

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No. 2399 of 2015 (O&M)

Date of Decision:- 12.08.2015

Joginder Singh and others

.....Appellants

Versus

Amrik Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Puneet Sharma, Advocate, for the appellants.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against judgment and decree dated 15.04.2014, whereby the first appeal filed by defendants-appellants was dismissed by Court of first appeal.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. The detailed facts of the case have already been recapitulated in the judgments of the Courts below. Relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff-Amrik Singh has filed suit for possession by way of specific performance of agreement of sale dated 08.05.2004 on the plea that defendants had executed agreement of sale dated 08.05.2004 in respect of land measuring 25 kanals 8 marlas, situated in village Saprur, Tehsil Phagwara, District Kapurthala for a total consideration of ₹27,78,125/-. Earnest money of ₹4,00,000/- was paid. Defendants

contested the suit and admitted to have executed the agreement but took the plea that in fact plaintiff was not ready and willing to perform his remaining part of agreement. Defendant Nos.6 to 10 took the plea that they are bona-fide purchasers by way of consideration and suit has been filed by plaintiff in connivance with remaining defendants and suit be dismissed. On this fact, the Court of first instance settled issues, after recording oral as well as documentary evidence, returned the findings that plaintiff was entitled to seek specific performance of agreement of sale dated 08.05.2004. Court of first appeal dismissed the appeal and also recorded the findings that sale deed executed by defendant Nos.1 to 3 in favour of defendant Nos.6 to 10 is not binding upon plaintiff-respondent as the same hit by doctrine of lis-pendence.

3. At the time of arguments, learned counsel for the appellants took the plea that appellants before the Court are subsequent purchasers. In fact plaintiff was not ready and willing to perform his part of the agreement on the date of execution of sale deed. Purchasers were not having ready money and were not having any source of money though they present before sub-registrar. So, the plaintiff was not entitled to seek specific performance of the agreement. Courts below have completely ignored while returning the findings. So, the judgment and decreed of Courts below be set aside.

4. After considering the submissions made by learned counsel for the appellants that both the Courts below have already dealt with this controversy and appreciated the oral as well as documentary evidence and returned the findings that agreement of sale dated 08.05.2004 was duly

executed and the same has been duly proved. The fact is not disputed that execution of agreement of sale dated 08.05.2004, as admitted by defendants. The only contention raised by defendant No.1 was that in fact plaintiff was ready and willing to perform his part of the agreement. However, the Courts below have returned specific findings that plaintiff had appeared before the office of sub-registrar on 16.06.2005, which was the date fixed for agreement of sale deed and defendant Nos.1 and 2 were asked to perform their part of the agreement, vide notice dated 21.05.2005. The said notice was never responded by defendant Nos.1 and 2. Thereafter, filing of the suit that plaintiff established readiness and willingness on the part of plaintiff to perform his part of the agreement rather defendants were not ready and willing to perform their part. As regards to plea of defendants regarding bona-fide purchasers, the same has already been duly negated by the Courts below. The said findings are based on evidence available on file. They had the knowledge of earlier agreement and therefore hit by doctrine of lis-pendence.

5. In view of the above, there is no substantial question of law involved in the case and concurrent finding of facts have been recorded by the Courts below. There are no grounds to interfere in the said findings by way of present Regular Second Appeal. Hence, the present Regular Second Appeal is without any merit and the same stands dismissed.

August 12, 2015
naresh.k

(SHEKHER DHAWAN)
Judge