

124.

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

Regular Second Appeal No.1925 of 2015 (O&M)

Date of decision: 04.12.2015

Hukam Singh and another

... Appellants

versus

Rai Singh and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajay Jain, Advocate,
for the appellants.

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 ?

K.Kannan, J. (Oral)

1. The plaintiffs are the appellants before this court. The suit for declaration and injunction was sought on the basis of two documents of purchase dated 26.02.1999 and 09.02.2005. The contest by the defendant was only with reference to the second document of purchase dated 09.02.2005 on a plea that the plaintiff's vendor had already executed an agreement of sale in his favour which was the subject of a suit for specific performance and a decree was passed in the year 2002. The appeal filed by the vendor was dismissed on 19.07.2003 and a second appeal filed by him had also

been dismissed on 03.02.2005. The contention therefore was that the vendor was not competent to execute a sale in favour of the plaintiff and the plaintiff would get no right over the same.

2. It is manifest that the plaintiff who claimed under a purchase would get no title to the property since the vendor had already sold the same by a court's decree, in pursuance to which a sale had also been executed in favour of the defendant. The court was, therefore, justified in restricting the plaintiff's prayer only for the property purchased by the plaintiff in the year 1999 for which there was no dispute and dismissed the claim with reference to the property over which he could have obtained no right and could not hold out his own suit for injunction against the true owner who in pursuance to the decree obtained against the plaintiff's vendor had secured title to the same.

3. The learned counsel states that the two courts have held that the defendant was a resident of the same village and he should have therefore known about the purchase and that he is not a bona fide purchaser. The counsel says that even the doctrine of lis pendens would not apply because there was no case pending at that time when he purchased the property. The arguments are only to be stated to be rejected as untenable. There can be no issue of bona fides at all for a person to plead when the issue is whether the vendor had any right to the property to convey. If he lost the same

by a decree for specific performance, a purchase made after the decree was passed secures to himself nothing except the paper without value. The court was not required to examine the bona fides and it ought to have merely stopped by saying that the sale made by the judgment debtor/vendor was incompetent and would convey no title in favour of the defendant.

4. The counsel has also an argument that the defendant merely had a decree for specific performance for execution of a sale deed and there was no decree for recovery of possession. Recovery of possession is but an incident of a decree for specific performance and there are also authorities to that effect that the courts that grant a decree for specific performance can also provide for a prayer for recovery of possession, even if not asked. Literally every High Court hold the same position (see: **Adarsh Kaur Gill Versus Mawasi and others-2012(187) DLT 41; Gajanand Versus Ramnath-2001(1) MPHT 337; S.S. Rajabathar Versus N.A. Sayeed-AIR 1974 Mad 289; Mahender Nath Gupta Versus Moti Ram Rattan Chand and another-AIR 1975 Delhi 155; and Hemchand Versus Karilal-AIR 1987 Rajasthan 117**). The argument that the defendant was attempting to take delivery of the property through court by execution petition would itself show that the plaintiff was in possession, advancing the case of the plaintiff no better. The point at issue was not whether the plaintiff was in possession. The point for

consideration was whether the plaintiff's possession could be protected and whether he had any title to the property. He had no title to the property, as already held and possession could not also be protected when he was up against the defendant who had obtained valid decree against his vendor, pursuant to the agreement which was earlier in point of time and a decree also earlier in point of time to the defendant's purchase.

5. The appeal is without substance and merit and is dismissed as such.

(K.KANNAN)
JUDGE

04.12.2015
sanjeev