

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

RSA No.367 of 2013 (O&M)

Date of decision : 06.11.2015

Smt. Bashiri and ors.

...Appellants

Versus

Mohit Malik and ors.

...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. R.K. Sharma, Advocate for appellants.

Mr. J.S. Hooda, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby the judgment and decree of the trial Court partly decreeing the suit in favour of the respondents-plaintiffs entitling him to the sum of ₹75,000/- along with 1% interest p.a., has been set aside.

Mr. Sharma, learned counsel appearing on behalf of appellants-defendants submits, that in pursuance to the agreement to sell dated 03.08.1992 entered into between the plaintiffs and defendants No.1 to 3 who had acquired the ownership of the property by efflux of time as the mortgagor has not been able to redeem the property and in lieu thereof paid a total sale consideration of ₹75,000/-. Along with the agreement to sell, irrevocable General Power of Attorney of the same date, was also executed

in favour of the defendants. The plaintiffs did not get the sale deed register and filed the suit on 25.09.2006. However, during the interregnum, in pursuance to the judgment and decree dated 01.12.1993 passed in Civil Suit No.538, the property was transferred in the name by defendants Nos.1 to 3 in favour of defendant Nos.4 and 5. The defendant Nos.4 and 5 vide registered sale deed dated 06.05.2004 sold the land to the defendant Nos.6 to 8. The defendant Nos.4 and 5 contested the suit by stating that agreement to sell was not entered into between defendant Nos.1 to 3 with the plaintiffs. The Trial Court on the basis of the aforementioned facts partly decreed the suit and ordered for refund of the earnest money of total sale consideration of ₹75,000/- along with 1% interest p.a. The Appellate Court after noticing the aforementioned facts, erroneously reversed the findings that the defendant Nos.4 and 5 had notice of the agreement to sell and, therefore, they cannot take up the plea of bona fide purchaser, much less, defendant Nos.6 to 8 acquired the land by virtue of sale deed dated 06.05.2004 and thus, prays that following substantial questions of law arises for determination:-

- 1) Whether the appellant-defendant Nos.6 to 8 are bona fide purchaser of the land in pursuance to the sale deed dated 06.05.2004 or not.
- 2) Whether the defendant Nos.4 and 5 had become the bona fide owner by virtue of the collusive decree dated 01.12.1993 executed by defendant Nos.1 to 3.
- 3) Whether the respondent-plaintiffs are willing and ready to perform his part of the agreement to sell dated 03.08.1992 or not.

Mr. J.S. Hooda, learned counsel appearing on behalf of

respondents-plaintiffs submits, that there was a breach of trust by the defendant No.1 to 3 and the respondents-plaintiffs came to know about the aforementioned facts i.e. the collusive decree and sale deed. It is only in these circumstances that suit, aforementioned, on 25.09.2006 was filed. The Lower Appellate Court found that the defendant Nos.4 and 5 had the knowledge of the agreement to sell and, therefore, could not have acquired the ownership by way of collusive decree and thus prays that there is no illegality and perversity in the findings rendered by the Lower Appellate Court, much less, no substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book.

Once the respondents-plaintiffs had not been able to use the Irrevocable General Power of Attorney dated 03.08.1992 for execution and registration of sale deed in his favour, from 1992 till 2006, though during the interregnum, aforementioned facts i.e. decree dated 01.12.1993 and sale deed dated 06.05.2004 have surfaced. The breach of agreement in my view had occurred in the year 1993, when the suit bearing No.538 was filed. The respondents-plaintiffs did not take any steps to seek the specific performance of the agreement to sell. There is another aspect of the matter, Irrevocable General of Power of Attorney has not been recalled, nothing prevented the plaintiffs even at that stage to get the sale deed registered.

In my view, Lower Appellate Court has formed the wrong/erroneous opinion by holding that defendant Nos.4 and 5 being brother of defendant Nos.1 to 3 had the knowledge of the agreement to sell.

Mere relationship would not entail into the knowledge of the agreement to

sell until and unless a direct and cogent evidence is brought on record. The property in my view have exchanged many hands. Now it is owned by defendant Nos.6 to 8 and rightly so, the trial Court compensated the plaintiff by entitling him refund of ₹75,000/- along with 1% interest p.a..

The sale deeds, aforementioned were also effected on 06.05.2004, whereas suit has been filed on 25.09.2006. Thus, in my view, there was no readiness and willingness throughout, by the respondents-plaintiffs, in seeking execution of the sale deed. It is strange that once respondents-plaintiffs were holding Irrevocable General Power of Attorney, did not get the sale deed registered for unexplained reasons.

I am of the view that respondents-plaintiffs should be compensated with the refund of earnest money of ₹75,000/- along with interest at the rate of 14% p.a.

With the aforementioned modification in the judgment and decree of trial Court, impugned judgment and decree of the lower Appellate Court, thus, is set aside.

Substantial questions of law as noticed above are answered in favour of appellants-defendants No.6 to 8 and against the respondents-plaintiffs.

The appellant-defendants are directed to pay the earnest money of ₹75,000/- alongwith interest @ 14% p.a. from the date of agreement to sell dated 03.08.1992 within a period of 4 months.

Appeal is allowed accordingly and judgment and decree of trial Court, with aforesaid modification is upheld.

Decree sheet be accordingly prepared.

06.11.2015

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**(AMIT RAWAL)
JUDGE**