

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 503 of 2013 (O&M)
Date of decision: 3.7.2015

Nawab Khan

.. Appellant

v.

Smt. Lata and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Surinder Dagar, Advocate for the appellant.

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Rajesh Bindal J.

One of the defendants is before this court impugning the judgment and decree of the learned lower appellate court, vide which while modifying the judgment and decree of the trial court in a suit for possession by way of specific performance of agreement to sell, the vendor has been directed to execute the sale deed.

The vendor is not aggrieved. The judgment and decree of the lower appellate court has been impugned by the subsequent vendee.

Briefly, the facts, as are available on record, are that Mohd. Ashu was owner in possession of half share in land measuring 164 kanals and 18 marlas. He entered into an agreement to sell 16 kanals of land with Smt. Lata on 8.7.2002 for a total sale consideration of ₹ 3,50,000/-. ₹ 3,05,000/- were paid as earnest money. Balance was to be paid at the time of registration of the sale deed. The last date fixed for registration of sale deed was 10.7.2003. On the date of registration of the sale deed, the vendee was

present in the office of Sub Registrar with balance sale consideration, but the vendor did not turn up. Suit for possession by way of specific performance of agreement to sell was filed on 20.9.2004. After the vendee came to know that vendor had sold some part of the property and also mortgaged some part, even criminal complaint was also filed. The vendor was proceeded against ex-parte. The present appellant, who purchased part of the suit property, defended the suit claiming himself to be a bonafide purchaser. The agreement to sell was duly proved. The trial court decreed the suit only to the extent of refund of earnest money along with interest. However, the learned lower appellate court decreed the suit in totality directing registration of the sale deed.

It was noticed that the vendor was having half share in total land measuring 164 kanals 18 marlas, i.e., 82 kanals and 9 marlas. Sixteen kanals of land was agreed to be sold to Smt. Lata on 8.7.2002. Thirty-two kanals of land was mortgaged with State Bank of Patiala on 12.12.2002. It was further noticed that vendor and the appellant, to whom part of the land was sold, were related, hence, the plea of ignorance and the appellant being a bonafide purchaser cannot be accepted as in relations, the sale and purchase of property is normally known to the family members in rural areas. The court below has further discussed that even in the sale deed registered by the vendor in favour of the appellant, it is not mentioned that sale consideration was passed in the presence of Sub Registrar, as it was stated that entire sale consideration was paid at home. In view of the facts, which came on record, the court below held that Smt. Lata shall be entitled to specific performance of agreement to sell with regard to land measuring 16 kanals falling in khasra No. 5//9 (8-0), 10 (8-0), 11 (8-0) and 12 (8-0). The appellant was also directed to join the vendor to get the sale deed registered. The sale deed dated 21.7.2004 executed in favour of the appellant was not set aside and for protecting his interest, the court below directed that he shall be entitled to land equivalent to 12 kanals, as purchased by him out of the entire khewat owned by the vendor.

With the material on record, as has been referred to above, the findings recorded by the court below, cannot be said to be perverse. No

substantial question of law arises in the present appeal. The same is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

3.7.2015
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