

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3138 of 2013(O&M)
Date of decision :February 6, 2015

Palwinder Singh and others

..... Appellants

Versus

Surinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Sarika Gupta, Advocate for
Mr. Sanjay Gupta, Advocate
for the appellants.

Mr. R. S. Ghuman, Advocate
for the respondents.

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

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellants-defendant Nos 2 and 3 is directed against the judgment and decree of the trial court whereby the suit for specific performance of agreement to sell dated 19.2.2003 in respect of land measuring 12 Kanals 13 Marlas had been decreed and the respondents-plaintiffs had been directed to deposit the balance consideration within a period of two months from the date of passing of the decree and further to register the sale deed within three months from the date of decree. The appeal filed by defendant Nos.2 and 3 against the aforementioned judgment and decree was also dismissed.

Learned counsel appearing on behalf of appellants-defendant Nos. 2 and 3 in support of grounds of appeal inter alia

submits that the appeal involves following substantial questions of law as both the courts below have committed illegality and perversity.

- i) Whether the appellants-defendant Nos.2 and 3 are bona fide purchasers. They made reasonable enquiry before entering into a sale deed dated 10.11.2003 with defendant No.1-Baldev Singh.
- ii) Whether the courts below decreed the suit of the respondents-plaintiffs on an presumption.
- iii) There is no clause in the agreement to sell seeking agreement to sell except to compensate the vendor with liquidated damages.
- iv) Whether the vendor was prepared with the valuable consideration of ₹6,67,750/-.

She further submitted that there was no readiness and willingness on the part of the respondents-plaintiffs and therefore the trial court ought not to have exercised discretion under Section 20 of the Specific Relief Act. The agreement to sell dated 19.2.2003 as set up by respondent No.1, plaintiff has not been scribed by a regular deed writer and it is also not on a regular stamp paper except one stamp.

Learned counsel appearing on behalf of the respondent No.1 submits that the judgments and decrees of both the courts below do not suffer from illegality and perversity as they have been rendered by appreciating oral and documentary evidence. The appellants-defendant Nos. 2 and 3 have not stepped into the witness box to allege that there was a connivance between respondents-

plaintiffs and defendant No.1 and only their attorney has put in appearance. He further submits that appellants-defendant Nos. 2 and 3 are not bona fide purchasers as they did not make any reasonable enquiry before entering into an agreement to purchase vide sale deed dated 10.11.2003 as the target date for execution and registration of the sale deed dated 20.2.2004. The plaintiffs have failed to prove the ingredients of Section 16-C of the Specific Relief Act.

Learned counsel appearing on behalf of the appellant-defendant Nos. 2 and 3 in rebuttal submits that since Sodhi Singh DW-1 attorney of defendant Nos. 2 and 3 was instrumental in purchasing the property and apparently signatures on the sale deed dated 10.11.2003 and therefore he had complete knowledge in respect of entire procedure.

I have heard learned counsel for the parties, appraised the impugned judgment and decrees of both the courts below and is of the view that the appeal is liable to be dismissed for the following reasons.

The onus to prove collusion of plaintiff with defendant No.1-vendee was upon defendant Nos. 2 and 3. No evidence has been lead in support of the aforementioned submissions, much less the stand taken in the written statement. The attorney in cross examination has unequivocally admitted that he did not make any enquiry with regard to the dispute in respect of the property from the Village Nambardar. The appellants-defendants Nos. 2 and 3 in order to prove collusion should have summoned

defendant No.1 in support of their assertion to prove on record as to whether there was an alleged collusion from the admission of their attorney. Appellants cannot be permitted to raise the plea of bona fide purchaser under Section 41 of the Transfer of Property Act. The plea that the agreement to sell did not contain any clause with regard to specific performance is no longer available for the vendee in view of the judgment rendered by the Hon'ble Supreme Court in **P D'Souza Vs. Shondrilo Naidu (2004) 6 SCC 649** wherein it has been held that even if the terms and conditions of the agreement contain compensation in terms of liquidated damages the vendee can seek specific performance of the agreement to sell. The sale deed dated 10.11.2003 executed by defendant No.1 respondent No.2 in favour of defendant Nos. 2 and 3-appellants is during the subsistence of the agreement to sell dated 19.2.2003 as target date was 20.4.2004.

In order to prove the attestation and readiness and willingness, the respondent-plaintiff examined Madan Singh-PW-2 attesting witness of the agreement to sell, and PW-3-Harsh Kumar Sharma Scribe, besides the aforementioned two witnesses, the respondent-plaintiff also appeared in the witness box and supported the averments made in the plaint qua readiness and willingness. Not only this even the respondent-plaintiff appeared before the office of Sub Registrar on 20.2.2004 i.e.the target date fixed for registration and execution of the sale deed. However, respondent No.2-defendant No.1 did not appear before the Sub Registrar to perform his part of the agreement. The aforementioned evidence is sufficient

to hold that the respondent-plaintiff proved the ingredients of Section 16-C of the Specific Relief Act. The suit in the instant case was filed in September 2004 well within the reasonable period from the target date. Thus, in essence the respondent-plaintiff has proved the essential ingredients of Section 16-C that he had been ready and willing from the date of agreement to sell till the filing of the suit, during the pendency of the suit, even during the period of passing of the decree, in as much as the respondent-plaintiff has deposited the balance consideration ₹2,73,000/-.

The appellants-defendant Nos. 2 and 3 failed to cause any dent to the cross examination of the respondents-plaintiffs.

Both the Courts below have rendered a finding of fact and law. There is no substance in the submissions made by learned counsel for the appellants-defendant Nos. 2 and 3. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below. The lower appellate court has also discharged the obligation as enshrined under Section 96 CPC by referring to oral and documentary evidence.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 6, 2015
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