

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

**RSA No.2309 of 2015 (O&M)
Date of Decision: 18.08.2015**

Sanjeev Kumar

.....Appellant.

Vs.

**Maninder @ Maninder Singh
and another**

.....Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Mr.Ravinder Malik, Advocate for the appellant.

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)

CM No.6025-C of 2015

For the reasons stated in the application, delay of 425 days in filing the appeal is condoned.

Application stands disposed of.

RSA No.2309 of 2015

The suit for specific performance was filed for enforcement of an agreement in favour of the plaintiff dated 30.12.2004. According to the plaintiff, first defendant did not act as per the agreement and the plaintiff, therefore, filed a suit for specific performance on 22.10.2007. The suit came to be filed immediately after the vendor, the first defendant, executed a sale deed in favour of second defendant on 01.10.2007. The

purchaser is not a bona fide purchaser without notice and the decree was sought so as to bind a subsequent purchaser. The first defendant filed a written statement denying the agreement and he also denied that he had executed a sale deed in favour of second defendant. The plaintiff produced witnesses to prove the agreement and the Court found that the agreement was true. The second defendant also sought to prove his own sale deed by examining the witness and the scribe. The Court found, notwithstanding the attempt of the defendant to prove his sale, there was no bona fide in his purchase. Since the agreement was anterior in point of time to the sale deed, the Courts found that plaintiff must be entitled to a decree for specific performance, more particularly, when the bona fides of purchase was suspect and the vendor was also denying that he had ever executed a sale deed. There was a contention that the plaintiff was son of Patwari and he was very cunning and he had forged many documents for the purpose of grabbing of property of innocent persons. It was also argued that the plaintiff had no independent source of income and he was only a student and there were no funds.

The trial Court made reference to the evidence of the plaintiff speaking about the actual passing of consideration. There was also evidence that the plaintiff remained present at the office of Sub-Registrar's office on the date which was fixed for the execution of the sale deed. The defendant himself was examined

and he admitted the signatures found in the document executed in favour of the plaintiff. Indeed, the first defendant himself filed a suit for cancellation of the agreement earlier in point of time. The institution of the suit seeking for cancellation of agreement was itself inherent proof of the existence of the agreement but finding that it would be inconvenient, the first defendant withdrew the suit. The plaintiff, therefore, relied on the copy of the plaint that made reference to agreement between parties. It became, therefore, easy for the Court to gather that the first defendant was deliberately taking a false defence and held the agreement to be established.

If the agreement was true and there was no collusion between the plaintiff and the first defendant, as indeed there could not have been when the first defendant was even attempting to institute a suit against him to have the agreement cancelled, it was essential of the defendant to prove his own bonafides of purchase. If the first defendant vendor would not support the subsequent sale and explain as to how, he wanted to sell the property even when there was an earlier agreement, as a matter of necessary inference the subsequent purchase was not bonafide and he had not shown to have made the enquiries which was essential before indulging in any purchase. The decree granted by the trial Court as affirmed in appellate Court was, therefore, perfectly justified and I find no error in the approaches adopted by the courts below for consideration for reversal of the

decision. The appeal is without merit and it is dismissed.

18.08.2015
anil

(K.KANNAN)
JUDGE