not reading the contents of the agreement, in essence, it was not an agreement to sell.
- iii) There was a cutting on the back side of the stamp paper on which agreement to sell had been drafted and by scoring serial number 7954, 7957 was written.
- iv) That appellants are bona fide purchasers in view of the provisions of Section 41 of the Transfer of Property Act, as they made reasonable inquiry before purchasing property in dispute.
- v) While referring to the statement of Stamp Vendor PW5-Dharam Singh, it was contended that he unequivocally admitted that there was a cutting on the stamp paper, which earlier had serial number 7954 and

after scoring the same, serial number 7957 was written.

Learned counsel for the appellants/defendants No.2 and 3 urged that present appeal involves substantial following substantial questions of law to be adjudicated by this Court:-

- “i) Whether the appellants are bonafide purchasers for consideration and without notice?*
- ii) Whether the appellants are entitled to the provision available to them in view of the provisions of Section 41 of the Transfer of Property Act?*
- iii) Whether the agreement dated 5.7.1999 which is un-registered document can form legal evidence for decreeing the suit in favour of the respondent Rajesh?”*

I have heard learned counsel for the appellants-defendants No.2 and 3 and appraised the impugned judgments and decrees of the Courts below and am of the view that the present appeal is liable to be dismissed for the following reasons:-

Stamp Vendor, as PW5-Dharam Singh, stated in his examination-in-chief that he maintained register and he had issued stamp papers on which the agreement to sell had been typed i.e. Ex.PW1/A. In cross examination to a specific question he admitted that there was a cutting on the back side of the paper as it had serial No.7954, which was allegedly issued in the name of Usha Rani and thereafter by scoring off the same, serial number 7957 was given.

The said witness has not been called upon by the appellants to produce the register in order to prove the alleged interpolation at the behest of the stamp vendor.

In view of what has been observed above a presumption has to be drawn in favour of the respondent-plaintiff and against appellants-defendants No.2 and 3. It is a matter of record that appellants are neighbour of the vendee/respondent Rajesh Kumar, therefore, it cannot be ruled out that he did not have the knowledge of the agreement to sell, for the reason, that property had been sold with a profit of ₹ 2,000/- which was agreed to be sold by the vendor in favour of the plaintiff-respondent No.1. Plaintiff-respondent No.1 has discharged the onus by proving the ingredients of Section 16 (c) of the Specific Relief Act by examining one of the attesting witnesses and scribe PW1-Sham Sunder and PW2-Shakuntla. Appellants have not been able to cause any dent in the cross-examination by proving to raise slightest doubt that there was an interpolation and forgery in the preparation and drafting of the agreement to sell.

No effort has been made by the appellants-defendants No.2 and 3 to disprove the signatures of Chajju Ram on the agreement to sell by examining/comparing from Handwriting Expert from the alleged sale deed dated 10.11.1999.

In view of what has been observed above, there is no illegality and perversity in the findings of the Courts below, much

less, no substantial question of law arises to be adjudicated by this Court.

No other argument has been urged.

Accordingly, the appeal is dismissed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

February 25, 2015
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